

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1650 Session of
1992

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

SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
JUNE 15, 1992

AN ACT

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

1 ~~penalties and for the abatement and restraint of violations;~~
2 ~~and making editorial changes.~~
3 AMENDING THE ACT OF JANUARY 8, 1960 (1959 P.L.2119, NO.787), <—
4 ENTITLED, AS AMENDED, "AN ACT TO PROVIDE FOR THE BETTER
5 PROTECTION OF THE HEALTH, GENERAL WELFARE AND PROPERTY OF THE
6 PEOPLE OF THE COMMONWEALTH BY THE CONTROL, ABATEMENT,
7 REDUCTION AND PREVENTION OF THE POLLUTION OF THE AIR BY
8 SMOKES, DUSTS, FUMES, GASES, ODORS, MISTS, VAPORS, POLLENS
9 AND SIMILAR MATTER, OR ANY COMBINATION THEREOF; IMPOSING
10 CERTAIN POWERS AND DUTIES ON THE DEPARTMENT OF ENVIRONMENTAL
11 RESOURCES, THE ENVIRONMENTAL QUALITY BOARD AND THE
12 ENVIRONMENTAL HEARING BOARD; ESTABLISHING PROCEDURES FOR THE
13 PROTECTION OF HEALTH AND PUBLIC SAFETY DURING EMERGENCY
14 CONDITIONS; CREATING A STATIONARY AIR CONTAMINATION SOURCE
15 PERMIT SYSTEM; PROVIDING ADDITIONAL REMEDIES FOR ABATING AIR
16 POLLUTION; RESERVING POWERS TO LOCAL POLITICAL SUBDIVISIONS,
17 AND DEFINING THE RELATIONSHIP BETWEEN THIS ACT AND THE
18 ORDINANCES, RESOLUTIONS AND REGULATIONS OF COUNTIES, CITIES,
19 BOROUGHs, TOWNS AND TOWNSHIPS; IMPOSING PENALTIES FOR
20 VIOLATION OF THIS ACT; AND PROVIDING FOR THE POWER TO ENJOIN
21 VIOLATIONS OF THIS ACT; AND CONFERRING UPON PERSONS AGGRIEVED
22 CERTAIN RIGHTS AND REMEDIES," ADDING AND AMENDING CERTAIN
23 DEFINITIONS; FURTHER PROVIDING FOR THE POWERS AND DUTIES OF
24 THE DEPARTMENT OF ENVIRONMENTAL RESOURCES, THE ENVIRONMENTAL
25 QUALITY BOARD AND THE ENVIRONMENTAL HEARING BOARD; FURTHER
26 PROVIDING FOR PLANS AND PERMITS; PROVIDING FOR CERTAIN FEES
27 AND CIVIL PENALTIES, FOR ACID CONTROL, FOR HAZARDOUS AIR
28 POLLUTANTS AND FOR CONTROL OF VOLATILE ORGANIC COMPOUNDS FROM
29 GASOLINE DISPENSING FACILITIES; FURTHER PROVIDING FOR CERTAIN
30 PROCEDURES; PROVIDING FOR COMPLIANCE; ESTABLISHING THE
31 COMPLIANCE ADVISORY PANEL AND PROVIDING FOR ITS POWERS AND
32 DUTIES; FURTHER PROVIDING FOR ENFORCEMENT, FOR CRIMINAL AND
33 CIVIL PENALTIES AND FOR THE ABATEMENT AND RESTRAINT OF
34 VIOLATIONS; AND MAKING EDITORIAL CHANGES.

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

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

40 ~~Section 2. Declaration of Policy. (a) It is hereby~~
41 ~~declared to be the policy of the Commonwealth of Pennsylvania to~~
42 ~~protect the air resources of the Commonwealth to the degree~~
43 ~~necessary for the (i) protection of public health, safety and~~
44 ~~well being of its citizens; (ii) prevention of injury to plant~~
45 ~~and animal life and to property; (iii) protection of the comfort~~
46 ~~and convenience of the public and the protection of the~~

~~recreational resources of the Commonwealth; [and] (iv) development, attraction and expansion of industry, commerce and agriculture[.]; and (v) implementation of the requirements of the Clean Air Act (Public Law 95-95, 42 U.S.C. § 7401 et seq.) in the Commonwealth.~~

~~(b) It is further declared that:~~

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

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

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

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

~~Section 2. Section 3 of the act, amended October 26, 1972~~

~~(P.L.989, No.245), is amended to read:~~

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

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

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

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

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

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

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

~~property, or which unreasonably interferes with the comfortable enjoyment of life or property.~~

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

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

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

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

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

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

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

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

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

~~"Air pollution." The presence in the outdoor atmosphere of a form of contaminant including, but not limited to, the discharging from stacks, chimneys, openings, buildings,~~

~~structures, open fires, vehicles, processes, or any other source of any smoke, soot, fly ash, dust, cinders, dirt, noxious or obnoxious acids, fumes, oxides, gases, vapors, odors, toxic, hazardous or radioactive substances, waste, or any other matter in such place, manner, or concentration inimical or which may be inimical to the public health, safety, or welfare or which is, or may be injurious to human, plant or animal life, or to property, or which unreasonably interferes with the comfortable enjoyment of life or property.~~

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

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

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

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

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

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

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

~~penalty, or a combination of the foregoing, the term shall also include the officers and directors of any corporation or other legal entity having officers and directors.~~

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

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

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

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

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

~~(3) is not a major stationary source;~~

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

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

~~"State Implementation Plan." The plan 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 et seq.) to provide for attainment of the national ambient air quality standards.~~

~~"Stationary air contamination source." An air contamination source other than that which, when operated, moves in a given~~

1 ~~direction under its own power.~~

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

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

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

12 ~~[(1)] (2) Enter any building, property, premises or place~~
13 ~~and inspect any air contamination source for the purpose of~~
14 ~~investigating an actual or a suspected source of air pollution~~
15 ~~or for the purpose of ascertaining the compliance or non-~~
16 ~~compliance with [any rule or regulation which may have been~~
17 ~~adopted and promulgated by the board hereunder.] this act, the~~
18 ~~Clean Air Act, a rule or regulation promulgated under either~~
19 ~~this act or the Clean Air Act, a plan approval, permit or order~~
20 ~~of the department. In connection with such inspection or~~
21 ~~investigation, samples of air, air contaminants, fuel, process~~
22 ~~material or other matter may be taken for analysis, a duplicate~~
23 ~~of the analytical report shall be furnished promptly to the~~
24 ~~person who is suspected of causing such air pollution or air~~
25 ~~contamination.~~

26 ~~[(2)] (3) Have access to, and require the production of,~~
27 ~~books [and], papers and records, including, but not limited to,~~
28 ~~existing computerized records pertinent to any matter under~~
29 ~~investigation.~~

30 ~~[(2.1)] (4) Require the owner or operator of any air~~

1 ~~contamination source to establish and maintain such records and~~
2 ~~make such reports and furnish such information as the department~~
3 ~~may reasonably prescribe.~~

4 ~~[(2.2)] (5) Require the owner or operator of any air~~
5 ~~contamination source to install, use and maintain such air~~
6 ~~contaminant monitoring equipment or methods as the department~~
7 ~~may reasonably prescribe.~~

8 ~~[(2.3)] (6) Require the owner or operator of any air~~
9 ~~contamination source to sample the emissions thereof in~~
10 ~~accordance with such methods and procedures and at such~~
11 ~~locations and intervals of time as the department may reasonably~~
12 ~~prescribe and to provide the department with the results~~
13 ~~thereof.~~

14 ~~[(3)] (7) Enter upon any property on which an air~~
15 ~~contamination source may be located and make such tests upon the~~
16 ~~source as are necessary to determine whether the air~~
17 ~~contaminants being emitted from such air contamination source~~
18 ~~are being emitted at a rate in excess of a rate provided for by~~
19 ~~[board rule or regulation] this act, the Clean Air Act, a rule~~
20 ~~or regulation promulgated under either this act or the Clean Air~~
21 ~~Act, a plan approval, permit or order of the department or~~
22 ~~otherwise causing air pollution. Whenever the department~~
23 ~~determines that a source test is necessary, it shall give~~
24 ~~reasonable written or oral notice to the person owning,~~
25 ~~operating, or otherwise in control of such source, that [it] the~~
26 ~~department will conduct a test on such source. Thereafter, the~~
27 ~~person to whom such notice is given shall provide such~~
28 ~~reasonably safe access to the testing area, and such sampling~~
29 ~~[holes] ports, facilities, electrical power and water as the~~
30 ~~department shall specify in its notice.~~

1 ~~[(4)] (8)~~ Receive, initiate and investigate complaints,
2 ~~institute and conduct surveys and testing programs, conduct~~
3 ~~general atmospheric sampling programs, make observations of~~
4 ~~conditions which may or do cause air pollution, make tests or~~
5 ~~other determinations at air contamination sources, and assess~~
6 ~~the degree of abatement required.~~

7 ~~[(4.1)] (9) (i)~~ Issue orders to any person owning or
8 ~~operating an air contamination source, or owning or possessing~~
9 ~~land on which such source is located, if such source is~~
10 ~~introducing or is likely to introduce air contaminants into the~~
11 ~~outdoor atmosphere in excess of any [board rule or regulation,~~
12 ~~or any permit requirement] rate provided for by this act, the~~
13 ~~Clean Air Act, a rule or regulation promulgated under either~~
14 ~~this act or the Clean Air Act, a plan approval or permit~~
15 ~~applicable to such source, or at such a level so as to cause air~~
16 ~~pollution. Any such order may require the cessation of any~~
17 ~~operation or activity which is introducing air contaminants into~~
18 ~~the outdoor atmosphere so as to cause air pollution, the~~
19 ~~reduction of emissions from such air contamination source,~~
20 ~~modification or repair of such source or air pollution control~~
21 ~~device or equipment or certain operating and maintenance~~
22 ~~procedures with respect to such source or air pollution control~~
23 ~~device or equipment, [institution] recommendation of a process~~
24 ~~change, installation of air pollution control devices or~~
25 ~~equipment, or any or all of said requirements as the department~~
26 ~~deems necessary. Such orders may specify a time for compliance,~~
27 ~~require submission of a proposed plan for compliance, and~~
28 ~~require submission of periodic reports concerning compliance. If~~
29 ~~a time for compliance is given, the department may, in its~~
30 ~~discretion, require the posting of a bond in the amount of twice~~

1 ~~the money to be expended in reaching compliance.~~

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

12 ~~[(5)] (10) Institute, in a court of competent jurisdiction~~
13 ~~proceedings to compel compliance with [any] this act, the Clean~~
14 ~~Air Act, a rule or regulation promulgated under either this act~~
15 ~~or the Clean Air Act, plan approval, permit or order of the~~
16 ~~department from which there has been no appeal or which has been~~
17 ~~sustained on appeal.~~

18 ~~[(6)] (11) Act as the agent for the board in holding public~~
19 ~~hearings when so directed by the board.~~

20 ~~[(7)] (12) Institute prosecutions under this act.~~

21 ~~[(8)] (13) Recommend the minimum job qualifications of~~
22 ~~personnel employed by county and municipal air pollution control~~
23 ~~agencies hereafter created.~~

24 ~~[(9)] (14) Require the submission of, and consider for~~
25 ~~approval, plans and specifications of air pollution control~~
26 ~~equipment, devices or process changes, and inspect such~~
27 ~~installations or modifications to insure compliance with the~~
28 ~~plans which have been approved.~~

29 ~~[(10)] (15) Conduct or cause to be conducted studies and~~
30 ~~research with respect to air contaminants, their nature, causes~~

1 ~~and effects, and with respect to the control, prevention,~~
2 ~~abatement and reduction of air pollution and air contamination.~~

3 ~~[(10.1)] (16) Evaluate motor vehicle emission control~~
4 ~~programs, including vehicle emission standards, clean~~
5 ~~alternative fuels, oxygenated fuels, reformulated fuels, vehicle~~
6 ~~miles of travel, congestion levels, transportation control~~
7 ~~measures and other transportation control strategies with~~
8 ~~respect to their effect upon air pollution and determine the~~
9 ~~need for modifications of such programs.~~

10 ~~[(11)] (17) Determine by means of field studies and sampling~~
11 ~~the degree of air pollution existing in any part of the~~
12 ~~Commonwealth.~~

13 ~~[(12)] (18) Prepare and develop a general comprehensive plan~~
14 ~~for the control and abatement of existing air pollution and air~~
15 ~~contamination and for the abatement, control and prevention of~~
16 ~~any new air pollution and air contamination, recognizing varying~~
17 ~~requirements for the different areas of the Commonwealth, and to~~
18 ~~submit a comprehensive plan to the board for its consideration~~
19 ~~and approval.~~

20 ~~[(13)] (19) Encourage the formulation and execution of plans~~
21 ~~in conjunction with air pollution control agencies or civil~~
22 ~~associations of counties, cities, boroughs, towns and townships~~
23 ~~of the Commonwealth wherein any sources of air pollution or air~~
24 ~~contamination may be located, and enlist the cooperation of~~
25 ~~those who may be in control of such sources for the control,~~
26 ~~prevention and abatement of such air pollution and air~~
27 ~~contamination.~~

28 ~~[(14)] (20) Encourage voluntary efforts and cooperation by~~
29 ~~all persons concerned in controlling, preventing, abating and~~
30 ~~reducing air pollution and air contamination.~~

1 ~~[(15)] (21) Conduct and supervise educational programs with~~
2 ~~respect to the control, prevention, abatement and reduction of~~
3 ~~air pollution and air contamination, including the preparation~~
4 ~~and distribution of information relating to the means of~~
5 ~~controlling and preventing such air pollution and air~~
6 ~~contamination.~~

7 ~~[(16)] (22) Develop and conduct in cooperation with local~~
8 ~~communities demonstration programs relating to air contaminants,~~
9 ~~air pollution and air contamination and the control, prevention,~~
10 ~~abatement and reduction of air pollution and air contamination.~~

11 ~~[(17)] (23) Provide advisory technical consultative services~~
12 ~~to local communities for the control, prevention, abatement and~~
13 ~~reduction of air pollution and air contamination.~~

14 ~~[(18)] (24) Cooperate with the appropriate agencies of the~~
15 ~~United States or of other states or any interstate agencies with~~
16 ~~respect to the control, prevention, abatement and reduction of~~
17 ~~air pollution, and where appropriate formulate interstate air~~
18 ~~pollution control compacts or agreements for the submission~~
19 ~~thereof to the General Assembly.~~

20 ~~[(19)] (25) Serve as the agency of the Commonwealth for the~~
21 ~~receipt of moneys from the Federal government or other public or~~
22 ~~private agencies, and expend such moneys for studies and~~
23 ~~research with respect to air contaminants, air pollution and the~~
24 ~~control, prevention, abatement and reduction of air pollution.~~

25 ~~(26) Establish and implement a Small Business Stationary~~
26 ~~Source Technical and Environmental Compliance Assistance~~
27 ~~Program.~~

28 ~~[(20)] (27) Do any and all other acts and things not~~
29 ~~inconsistent with any provision of this act, which it may deem~~
30 ~~necessary or proper for the effective enforcement of this act.~~

1 ~~the Clean Air Act, and the rules or regulations [which have~~
2 ~~been] promulgated [thereunder] under either this act or the~~
3 ~~Clean Air Act.~~

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

6 ~~Section 4.1. Agricultural Regulations Prohibited. [The]~~
7 ~~Except as may be required by the Clean Air Act or the~~
8 ~~regulations promulgated under the Clean Air Act, the~~
9 ~~Environmental Quality Board shall not have the power nor the~~
10 ~~authority to adopt rules and regulations relating to air~~
11 ~~contaminants and air pollution arising from the production of~~
12 ~~agricultural commodities in their unmanufactured state but shall~~
13 ~~not include the use of materials produced or manufactured off~~
14 ~~the premises of the farm operation.~~

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

16 ~~Section 4.2. Permissible Actions. In implementing the~~
17 ~~requirements of the Clean Air Act, the department and~~
18 ~~Environmental Quality Board may take only those actions directly~~
19 ~~required to obtain the administrator's approval and to implement~~
20 ~~the Federal operating permit program and other requirements of~~
21 ~~the Clean Air Act. Such actions shall be no more stringent than~~
22 ~~the requirements of the Clean Air Act, unless specifically~~
23 ~~authorized in this act. This section shall not apply to rules~~
24 ~~and regulations adopted as final prior to the effective date of~~
25 ~~this act. This section shall not be construed to weaken~~
26 ~~standards in place prior to the effective date of this act for~~
27 ~~emissions from sources of air pollution.~~

28 ~~Section 4.3 Evaluation. Beginning five years after the~~
29 ~~effective date of this act and every five years thereafter, the~~
30 ~~department shall conduct and submit to the General Assembly an~~

~~evaluation of the effectiveness of the programs adopted to
implement the Clean Air Act. The evaluation shall include:~~

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

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

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

~~(4) An analysis of the costs imposed on mobile and
stationery air contamination sources to implement the
requirements of the Clean Air Act, including on individuals and
companies.~~

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

~~(6) A summary of the activities undertaken by the Citizens
Advisory Council and the Clean Air Technical Advisory Committee
under section 7.6.~~

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

~~(8) An assessment of the impact of any delays caused by missing deadlines under section 7.13 has had or will have on the State implementation of the Clean Air Act programs.~~

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

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

~~(1) Adopt rules and regulations, for the prevention, control, reduction and abatement of air pollution, applicable throughout the Commonwealth or to such parts or regions or subregions thereof specifically designated in such regulation which shall be applicable to all air contamination sources regardless of whether such source is required to be under permit by this act. Such rules and regulations may establish maximum allowable emission rates of air contaminants from such sources, prohibit or regulate the combustion of certain fuels, prohibit or regulate open burning, prohibit or regulate any process or source or class of processes or sources, require the installation of specified control devices or equipment, or designate the control efficiency of air pollution control devices or equipment required in specific processes or sources or classes of processes or sources. Such rules and regulations shall be adopted pursuant to the provisions of the act of July 31, 1968 (P.L.769), known as the "Commonwealth Documents Law," upon such notice and after such public hearings as the board deems appropriate. In exercising its authority to adopt rules and regulations, the board may, and to the extent deemed desirable by it shall, consult with a council of technical advisers, properly qualified by education or experience in air pollution matters, appointed by the board and to serve at the~~

~~pleasure of the board, to consist of such number of advisers as the board may appoint, but such technical advisers shall receive no compensation, other than their actual and necessary expenses, for their services to the board.~~

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

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

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

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

1 ~~safety during such periods.~~

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

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

12 ~~(8) Adopt rules and regulations to implement the~~
13 ~~requirements imposed on the Commonwealth by the Clean Air Act,~~
14 ~~provided that the regulations shall be fully consistent with the~~
15 ~~Clean Air Act and equivalent to regulations promulgated by EPA~~
16 ~~including such operational flexibility as is authorized by the~~
17 ~~Clean Air Act.~~

18 ~~Section 6. Environmental Hearing Board. The hearing board~~
19 ~~shall have the power and its duty shall be to hear and determine~~
20 ~~all appeals from orders issued by and appealable actions of the~~
21 ~~department as defined in the act of July 13, 1988 (P.L.530,~~
22 ~~No.94), known as the "Environmental Hearing Board Act," in~~
23 ~~accordance with the provisions of this act. Any and all action~~
24 ~~taken by the hearing board with reference to any such appeal~~
25 ~~shall be in the form of an adjudication, and all such action~~
26 ~~shall be subject to the provisions of [the act of June 4, 1945~~
27 ~~(P.L.1388), known as the "Administrative Agency Law."] 2 Pa.C.S.~~
28 ~~(relating to administrative law and procedure).~~

29 ~~Section 7. Section 6.1 of the act, added October 26, 1972~~
30 ~~(P.L.989, No.245) and repealed in part April 28, 1978 (P.L.202,~~

1 ~~No.53), is amended to read:~~

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

25 ~~(b) (1) No person shall operate any stationary air~~
26 ~~contamination source [which is subject to the provisions of~~
27 ~~subsection (a) of this section], including any stationary air~~
28 ~~contamination source required by Title V of the Clean Air Act to~~
29 ~~have a permit after the dates specified in Title V, unless the~~
30 ~~department shall have issued to such person a permit to operate~~

~~such source under the provisions of this section in response to a written application for a permit submitted on forms and containing such information as the department may prescribe. The department shall provide public notice and the right to comment on all permits prior to issuance or denial and may hold public hearings concerning any permit. Upon request of an applicant, the department may include all air contamination sources at a facility in one facility permit.~~

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

~~(3) A stationary air contamination source operating lawfully without a permit for which fees required by section 6.3 of this act or the regulations promulgated under this act have been paid is authorized to continue to operate without a permit until one hundred twenty (120) days after the department provides notice to the source that a permit is required or until November 1, 1995, whichever occurs first. If the applicant submits a~~

~~complete permit application within the time frames in this subsection, and the department fails to issue a permit through no fault of the applicant, the source may continue to operate if the fees required by section 6.3 of this act or the regulations promulgated under this act have been paid and the source is operated in conformance with this act, the Clean Air Act and final regulations promulgated under both this act and the Clean Air Act. For a performance or emission standard or other requirement established by the Environmental Protection Agency or the department for the source subsequent to the effective date of this section but prior to the permit issuance date, the permit may contain a compliance schedule authorizing the source to operate out of compliance and requiring the source to achieve compliance.~~

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

~~(b.1) [Permits] A permit or plan approval issued hereunder may contain such terms and conditions as the department deems necessary to assure the proper operation of the source in compliance with applicable provisions of this act and final~~

1 ~~regulations promulgated under this act. [Each permittee, on or~~
2 ~~before the anniversary date set forth in his permit, shall~~
3 ~~submit to the department an annual report containing such~~
4 ~~information as the department shall prescribe relative to the~~
5 ~~operation and maintenance of the installation under permit.~~

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

15 ~~(d) The department may refuse to grant approval for any~~
16 ~~stationary air contamination source subject to the provisions of~~
17 ~~subsection (a) of this section or to issue a permit to operate~~
18 ~~such source if it appears, from the data available to the~~
19 ~~department, that the proposed source, or proposed changes in~~
20 ~~such source, are likely either to cause air pollution or to~~
21 ~~violate any board rule or regulation applicable to such source,~~
22 ~~or if, in the design of such source, no provision is made for~~
23 ~~adequate facilities to conduct source testing. The department~~
24 ~~may also refuse to issue a permit to any person who has~~
25 ~~constructed, installed or modified any air contamination source,~~
26 ~~or installed any air pollution control equipment or device on~~
27 ~~such source contrary to the plans and specifications approved by~~
28 ~~the department.] Each permit issued under this act shall provide~~
29 ~~that compliance with the permit shall be considered compliance~~
30 ~~with other applicable provisions of this act or regulations~~

~~promulgated under this act, as provided in section 504(f) of the Clean Air Act. Each permittee, on a schedule established by the department, shall submit reports to the department containing such information as the department may prescribe relative to the operation and maintenance of the source.~~

~~(b.2) A permit issued or reissued under subsection (b) of this section shall be for a fixed term of five (5) years. A permit may be terminated, modified, suspended or revoked and reissued for cause. The terms and conditions of an expired permit are automatically continued pending the issuance of a new permit where the permittee has submitted a timely and complete application for a new permit and paid the fees required by section 6.3 of this act or the regulations promulgated under this act and the department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration date of the previous permit. For the purposes of this section, the department shall inform a plan approval or permit applicant within thirty (30) days of filing of the application whether the application is complete. Upon failure to notify the applicant, the application shall be considered complete. Upon determination that a plan approval or permit application is complete, the department shall have up to one hundred twenty (120) days to take action on the application. Failure to take action by the deadline shall mean the application is deemed approved. Failure of the department to issue or deny a new permit prior to the expiration date of the previous permit shall be an appealable action as described in section 10.2 of this act.~~

~~(c) A plan approval or permit issued under this act may be terminated, modified, suspended or revoked and reissued if the permittee constructs or operates the source subject to the plan~~

~~approval or permit in such a manner as to be in violation of this act, the Clean Air Act, the regulations promulgated under either this act or the Clean Air Act, a plan approval or permit or in such a manner as to cause air pollution, if the permittee fails to properly or adequately maintain or repair any air pollution control device or equipment attached to or otherwise made a part of the source or if the EPA determines that the permit is not in compliance with the requirements of the Clean Air Act or the regulations promulgated under the Clean Air Act.~~

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

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

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

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

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

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

~~(i) The department shall establish comprehensive plan approval and operating permit programs which, at a minimum, meet the requirements of the Clean Air Act, while minimizing costs and fees and providing all such operational flexibility as authorized by the Clean Air Act.~~

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

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

~~* * *~~

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

2 ~~Section 6.3. Fees. (a) The board is authorized to~~
3 ~~establish annual air emission fees for air contaminant sources~~
4 ~~within this Commonwealth. The fees shall be sufficient to cover~~
5 ~~the indirect and direct costs of administering the air pollution~~
6 ~~control plan approval and permitting program required by Title V~~
7 ~~of the Clean Air Act and the indirect and direct costs of~~
8 ~~administering the Small Business Stationary Source Technical and~~
9 ~~Environmental Compliance Assistance Program, Compliance Advisory~~
10 ~~Committee and Office of Small Business Ombudsman, subject to the~~
11 ~~criteria in subsection (f) of this section.~~

12 ~~(b) The board shall establish, by regulation, annual interim~~
13 ~~air emission fees covering emissions of sulfur dioxide, nitrogen~~
14 ~~oxides, particulate matter of ten (10) microns or less and~~
15 ~~volatile organic compounds. In determining the amount each~~
16 ~~facility is to pay, the facility is not required to include any~~
17 ~~amount of a contaminant listed in this section emitted by the~~
18 ~~facility in quantities less than one hundred (100) tons per year~~
19 ~~or greater than four thousand (4,000) tons per year. The revenue~~
20 ~~generated by the interim emission fee proposal shall equal no~~
21 ~~more than fifty per centum of the estimated cost of implementing~~
22 ~~the Title V program. The fees shall be based on a funding plan~~
23 ~~submitted by the department under subsection (f) of this section~~
24 ~~and shall be due on emissions occurring in the calendar year~~
25 ~~immediately preceding the effective date of regulations~~
26 ~~establishing the emission fees. In no case shall the interim fee~~
27 ~~be more than seventeen dollars (\$17.00) per ton of pollutant~~
28 ~~emitted.~~

29 ~~(c) The board shall establish, by regulation, annual air~~
30 ~~emission fees as required for regulated pollutants by section~~

~~502(b) of the Clean Air Act for sources emitting less than four thousand (4,000) tons of regulated pollutants per year. In no case shall the fees be more than twenty five dollars (\$25.00) per ton of regulated pollutant emitted. The fee amounts shall be based on the funding plan submitted by the department under subsection (f) of this section and shall be due on emissions occurring in calendar year 1995 and thereafter.~~

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

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

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

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

~~(f) Within thirty (30) days of the effective date of this section the department shall submit a budget to the Appropriation Committee of the Senate and the Appropriation Committee of the House of Representatives and to the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives outlining the need for funding to implement the permitting~~

~~provisions of Title V of the Clean Air Act for ten (10) years after the effective date of this section. The plan shall include:~~

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

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

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

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

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

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

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

~~Engineers.~~

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

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

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

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

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

~~(h) An air contamination source that fails to pay the fees
within the time frame established by regulation shall pay a
penalty of fifty per centum of the fee amount, plus interest on
the fee amount computed in accordance with section 6621(a)(2) of
the Internal Revenue Code of 1986 (Public Law 99-514, 26 U.S.C.
§ 1 et seq.) from the date the fee was required to be paid. In
addition, such source may have its permit terminated or~~

~~suspended. The fee, penalty and interest may be collected following the process for assessment and collection of a civil penalty contained in section 9.1 of the act.~~

~~(i) Any fees, penalties and interest owed the Commonwealth for delinquent payment collected under this section shall be deposited in a special account in the Clean Air Fund and shall be utilized to cover a portion of the reasonable direct and indirect costs of the plan approval and permit programs required by Title V of the Clean Air Act and a portion of the reasonable direct and indirect costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. The fee established under subsection (a) of this section to cover the cost of the permitting program under Title V of the Clean Air Act shall generate sufficient funds to cover all reasonable direct and indirect costs required to develop and administer the Title V operating permit program and all reasonable direct and indirect costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman and shall only be expended for these purposes.~~

~~(j) The fees under this section shall be increased in each year after implementation of the fee by regulation by the percentage, if any, by which the Consumer Price Index for the most recent calendar year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this clause:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~Section 6.6. Hazardous Air Pollutants. (a) The Work Practice Standards of section 112(h) of the Clean Air Act and the regulations establishing performance or emission standards promulgated under section 112 of the Clean Air Act are~~

~~incorporated by reference into the department's permitting program. After the effective date of the performance or emission standard, new, reconstructed, modified and existing sources shall comply with the performance or emission standards pursuant to the compliance schedule established under section 112 of the Clean Air Act and the regulations promulgated under the Clean Air Act.~~

~~(b) In the event the administrator has not promulgated a standard to control the emissions of hazardous air pollutants for a category or subcategory of major sources under section 112 of the Clean Air Act by the dates established pursuant thereto, the department in issuing any permit under Title V of the Clean Air Act shall have the authority to establish a performance or emission standard on a case by case basis for individual major sources or a category of major sources. A person challenging the performance or emission standards established by the department shall have the burden to demonstrate by the preponderance of the evidence that the performance or emission standard does not meet the requirements of section 112 of the Clean Air Act. The department shall incorporate the standard to control the emissions of hazardous air pollutants into the Title V operating permit of any major source within the category or subcategory and shall require compliance with the schedule established by section 112 of the Clean Air Act. The performance or emission standard established on a case by case basis by the department shall be equivalent to the limitation that would apply to the source if a performance or emission standard had been promulgated in a timely manner by the administrator under section 112 of the Clean Air Act.~~

~~(c) Nothing in this section shall alter or otherwise affect~~

~~the department's existing authority to prevent air pollution from hazardous air pollutants by regulation or on a case by case basis during the department's review of a plan approval or operating permit application.~~

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

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

~~Section 7.2. Permit Compliance Schedules. In addition to the other enforcement provisions of this act, the department may issue a permit under section 6.1(b)(3) and (4) of this act to a source that is out of compliance with this act, the Clean Air Act or the regulations promulgated under either this act or the~~

~~Clean Air Act. A permit must contain an enforceable schedule requiring the source to attain compliance. The compliance schedule may contain interim milestone dates for completing any phase of the required work, as well as a final compliance date. If the permittee fails to achieve compliance by the final compliance date, the permit shall terminate. The permit shall be part of an overall resolution of the outstanding noncompliance and shall include the payment of an appropriate civil penalty for past violations and shall contain such other terms and conditions as the department deems appropriate. A permit may incorporate by reference a compliance schedule contained within a consent order and agreement, including all provisions related to implementation or enforcement of the compliance schedule or consent order and agreement.~~

~~Section 7.3. Responsibilities of Owners and Operators. (a) Whenever the department finds that air pollution or danger of air pollution is or may be resulting from an air contamination source in the Commonwealth, the department may order the owner, operator, landowner or occupier to take action in a manner satisfactory to the department to bring the source into compliance.~~

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

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

1 ~~section 9.1 of the act.~~

2 ~~Section 7.4. Interstate Transport Commissions. (a) A~~
3 ~~person appointed by the Governor or appointed to serve as his~~
4 ~~designee on any interstate transport commission formed under~~
5 ~~section 176(A) or 184 of the Clean Air Act shall be confirmed by~~
6 ~~the Senate.~~

7 ~~(b) A person representing the Commonwealth on any interstate~~
8 ~~transport commission formed under the Clean Air Act shall not~~
9 ~~commit the Commonwealth to proposing or adopting any pollution~~
10 ~~control measure unless the suggested control measure has been~~
11 ~~subject to public review, such as under section 184(c) of the~~
12 ~~Clean Air Act, or is part of an approved plan or State~~
13 ~~Implementation Plan submitted to the Environmental Protection~~
14 ~~Agency by the Commonwealth.~~

15 ~~Section 7.5. Public Review of Plans. (a) A plan, program~~
16 ~~or State Implementation Plan revision required by the Clean Air~~
17 ~~Act which commits the Commonwealth to adopt air pollution~~
18 ~~control measures or procedures shall be the subject of a public~~
19 ~~comment period. The board shall authorize a comment period of no~~
20 ~~less than sixty (60) days and may, at its discretion, hold~~
21 ~~public informational meetings or public hearings as part of the~~
22 ~~comment period.~~

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

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

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

1 ~~comply.~~

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

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

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

12 ~~(d) After the public comment period and prior to the~~
13 ~~submission of any plan or State Implementation Plan revision~~
14 ~~required by the Clean Air Act which commits the Commonwealth to~~
15 ~~adopt air pollution control measures or procedures, the~~
16 ~~department shall submit a final plan or revision to the board~~
17 ~~for its review together with a document which responds to all~~
18 ~~comments made during the public comment period. No plan, program~~
19 ~~or State Implementation Plan revision committing the~~
20 ~~Commonwealth to adopt air pollution control measures or~~
21 ~~procedures may be submitted to the Environmental Protection~~
22 ~~Agency without the approval of the board.~~

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

27 ~~Section 7.6. Advice to Department. (a) The department~~
28 ~~shall consult with the Citizens Advisory Council established~~
29 ~~under section 448 of the act of April 9, 1929 (P.L.177, No.175),~~
30 ~~known as "The Administrative Code of 1929," as appropriate in~~

~~the development and consideration of plans, guidance and regulations needed for the implementation of the Clean Air Act. Nothing in this section shall limit the council's ability to consider, study and review department policies and other activities related to Clean Air Act implementation as provided under section 1922 A of "The Administrative Code of 1929."~~

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

~~(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 Clear Air Act. The committee may also make a request to the department to review such a policy, guidance or regulation.~~

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

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

~~(d) All actions by the Citizens Advisory Council and the~~

~~Clean Air Technical Advisory Committee to provide advice under this section shall be by majority of those present. A quorum shall consist of a majority of the appointed members.~~

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

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

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

~~(2) Consideration of testimony received by the board during the public comment period and information received under subsections (c) and (d) of this section relating to compliance costs.~~

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

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

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

~~(c) In preparing the report, the Department of Commerce shall consult with the Office of Small Business Ombudsman established by section 7.10 of this act. The Office of Small Business Ombudsman shall be given a reasonable opportunity to review the report prior to its submission to the board and to submit written comments, provide additional information on~~

~~compliance costs, and offer recommendations on the rulemaking, plan, revision or program. Such comments and recommendations shall be included as appendices to the report.~~

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

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

~~Section 7.8. Small Business Compliance Assistance Program.~~

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

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

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

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

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

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

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

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

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

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

~~(7) Procedures for soliciting input from and exchanging~~

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

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

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

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

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

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

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

~~(c) The department shall consult with the Compliance
Advisory Committee established in section 7.9 and the Office of
Small Business Ombudsman established in section 7.10 in
developing the Small Business Stationary Source Technical and~~

~~Environmental Compliance Assistance Program.~~

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

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

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

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

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

~~Section 7.9. Compliance Advisory Committee. (a) There is~~

~~hereby established a Compliance Advisory Committee which shall perform all of the following:~~

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

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

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

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

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

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

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

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

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

~~(2) Four (4) members, each of whom shall be an owner or the~~

~~representative of an owner of a small business stationary
source. Of these four (4) members, one shall be appointed by
each of the following:~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(d) The department shall consult with the advisory committee~~

~~in the formulation, drafting and presentation of all rulemakings, plans, plan revisions and programs under this act and the Clean Air Act which affect small business stationary sources. The advisory committee shall be given a reasonable opportunity to review and comment on all rulemakings, plans, plan revisions and programs under this act and the Clean Air Act which affect small business stationary sources prior to their submission to the board for consideration. The written report of the committee shall be presented to the board with any submission. The chairman of the committee shall be invited to participate in the presentation before the board of all rulemakings, plans, plan revisions and programs under this act and the Clean Air Act which affect small business stationary sources. Nothing in this act shall preclude any member of the committee from filing a petition for rulemaking with the board in accordance with procedures established by the board.~~

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

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

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

~~(2) Provide guidance and recommendations to the department on the development of the Small Business Stationary Source~~

~~Technical and Environmental Compliance Assistance Program.~~

~~(3) Make recommendations to the department regarding the content and operation of the Small Business Stationary Source~~

~~Technical and Environmental Compliance Assistance Program.~~

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

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

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

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

~~(8) Conduct independent evaluations of all aspects of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.~~

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

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

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

~~(12) Report annually to the Governor and General Assembly on the effectiveness of the Small Business Stationary Source~~

~~Technical and Environmental Compliance Assistance Program and other issues relating to the impact of the Clean Air Act implementation on small businesses in this Commonwealth.~~

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

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

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

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

~~Section 7.12. Notice of Sanctions. (a) Whenever the Commonwealth is notified that it has missed a deadline for~~

~~taking an action for which it was responsible under the Clean Air Act, the department shall within two (2) working days of the receipt of notice notify the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives.~~

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

~~Section 7.13. Missed Federal Deadlines. (a) The department shall maintain a report which tracks the compliance of the Environmental Protection Agency with deadlines in the Clean Air Act for developing regulations or guidance on which states must rely to comply with deadlines in the Clean Air Act. The department shall submit the report to the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives every six (6) months beginning thirty (30) days after the effective date of this act.~~

~~(b) Whenever the Environmental Protection Agency has missed a deadline outlined in subsection (a) by more than ninety (90) days and, in the opinion of the department, the Environmental Protection Agency has failed to provide it with timely guidance needed to comply with the act in a timely manner, the department shall bring a legal action against the Environmental Protection Agency in a court of competent jurisdiction seeking an injunction to restrain the Environmental Protection Agency from enforcing the applicable Clean Air Act deadline on the~~

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

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

~~Section 8. Unlawful Conduct. It shall be unlawful to fail to comply with [any rule or regulation of the board], or to cause or assist in the violation of, any of the provisions of this act, the Clean Air Act or the rules and regulations adopted under either this act or the Clean Air Act; or to fail to comply with any order, plan approval or operating permit of the department[, to violate or to assist in the violation of any of the provisions of this act or rules and regulations adopted hereunder, to cause air pollution, or to in any manner hinder, obstruct, delay, resist, prevent or in any way interfere or attempt to interfere with the department or its personnel in the performance of any duty hereunder.] or to cause a public nuisance; or to cause air pollution, soil or water pollution resulting from an air pollution incident; or to prevent or interfere with the department or its personnel in their performance of any duty in this act, including denying the department access to the source or facility; or to violate the provisions of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904 (relating to unsworn falsification to authorities) in regard to papers required to be submitted under this act. The owner or operator of an air contamination source and the landowner or occupier on whose land an air contamination source is or was located shall not allow pollution of the air, water or~~

1 ~~other natural resources of the Commonwealth resulting from the~~
2 ~~source.~~

3 ~~{Section 9. Penalties. (a) Summary offense. Any person as~~
4 ~~herein defined, except a department, board, bureau or agency of~~
5 ~~the Commonwealth, engaging in unlawful conduct as set forth in~~
6 ~~section 8 of this act, shall, for each offense, upon conviction~~
7 ~~thereof in a summary proceeding before a district justice,~~
8 ~~magistrate, alderman or justice of the peace, be sentenced to~~
9 ~~pay the costs of prosecution and a fine of not less than one~~
10 ~~hundred dollars (\$100.00) nor more than one thousand dollars~~
11 ~~(\$1,000.00), and, in default thereof, to undergo imprisonment of~~
12 ~~not less than ten (10) days nor more than thirty (30) days.~~

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

27 ~~(c) For the purpose of this section, violations on separate~~
28 ~~days shall be considered separate offenses. Where a person~~
29 ~~engages in continuing unlawful conduct, such person shall be~~
30 ~~guilty of separate offenses for each day such conduct continues~~

1 ~~up until the time of hearing or trial.~~

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

8 ~~Section 9.1. Civil Penalties. In addition to proceeding~~
9 ~~under any other remedy available at law, or in equity, for a~~
10 ~~violation of a provision of this act, or a rule or regulation of~~
11 ~~the board, or an order of the department, the hearing board,~~
12 ~~after hearing, may assess a civil penalty upon a person for such~~
13 ~~violation. Such a penalty may be assessed whether or not the~~
14 ~~violation was wilful. The civil penalty so assessed shall not~~
15 ~~exceed ten thousand dollars (\$10,000.00), plus up to two~~
16 ~~thousand five hundred dollars (\$2,500.00) for each day of~~
17 ~~continued violation. In determining the amount of the civil~~
18 ~~penalty, the hearing board shall consider the wilfulness of the~~
19 ~~violation, damage or injury to the outdoor atmosphere of the~~
20 ~~Commonwealth or its uses, and other relevant factors. It shall~~
21 ~~be payable to the Commonwealth of Pennsylvania and shall be~~
22 ~~collectible in any manner provided at law for the collection of~~
23 ~~debt. If any person liable to pay any such penalty neglects or~~
24 ~~refuses to pay the same after demand, the amount, together with~~
25 ~~interest and any costs that may accrue, shall be a lien in favor~~
26 ~~of the Commonwealth upon the property, both real and personal,~~
27 ~~of such person, but only after same has been entered and~~
28 ~~docketed of record by the prothonotary of the county where such~~
29 ~~is situated. The hearing board may, at any time, transmit to the~~
30 ~~prothonotaries of the respective counties certified copies of~~

1 ~~all such liens, and it shall be the duty of each prothonotary to~~
2 ~~enter and docket the same of record in his office, and to index~~
3 ~~the same as judgments are indexed, without requiring the payment~~
4 ~~of costs as a condition precedent to the entry thereof.}~~

5 ~~Section 9. Penalties. (a) A person who violates any~~
6 ~~provision of this act, the Clean Air Act, any rule or regulation~~
7 ~~adopted under either this act or the Clean Air Act, an order of~~
8 ~~the department or any condition or term of a plan approval or~~
9 ~~permit issued under this act commits a summary offense and~~
10 ~~shall, upon conviction, be sentenced to pay a fine of not less~~
11 ~~than five hundred dollars (\$500.00) nor more than five thousand~~
12 ~~dollars (\$5,000.00) for each separate offense, and, in default~~
13 ~~of the payment of such fine, may be sentenced to imprisonment~~
14 ~~for ninety (90) days for each separate offense. Employees of the~~
15 ~~department authorized to conduct inspections or investigations~~
16 ~~are declared to be law enforcement officers authorized to issue~~
17 ~~or file citations for summary violations under this act, and the~~
18 ~~General Counsel is authorized to prosecute these offenses. For~~
19 ~~purposes of this subsection, a summary offense may be prosecuted~~
20 ~~before any district justice in the county where the offense~~
21 ~~occurred. There is no accelerated rehabilitative disposition~~
22 ~~authorized for a summary offense.~~

23 ~~(b) (1) A person who wilfully or negligently violates any~~
24 ~~provision of this act, the Clean Air Act, any rule or regulation~~
25 ~~adopted under either this act or the Clean Air Act, an order of~~
26 ~~the department or any condition or term of a plan approval or~~
27 ~~permit issued under this act commits a misdemeanor of the second~~
28 ~~degree and shall, upon conviction, be sentenced to pay a fine of~~
29 ~~not less than ten thousand dollars (\$10,000.00) nor more than~~
30 ~~fifty thousand dollars (\$50,000.00) for each separate offense or~~

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

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

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

~~(c) (1) A person who knowingly releases into the ambient air any hazardous air pollutant listed under section 112 of the Clean Air Act or any extremely hazardous substance listed under section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986 that is not listed in section 112 of~~

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

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

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

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

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

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

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

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

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

~~Section 9.1. Civil Penalties. (a) In addition to~~
~~proceeding under any other remedy available at law or in equity~~
~~for a violation of a provision of this act, the Clean Air Act or~~
~~a rule or regulation promulgated under either this act or the~~
~~Clean Air Act or an order, plan approval or permit issued under~~

~~this act, the department may assess a civil penalty for the violation. The penalty may be assessed whether or not the violation was wilful. The civil penalty so assessed shall not exceed twenty five thousand dollars (\$25,000.00) per day for each violation. In determining the amount of the penalty, the department shall consider the wilfulness of the violation, damage to air, soil, water or other natural resources of the Commonwealth or their uses, financial benefit to the person in consequence of the violation, deterrence of future violations, cost to the department, and other relevant factors.~~

~~(b) When the department proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have thirty (30) days to pay the proposed penalty in full, or if the person wishes to contest the amount of the penalty or the fact of the violation to the extent not already established, the person shall forward the proposed amount of the penalty to the hearing board within the thirty (30) day period for placement in an escrow account with the State treasurer or any Commonwealth bank or post an appeal bond to the hearing board within thirty (30) days in the amount of the proposed penalty, provided that the bond is executed by a surety licensed to do business in the Commonwealth and is satisfactory to the department. If, through administrative or final judicial review of the proposed penalty, it is determined that no violation occurred or that the amount of the penalty shall be reduced, the hearing board shall, within thirty (30) days, remit the appropriate amount to the person with any interest accumulated by the escrow deposit. Failure to forward the money or the appeal bond at the time of the appeal shall result in a waiver of all legal rights to contest the~~

~~1 violation or the amount of the civil penalty. The amount~~
~~2 assessed after administrative hearing or after waiver of~~
~~3 administrative hearing shall be payable to the Commonwealth and~~
~~4 shall be collectible in any manner provided by law for the~~
~~5 collection of debts, including the collection of interest at the~~
~~6 rate established in section 6.3(c), which shall run from the~~
~~7 date of assessment of the penalty. If any person liable to pay~~
~~8 any such penalty neglects or refuses to pay the same after~~
~~9 demand, the amount, together with interest and any costs that~~
~~10 may accrue, shall constitute a debt of such person, as may be~~
~~11 appropriate, to the Clean Air Fund. The debt shall constitute a~~
~~12 lien on all property owned by that person when a notice of lien~~
~~13 incorporating a description of the property of the person~~
~~14 subject to the action is duly filed with the prothonotary of the~~
~~15 court of common pleas where the property is located. The~~
~~16 prothonotary shall promptly enter upon the civil judgment or~~
~~17 order docket, at no cost to the department, the name and address~~
~~18 of the person, as may be appropriate, and the amount of the lien~~
~~19 as set forth in the notice of lien. Upon entry by the~~
~~20 prothonotary, the lien shall attach to the revenues and all real~~
~~21 and personal property of the person, whether or not the person~~
~~22 is solvent. The notice of lien, filed under this subsection,~~
~~23 which affects the property of the person shall create a lien~~
~~24 with priority over all subsequent claims or liens which are~~
~~25 filed against the person, but it shall not affect any valid~~
~~26 lien, right or interest in the property filed in accordance with~~
~~27 established procedure prior to the filing of a notice of lien~~
~~28 under this subsection.~~

~~29 Section 9.2. Disposition of Fees, Fines and Civil~~
~~30 Penalties. (a) All fines, civil penalties and fees collected~~

~~under this act shall be paid into the Treasury of the Commonwealth in a special fund known as the ["]Clean Air Fund,["] hereby established, which, along with interest earned, shall be administered by the department for use in the elimination of air pollution. Fees deposited into the fund shall be used as authorized in sections 6.3, 7.8 and 7.11 of this act. The department may establish such separate accounts as may be necessary or appropriate to implement the requirements of this act and the Clean Air Act. The board shall adopt rules and regulations for the management and use of the money in the fund.~~

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

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

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

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

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

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

~~Section 10.1. Enforcement Orders. (a) The department may issue such orders as are necessary to aid in the enforcement of the provisions of this act. These orders shall include, but not be limited to, orders modifying, suspending, terminating or revoking any plan approvals or permits, orders requiring persons to cease unlawful activities or cease operation of a facility or~~

~~air contamination source which in the course of its operation is in violation of any provision of this act, the Clean Air Act, any rule or regulation promulgated under either this act or the Clean Air Act, plan approval or permit, order to take corrective action or to abate a public nuisance or an order requiring the testing, sampling or monitoring of any air contamination source or orders requiring production of information. This order may be issued if the department finds that any condition existing in or on the facility or source involved is causing or contributing to or is creating a danger of air pollution or if it finds that the permittee or any person is in violation of any provision of this act or of any rule, regulation or order of the department.~~

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

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

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

~~Section 10.2. Appealable Actions. A person aggrieved by an order or other administrative action of the department issued under this act or any person who participated in the public comment process for a plan approval or permit shall have the right, within thirty (30) days from actual or constructive~~

~~notice of the action, to appeal the action to the hearing board in accordance with the act of July 13, 1988 (P.L.530, No.94), known as the "Environmental Hearing Board Act," and 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).~~

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

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

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

~~(b) The administrative procedures for the abatement, reduction, prevention and control of air pollution set forth in this act shall not apply to any [political subdivision of the~~

1 ~~Commonwealth which has an approved air pollution control~~
2 ~~agency.] county of the first or second class of the Commonwealth~~
3 ~~which has and implements an air pollution control program that~~
4 ~~meets the requirements of this act, the Clean Air Act and the~~
5 ~~rules and regulations promulgated under both this act and the~~
6 ~~Clean Air Act and has been approved by the department.~~

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

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

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

28 ~~(e) The department shall have the power to refuse approval,~~
29 ~~or to suspend or rescind approval, once given, to any county air~~
30 ~~pollution control agency if the department finds that such~~

1 ~~county agency is unable or unwilling [so] to conduct an air~~
2 ~~pollution control program [as] to abate or reduce air pollution~~
3 ~~problems within its jurisdiction in [an effective manner]~~
4 ~~accordance with the requirements of this act, the Clean Air Act~~
5 ~~or the rules and regulations promulgated under both this act and~~
6 ~~the Clean Air Act.~~

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

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

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

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

1 ~~and personal, of such person, but only after the same has been~~
2 ~~entered and docketed of record by the prothonotary of the county~~
3 ~~where such is situated: Provided, That nothing contained in this~~
4 ~~subsection shall preclude any public official from seeking, at~~
5 ~~law or at equity or before any appropriate administrative body,~~
6 ~~the assessment of civil penalties in the amount provided by~~
7 ~~section 9.1 of this act.]~~

8 ~~Section 12.1. Construction. Nothing in this act shall be~~
9 ~~construed as estopping the Commonwealth, or any district~~
10 ~~attorney or solicitor of a municipality, from proceeding in~~
11 ~~courts of law or equity to abate pollutions forbidden under this~~
12 ~~act, or abate nuisances under existing law. It is hereby~~
13 ~~declared to be the purpose of this act to provide additional and~~
14 ~~cumulative remedies to abate the pollution of the air of this~~
15 ~~Commonwealth, and nothing contained in this act shall in any way~~
16 ~~abridge or alter rights of action or remedies now or hereafter~~
17 ~~existing in equity, or under the common law or statutory law,~~
18 ~~criminal or civil, nor shall any provision of this act, or the~~
19 ~~granting of any plan approval or permit under this act, or any~~
20 ~~act done by virtue of this act, be construed as estopping the~~
21 ~~Commonwealth, persons or municipalities, in the exercise of~~
22 ~~their rights under the common law or decisional law or in~~
23 ~~equity, from proceeding in courts of law or equity to suppress~~
24 ~~nuisances, or to abate any pollution now or hereafter existing,~~
25 ~~or enforce common law or statutory rights. No courts of this~~
26 ~~Commonwealth having jurisdiction to abate public or private~~
27 ~~nuisance shall be deprived of such jurisdiction to abate any~~
28 ~~private or public nuisance instituted by any person for the~~
29 ~~reason that such nuisance constitutes air pollution.~~

30 ~~[Section 13. Public Nuisances. A violation of any order or~~

1 of any provision of any rule or regulation promulgated pursuant
2 to a local air pollution code or to a State air pollution act,
3 which limits or controls the emission of any air contaminant
4 shall constitute a public nuisance and shall be abatable in the
5 manner provided by law.}]

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

22 ~~Section 13.1. Search Warrants. Whenever an agent or employe~~
23 ~~of the department, charged with the enforcement of the~~
24 ~~provisions of this act, has been refused access to property, or~~
25 ~~has been refused the right to examine any air contamination~~
26 ~~source, or air pollution control equipment or device, or is~~
27 ~~refused access to or examination of books, papers and records~~
28 ~~pertinent to any matter under investigation, such agent or~~
29 ~~employe may apply for a search warrant to any Commonwealth~~
30 ~~official authorized by the laws of the Commonwealth to issue the~~

1 ~~same to enable him to have access [and], examine and seize such~~
2 ~~property, air contamination source, air pollution control~~
3 ~~equipment or device, or books, papers and records, as the case~~
4 ~~may be. It shall be sufficient probable cause to issue a search~~
5 ~~warrant that the inspection is necessary to properly enforce the~~
6 ~~provisions of this act.~~

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

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

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

~~require immediate abatement of the nuisance, the court may in its decree fix a reasonable time during which the person responsible for the nuisance may make provision for the abatement of the same.~~

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

~~(c) Except as provided in subsection (d) of this section, any person having an interest which is or may be affected may commence a civil action to compel compliance with this act or any rule, regulation, final order or plan approval or permit issued pursuant to this act by any owner, operator, landowner or occupier alleged to be causing or contributing to a violation of any provision of this act, the Clean Air Act or any rule or regulation promulgated under either this act or the Clean Air Act or any plan approval, permit or order issued by the department. In addition to seeking to compel compliance, any~~

~~person may request the court to award civil penalties. The court shall use the factors and amounts contained in section 9.1 of this act in awarding civil penalties under this subsection. Such penalties shall be paid into the Clean Air Fund established by section 9.2 of this act. Except where 42 Pa.C.S. (relating to judiciary and judicial procedure) requires otherwise, the courts of common pleas shall have jurisdiction of these actions. This action may not be commenced if the person or operator is in compliance with a permit issued under this act or with a schedule of compliance contained in a permit, consent order or other legally enforceable document or if the department has commenced and is diligently prosecuting a civil action in a Federal or State court or is in litigation before the hearing board regarding any order, plan approval or operating permit issued under this act, but, in any such action in a Federal or State court or before the hearing board, any person having or representing an interest which is or may be adversely affected may intervene as a matter of right without posting bond.~~

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

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

~~(f) The court, in issuing any final order in an action~~

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

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

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

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

(B) IT IS FURTHER DECLARED THAT:

(1) INTERSTATE POLLUTION TRANSPORT COMMISSIONS ESTABLISHED
UNDER THE CLEAN AIR ACT SHOULD DEVELOP POLLUTION CONTROL
STRATEGIES VIA A PROCESS WHICH INVOLVES PUBLIC REVIEW AND
OPPORTUNITY FOR COMMENT.

(2) THE PUBLIC SHOULD BE INVOLVED IN DEVELOPING AND
COMMITTING THE COMMONWEALTH TO THE ADOPTION OF PARTICULAR

1 POLLUTION CONTROL STRATEGIES THROUGH REVIEW OF STATE
2 IMPLEMENTATION PLANS REQUIRED TO BE SUBMITTED BY THE CLEAN AIR
3 ACT.

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

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

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

17 SECTION 3. DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES,
18 WHEN USED IN THIS ACT, UNLESS THE CONTEXT CLEARLY INDICATES
19 OTHERWISE, SHALL HAVE THE MEANING ASCRIBED TO THEM IN THIS
20 SECTION:

21 [(1) "DEPARTMENT." DEPARTMENT OF ENVIRONMENTAL RESOURCES OF
22 THE COMMONWEALTH OF PENNSYLVANIA.

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

25 (2.1) "HEARING BOARD." THE ENVIRONMENTAL HEARING BOARD
26 ESTABLISHED IN THE DEPARTMENT BY THE ACT OF DECEMBER 3, 1970
27 (P.L.834).

28 (3) "PERSON." ANY INDIVIDUAL, PUBLIC OR PRIVATE CORPORATION
29 FOR PROFIT OR NOT FOR PROFIT, ASSOCIATION, PARTNERSHIP, FIRM,
30 TRUST, ESTATE, DEPARTMENT, BOARD, BUREAU OR AGENCY OF THE

1 COMMONWEALTH, POLITICAL SUBDIVISION, MUNICIPALITY, DISTRICT,
2 AUTHORITY OR ANY OTHER LEGAL ENTITY WHATSOEVER WHICH IS
3 RECOGNIZED BY LAW AS THE SUBJECT OF RIGHTS AND DUTIES.

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

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

18 (6) "AIR CONTAMINATION." THE PRESENCE IN THE OUTDOOR
19 ATMOSPHERE OF AN AIR CONTAMINANT WHICH CONTRIBUTES TO ANY
20 CONDITION OF AIR POLLUTION.

21 (7) "AIR CONTAMINATION SOURCE." ANY PLACE, FACILITY OR
22 EQUIPMENT, STATIONARY OR MOBILE, AT, FROM OR BY REASON OF WHICH
23 THERE IS EMITTED INTO THE OUTDOOR ATMOSPHERE ANY AIR
24 CONTAMINANT.

25 (8) "STATIONARY AIR CONTAMINATION SOURCE." ANY AIR
26 CONTAMINATION SOURCE OTHER THAN THAT WHICH, WHEN OPERATED, MOVES
27 IN A GIVEN DIRECTION UNDER ITS OWN POWER.

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

30 (10) "APPROVED AIR POLLUTION CONTROL AGENCY." AN AIR

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

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

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

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

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

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

"APPROVED AIR POLLUTION CONTROL AGENCY." AN AIR POLLUTION
CONTROL AGENCY OF ANY POLITICAL SUBDIVISION OF THE COMMONWEALTH
WHICH HAS BEEN GRANTED APPROVAL BY THE ENVIRONMENTAL QUALITY
BOARD.

"BOARD" OR "EQB." THE ENVIRONMENTAL QUALITY BOARD.

1 "CLEAN AIR ACT." PUBLIC LAW 95-95 AS AMENDED, 42 U.S.C. §
2 7401 ET SEQ.

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

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

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

10 "HEARING BOARD." THE ENVIRONMENTAL HEARING BOARD.

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

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

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

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

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

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

1 (3) IS NOT A MAJOR STATIONARY SOURCE;

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

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

6 "STATE IMPLEMENTATION PLAN." THE PLAN OR PLAN REVISION THAT
7 A STATE IS AUTHORIZED AND REQUIRED TO SUBMIT UNDER SECTION 110
8 OF THE CLEAN AIR ACT (PUBLIC LAW 95-95 AS AMENDED, 42 U.S.C. §
9 7410) TO PROVIDE FOR ATTAINMENT OF THE NATIONAL AMBIENT AIR
10 QUALITY STANDARDS.

11 "STATIONARY AIR CONTAMINATION SOURCE." ANY AIR CONTAMINATION
12 SOURCE OTHER THAN THAT WHICH, WHEN OPERATED, MOVES IN A GIVEN
13 DIRECTION UNDER ITS OWN POWER.

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

17 SECTION 4. POWERS AND DUTIES OF THE DEPARTMENT OF
18 ENVIRONMENTAL RESOURCES.--THE DEPARTMENT SHALL HAVE POWER AND
19 ITS DUTY SHALL BE TO--

20 (1) IMPLEMENT THE PROVISIONS OF THE CLEAN AIR ACT IN THE
21 COMMONWEALTH.

22 [(1)] (2) ENTER ANY BUILDING, PROPERTY, PREMISES OR PLACE
23 AND INSPECT ANY AIR CONTAMINATION SOURCE FOR THE PURPOSE OF
24 INVESTIGATING AN ACTUAL OR A SUSPECTED SOURCE OF AIR POLLUTION
25 OR FOR THE PURPOSE OF ASCERTAINING THE COMPLIANCE OR NON-
26 COMPLIANCE WITH [ANY RULE OR REGULATION WHICH MAY HAVE BEEN
27 ADOPTED AND PROMULGATED BY THE BOARD HEREUNDER.] THIS ACT, ANY
28 RULE OR REGULATION PROMULGATED UNDER THIS ACT OR ANY PLAN
29 APPROVAL, PERMIT OR ORDER OF THE DEPARTMENT. IN CONNECTION WITH
30 SUCH INSPECTION OR INVESTIGATION, SAMPLES OF AIR, AIR

1 CONTAMINANTS, FUEL, PROCESS MATERIAL OR OTHER MATTER MAY BE
2 TAKEN FOR ANALYSIS, A DUPLICATE OF THE ANALYTICAL REPORT SHALL
3 BE FURNISHED PROMPTLY TO THE PERSON WHO IS SUSPECTED OF CAUSING
4 SUCH AIR POLLUTION OR AIR CONTAMINATION.

5 [(2)] (3) HAVE ACCESS TO, AND REQUIRE THE PRODUCTION OF,
6 BOOKS [AND], PAPERS AND RECORDS, INCLUDING, BUT NOT LIMITED TO,
7 COMPUTERIZED INFORMATION IN A FORMAT AS THE DEPARTMENT MAY
8 REASONABLY PRESCRIBE PERTINENT TO ANY MATTER UNDER
9 INVESTIGATION.

10 [(2.1)] (4) REQUIRE THE OWNER OR OPERATOR OF ANY AIR
11 CONTAMINATION SOURCE TO ESTABLISH AND MAINTAIN SUCH RECORDS AND
12 MAKE SUCH REPORTS AND FURNISH SUCH INFORMATION, INCLUDING
13 COMPUTERIZED INFORMATION IN A FORMAT AS THE DEPARTMENT MAY
14 REASONABLY PRESCRIBE.

15 [(2.2)] (5) REQUIRE THE OWNER OR OPERATOR OF ANY AIR
16 CONTAMINATION SOURCE TO INSTALL, USE AND MAINTAIN SUCH AIR
17 CONTAMINANT MONITORING EQUIPMENT OR METHODS AS THE DEPARTMENT
18 MAY REASONABLY PRESCRIBE.

19 [(2.3)] (6) REQUIRE THE OWNER OR OPERATOR OF ANY AIR
20 CONTAMINATION SOURCE TO SAMPLE THE EMISSIONS THEREOF IN
21 ACCORDANCE WITH SUCH METHODS AND PROCEDURES AND AT SUCH
22 LOCATIONS AND INTERVALS OF TIME AS THE DEPARTMENT MAY REASONABLY
23 PRESCRIBE AND TO PROVIDE THE DEPARTMENT WITH THE RESULTS
24 THEREOF.

25 [(3)] (7) ENTER UPON ANY PROPERTY ON WHICH AN AIR
26 CONTAMINATION SOURCE MAY BE LOCATED AND MAKE SUCH TESTS UPON THE
27 SOURCE AS ARE NECESSARY TO DETERMINE WHETHER THE AIR
28 CONTAMINANTS BEING EMITTED FROM SUCH AIR CONTAMINATION SOURCE
29 ARE BEING EMITTED AT A RATE IN EXCESS OF A RATE PROVIDED FOR BY
30 [BOARD RULE OR REGULATION] THIS ACT, ANY RULE OR REGULATIONS

1 PROMULGATED UNDER THIS ACT OR ANY PLAN APPROVAL, PERMIT OR ORDER
2 OF THE DEPARTMENT OR OTHERWISE CAUSING AIR POLLUTION. WHENEVER
3 THE DEPARTMENT DETERMINES THAT A SOURCE TEST IS NECESSARY, IT
4 SHALL GIVE REASONABLE WRITTEN OR ORAL NOTICE TO THE PERSON
5 OWNING, OPERATING, OR OTHERWISE IN CONTROL OF SUCH SOURCE, THAT
6 [IT] THE DEPARTMENT WILL CONDUCT A TEST ON SUCH SOURCE.
7 THEREAFTER, THE PERSON TO WHOM SUCH NOTICE IS GIVEN SHALL
8 PROVIDE SUCH REASONABLY SAFE ACCESS TO THE TESTING AREA, AND
9 SUCH SAMPLING [HOLES] PORTS, FACILITIES, ELECTRICAL POWER AND
10 WATER AS THE DEPARTMENT SHALL SPECIFY IN ITS NOTICE.

11 [(4)] (8) RECEIVE, INITIATE AND INVESTIGATE COMPLAINTS,
12 INSTITUTE AND CONDUCT SURVEYS AND TESTING PROGRAMS, CONDUCT
13 GENERAL ATMOSPHERIC SAMPLING PROGRAMS, MAKE OBSERVATIONS OF
14 CONDITIONS WHICH MAY OR DO CAUSE AIR POLLUTION, MAKE TESTS OR
15 OTHER DETERMINATIONS AT AIR CONTAMINATION SOURCES, AND ASSESS
16 THE DEGREE OF ABATEMENT REQUIRED.

17 [(4.1)] (9) (I) ISSUE ORDERS TO ANY PERSON OWNING OR
18 OPERATING AN AIR CONTAMINATION SOURCE, OR OWNING OR POSSESSING
19 LAND ON WHICH SUCH SOURCE IS LOCATED, IF SUCH SOURCE IS
20 INTRODUCING OR IS LIKELY TO INTRODUCE AIR CONTAMINANTS INTO THE
21 OUTDOOR ATMOSPHERE IN EXCESS OF ANY [BOARD RULE OR REGULATION,
22 OR ANY PERMIT REQUIREMENT] RATE PROVIDED FOR BY THIS ACT, ANY
23 RULE OR REGULATION PROMULGATED UNDER THIS ACT OR ANY PLAN
24 APPROVAL OR PERMIT APPLICABLE TO SUCH SOURCE, OR AT SUCH A LEVEL
25 SO AS TO CAUSE AIR POLLUTION. ANY SUCH ORDER MAY REQUIRE THE
26 CESSATION OF ANY OPERATION OR ACTIVITY WHICH IS INTRODUCING AIR
27 CONTAMINANTS INTO THE OUTDOOR ATMOSPHERE SO AS TO CAUSE AIR
28 POLLUTION, THE REDUCTION OF EMISSIONS FROM SUCH AIR
29 CONTAMINATION SOURCE, MODIFICATION OR REPAIR OF SUCH SOURCE OR
30 AIR POLLUTION CONTROL DEVICE OR EQUIPMENT OR CERTAIN OPERATING

1 AND MAINTENANCE PROCEDURES WITH RESPECT TO SUCH SOURCE OR AIR
2 POLLUTION CONTROL DEVICE OR EQUIPMENT, INSTITUTION OF A
3 REASONABLE PROCESS CHANGE, INSTALLATION OF AIR POLLUTION CONTROL
4 DEVICES OR EQUIPMENT, OR ANY OR ALL OF SAID REQUIREMENTS AS THE
5 DEPARTMENT DEEMS NECESSARY. SUCH ORDERS MAY SPECIFY A TIME FOR
6 COMPLIANCE, REQUIRE SUBMISSION OF A PROPOSED PLAN FOR
7 COMPLIANCE, AND REQUIRE SUBMISSION OF PERIODIC REPORTS
8 CONCERNING COMPLIANCE. IF A TIME FOR COMPLIANCE IS GIVEN, THE
9 DEPARTMENT MAY, IN ITS DISCRETION, REQUIRE THE POSTING OF A BOND
10 IN THE AMOUNT OF TWICE THE MONEY TO BE EXPENDED IN REACHING
11 COMPLIANCE.

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

22 [(5)] (10) INSTITUTE, IN A COURT OF COMPETENT JURISDICTION
23 PROCEEDINGS TO COMPEL COMPLIANCE WITH [ANY] THIS ACT, ANY RULE
24 OR REGULATION PROMULGATED UNDER THIS ACT OR ANY PLAN APPROVAL,
25 PERMIT OR ORDER OF THE DEPARTMENT [FROM WHICH THERE HAS BEEN NO
26 APPEAL OR WHICH HAS BEEN SUSTAINED ON APPEAL].

27 [(6)] (11) ACT AS THE AGENT FOR THE BOARD IN HOLDING PUBLIC
28 HEARINGS WHEN SO DIRECTED BY THE BOARD.

29 [(7)] (12) INSTITUTE PROSECUTIONS UNDER THIS ACT.

30 [(8)] (13) RECOMMEND THE MINIMUM JOB QUALIFICATIONS OF

1 PERSONNEL EMPLOYED BY COUNTY AND MUNICIPAL AIR POLLUTION CONTROL
2 AGENCIES HEREAFTER CREATED.

3 [(9)] (14) REQUIRE THE SUBMISSION OF, AND CONSIDER FOR
4 APPROVAL, PLANS AND SPECIFICATIONS OF AIR POLLUTION CONTROL
5 EQUIPMENT, DEVICES OR PROCESS CHANGES, AND INSPECT SUCH
6 INSTALLATIONS OR MODIFICATIONS TO INSURE COMPLIANCE WITH THE
7 PLANS WHICH HAVE BEEN APPROVED.

8 [(10)] (15) CONDUCT OR CAUSE TO BE CONDUCTED STUDIES AND
9 RESEARCH WITH RESPECT TO AIR CONTAMINANTS, THEIR NATURE, CAUSES
10 AND EFFECTS, AND WITH RESPECT TO THE CONTROL, PREVENTION,
11 ABATEMENT AND REDUCTION OF AIR POLLUTION AND AIR CONTAMINATION.

12 [(10.1)] (16) EVALUATE MOTOR VEHICLE EMISSION CONTROL
13 PROGRAMS, INCLUDING VEHICLE EMISSION STANDARDS, CLEAN
14 ALTERNATIVE FUELS, OXYGENATED FUELS, REFORMULATED FUELS, VEHICLE
15 MILES OF TRAVEL, CONGESTION LEVELS, TRANSPORTATION CONTROL
16 MEASURES AND OTHER TRANSPORTATION CONTROL STRATEGIES WITH
17 RESPECT TO THEIR EFFECT UPON AIR POLLUTION AND DETERMINE THE
18 NEED FOR MODIFICATIONS OF SUCH PROGRAMS.

19 [(11)] (17) DETERMINE BY MEANS OF FIELD STUDIES AND SAMPLING
20 THE DEGREE OF AIR POLLUTION EXISTING IN ANY PART OF THE
21 COMMONWEALTH.

22 [(12)] (18) PREPARE AND DEVELOP A GENERAL COMPREHENSIVE PLAN
23 FOR THE CONTROL AND ABATEMENT OF EXISTING AIR POLLUTION AND AIR
24 CONTAMINATION AND FOR THE ABATEMENT, CONTROL AND PREVENTION OF
25 ANY NEW AIR POLLUTION AND AIR CONTAMINATION, RECOGNIZING VARYING
26 REQUIREMENTS FOR THE DIFFERENT AREAS OF THE COMMONWEALTH, AND TO
27 SUBMIT A COMPREHENSIVE PLAN TO THE BOARD FOR ITS CONSIDERATION
28 AND APPROVAL.

29 [(13)] (19) ENCOURAGE THE FORMULATION AND EXECUTION OF PLANS
30 IN CONJUNCTION WITH AIR POLLUTION CONTROL AGENCIES OR CIVIL

1 ASSOCIATIONS OF COUNTIES, CITIES, BOROUGH, TOWNS AND TOWNSHIPS
2 OF THE COMMONWEALTH WHEREIN ANY SOURCES OF AIR POLLUTION OR AIR
3 CONTAMINATION MAY BE LOCATED, AND ENLIST THE COOPERATION OF
4 THOSE WHO MAY BE IN CONTROL OF SUCH SOURCES FOR THE CONTROL,
5 PREVENTION AND ABATEMENT OF SUCH AIR POLLUTION AND AIR
6 CONTAMINATION.

7 [(14)] (20) ENCOURAGE VOLUNTARY EFFORTS AND COOPERATION BY
8 ALL PERSONS CONCERNED IN CONTROLLING, PREVENTING, ABATING AND
9 REDUCING AIR POLLUTION AND AIR CONTAMINATION.

10 [(15)] (21) CONDUCT AND SUPERVISE EDUCATIONAL PROGRAMS WITH
11 RESPECT TO THE CONTROL, PREVENTION, ABATEMENT AND REDUCTION OF
12 AIR POLLUTION AND AIR CONTAMINATION, INCLUDING THE PREPARATION
13 AND DISTRIBUTION OF INFORMATION RELATING TO THE MEANS OF
14 CONTROLLING AND PREVENTING SUCH AIR POLLUTION AND AIR
15 CONTAMINATION.

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

20 [(17)] (23) PROVIDE ADVISORY TECHNICAL CONSULTATIVE SERVICES
21 TO LOCAL COMMUNITIES FOR THE CONTROL, PREVENTION, ABATEMENT AND
22 REDUCTION OF AIR POLLUTION AND AIR CONTAMINATION.

23 [(18)] (24) COOPERATE WITH THE APPROPRIATE AGENCIES OF THE
24 UNITED STATES OR OF OTHER STATES OR ANY INTERSTATE AGENCIES WITH
25 RESPECT TO THE CONTROL, PREVENTION, ABATEMENT AND REDUCTION OF
26 AIR POLLUTION, AND WHERE APPROPRIATE FORMULATE INTERSTATE AIR
27 POLLUTION CONTROL COMPACTS OR AGREEMENTS FOR THE SUBMISSION
28 THEREOF TO THE GENERAL ASSEMBLY.

29 [(19)] (25) SERVE AS THE AGENCY OF THE COMMONWEALTH FOR THE
30 RECEIPT OF MONEYS FROM THE FEDERAL GOVERNMENT OR OTHER PUBLIC OR

PRIVATE AGENCIES, AND EXPEND SUCH MONEYS FOR STUDIES AND RESEARCH WITH RESPECT TO AIR CONTAMINANTS, AIR POLLUTION AND THE CONTROL, PREVENTION, ABATEMENT AND REDUCTION OF AIR POLLUTION.

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

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

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

SECTION 4.1. AGRICULTURAL REGULATIONS PROHIBITED.--[THE] EXCEPT AS MAY BE REQUIRED BY THE CLEAN AIR ACT OR THE REGULATIONS PROMULGATED UNDER THE CLEAN AIR ACT, THE ENVIRONMENTAL QUALITY BOARD SHALL NOT HAVE THE POWER NOR THE AUTHORITY TO ADOPT RULES AND REGULATIONS RELATING TO AIR CONTAMINANTS AND AIR POLLUTION ARISING FROM THE PRODUCTION OF AGRICULTURAL COMMODITIES IN THEIR UNMANUFACTURED STATE BUT THIS PROHIBITION SHALL NOT INCLUDE THE USE OF MATERIALS PRODUCED OR MANUFACTURED OFF THE PREMISES OF THE FARM OPERATION.

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

SECTION 4.2. PERMISSIBLE ACTIONS.--(A) IN IMPLEMENTING THE

1 REQUIREMENTS OF SECTION 109 OF THE CLEAN AIR ACT, THE BOARD MAY
2 ADOPT, BY REGULATION, ONLY THOSE CONTROL MEASURES OR OTHER
3 REQUIREMENTS WHICH ARE REASONABLY REQUIRED, IN ACCORDANCE WITH
4 THE CLEAN AIR ACT DEADLINES, TO ACHIEVE AND MAINTAIN THE AMBIENT
5 AIR QUALITY STANDARDS OR TO SATISFY RELATED CLEAN AIR ACT
6 REQUIREMENTS, UNLESS OTHERWISE SPECIFICALLY AUTHORIZED OR
7 REQUIRED BY THIS ACT OR SPECIFICALLY REQUIRED BY THE CLEAN AIR
8 ACT.

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

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

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

20 (3) TO PREVENT AN ASSESSMENT OR IMPOSITION OF CLEAN AIR ACT
21 SANCTIONS; OR

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

23 (C) THE BOARD MAY NOT BY REGULATION ADOPT AN AMBIENT AIR
24 QUALITY STANDARD FOR A SPECIFIC POLLUTANT WHICH IS MORE
25 STRINGENT THAN THE AIR QUALITY STANDARD WHICH THE EPA HAS
26 ADOPTED FOR THE SPECIFIC POLLUTANT PURSUANT TO SECTION 109 OF
27 THE CLEAN AIR ACT.

28 (D) IN ANY CHALLENGE TO THE ENFORCEMENT OF REGULATIONS
29 ADOPTED TO ACHIEVE AND MAINTAIN THE AMBIENT AIR QUALITY
30 STANDARDS OR TO SATISFY RELATED CLEAN AIR ACT REQUIREMENTS, THE

1 PERSON CHALLENGING THE REGULATION SHALL HAVE THE BURDEN TO
2 DEMONSTRATE THAT THE CONTROL MEASURE OR OTHER REQUIREMENT OR THE
3 STRINGENCY OF THE CONTROL MEASURE OR REQUIREMENT IS NOT
4 REASONABLY REQUIRED TO ACHIEVE OR MAINTAIN THE STANDARD OR TO
5 SATISFY RELATED CLEAN AIR ACT REQUIREMENTS.

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

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

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

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

24 (1) A DETERMINATION OF WHETHER THE LIMITATION IMPOSED IN
25 SECTION 4.2 HAS HINDERED IN ANY WAY THE COMMONWEALTH'S EFFORTS
26 TO COMPLY WITH THE CLEAN AIR ACT AND A RECOMMENDATION ON WHETHER
27 THAT PROVISION SHOULD BE CHANGED.

28 (2) THE SPECIFIC STEPS TAKEN TO IMPLEMENT THE CLEAN AIR ACT
29 AND PROGRESS MADE TOWARD MEETING THE EMISSION REDUCTIONS
30 REQUIRED BY THE ACT AND RECOMMENDATIONS ON ANY ADDITIONAL STEPS

1 WHICH MUST BE TAKEN.

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

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

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

18 (6) A SUMMARY OF THE ACTIVITIES UNDERTAKEN BY THE CITIZENS
19 ADVISORY COUNCIL AND THE AIR TECHNICAL ADVISORY COMMITTEE UNDER
20 SECTION 7.6.

21 (7) AN EVALUATION OF THE EFFECTIVENESS OF THE NORTHEAST
22 OZONE TRANSPORT COMMISSION IN MEETING THE MANDATES OF THE CLEAN
23 AIR ACT AND RECOMMENDATIONS ON ANY CHANGES THAT COULD MAKE THE
24 COMMISSION MORE EFFECTIVE.

25 (8) AN ASSESSMENT OF THE IMPACT OF MISSING FEDERAL DEADLINES
26 IDENTIFIED UNDER SECTION 7.12 HAS HAD OR WILL HAVE ON THE STATE
27 IMPLEMENTATION OF THE CLEAN AIR ACT PROGRAMS.

28 SECTION 6. SECTIONS 5 AND 6 OF THE ACT, AMENDED OCTOBER 26,
29 1972 (P.L.989, NO.245), ARE AMENDED TO READ:

30 SECTION 5. ENVIRONMENTAL QUALITY BOARD.--THE BOARD SHALL

1 HAVE THE POWER AND ITS DUTY SHALL BE TO--

2 (1) ADOPT RULES AND REGULATIONS, FOR THE PREVENTION,
3 CONTROL, REDUCTION AND ABATEMENT OF AIR POLLUTION, APPLICABLE
4 THROUGHOUT THE COMMONWEALTH OR TO SUCH PARTS OR REGIONS OR
5 SUBREGIONS THEREOF SPECIFICALLY DESIGNATED IN SUCH REGULATION
6 WHICH SHALL BE APPLICABLE TO ALL AIR CONTAMINATION SOURCES
7 REGARDLESS OF WHETHER SUCH SOURCE IS REQUIRED TO BE UNDER PERMIT
8 BY THIS ACT. SUCH RULES AND REGULATIONS MAY ESTABLISH MAXIMUM
9 ALLOWABLE EMISSION RATES OF AIR CONTAMINANTS FROM SUCH SOURCES,
10 PROHIBIT OR REGULATE THE COMBUSTION OF CERTAIN FUELS, PROHIBIT
11 OR REGULATE OPEN BURNING, PROHIBIT OR REGULATE ANY PROCESS OR
12 SOURCE OR CLASS OF PROCESSES OR SOURCES, REQUIRE THE
13 INSTALLATION OF SPECIFIED CONTROL DEVICES OR EQUIPMENT, OR
14 DESIGNATE THE CONTROL EFFICIENCY OF AIR POLLUTION CONTROL
15 DEVICES OR EQUIPMENT REQUIRED IN SPECIFIC PROCESSES OR SOURCES
16 OR CLASSES OF PROCESSES OR SOURCES. SUCH RULES AND REGULATIONS
17 SHALL BE ADOPTED PURSUANT TO THE PROVISIONS OF THE ACT OF JULY
18 31, 1968 (P.L.769), KNOWN AS THE "COMMONWEALTH DOCUMENTS LAW,"
19 UPON SUCH NOTICE AND AFTER SUCH PUBLIC HEARINGS AS THE BOARD
20 DEEMS APPROPRIATE. IN EXERCISING ITS AUTHORITY TO ADOPT RULES
21 AND REGULATIONS, THE BOARD MAY, AND TO THE EXTENT DEEMED
22 DESIRABLE BY IT SHALL, CONSULT WITH A COUNCIL OF TECHNICAL
23 ADVISERS, PROPERLY QUALIFIED BY EDUCATION OR EXPERIENCE IN AIR
24 POLLUTION MATTERS, APPOINTED BY THE BOARD AND TO SERVE AT THE
25 PLEASURE OF THE BOARD, TO CONSIST OF SUCH NUMBER OF ADVISERS AS
26 THE BOARD MAY APPOINT, BUT SUCH TECHNICAL ADVISERS SHALL RECEIVE
27 NO COMPENSATION, OTHER THAN THEIR ACTUAL AND NECESSARY EXPENSES,
28 FOR THEIR SERVICES TO THE BOARD.

29 (2) ESTABLISH AND PUBLISH MAXIMUM QUANTITIES OF AIR
30 CONTAMINANTS THAT MAY BE PERMITTED UNDER VARIOUS CONDITIONS AT

1 THE POINT OF USE FROM ANY AIR CONTAMINANT SOURCE IN VARIOUS
2 AREAS OF THE COMMONWEALTH SO AS TO CONTROL AIR POLLUTION.

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

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

19 (5) ADOPT RULES AND 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 THREAT
23 TO THE HEALTH OF THE PUBLIC. SUCH RULES AND REGULATIONS SHALL
24 CONTAIN APPROPRIATE PROCEDURES TO PROTECT PUBLIC HEALTH AND
25 SAFETY DURING SUCH PERIODS.

26 (6) ADOPT RULES AND REGULATIONS FOR THE APPROVAL AND THE
27 RECISION AND SUSPENSION OF APPROVAL OF LOCAL AIR POLLUTION
28 CONTROL AGENCIES.

29 (7) ADOPT RULES AND REGULATIONS DESIGNED TO REDUCE EMISSIONS
30 FROM MOTOR VEHICLES, INCLUDING CENTRALLY CLEAN-FUELED FLEETS,

1 CLEAN ALTERNATIVE FUELS, OXYGENATED FUELS, REFORMULATED FUELS,
2 VEHICLE MILES OF TRAVEL, TRANSPORTATION CONTROL MEASURES AND
3 OTHER TRANSPORTATION CONTROL STRATEGIES. SUCH RULES AND
4 REGULATIONS SHALL BE DEVELOPED IN CONSULTATION WITH THE
5 DEPARTMENT OF TRANSPORTATION. THE BOARD SHALL NOT ADOPT
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) UNLESS THE SET OF
9 SPECIFICATIONS IS REQUIRED UNDER THE CLEAN AIR ACT OR THE
10 REGULATIONS PROMULGATED THEREUNDER.

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

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

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

1 FRAME FOR EMERGENCIES.

2 (11) IN ITS DISCRETION, BY REGULATION REQUIRE REVISIONS TO
3 PERMITS FOR MAJOR SOURCES TO INCORPORATE APPLICABLE STANDARDS
4 AND REGULATIONS PROMULGATED PURSUANT TO THE CLEAN AIR ACT AND
5 ADOPTED BY THE BOARD AFTER THE ISSUANCE OF SUCH PERMIT AS
6 REQUIRED BY SECTION 502(B)(9) OF THE CLEAN AIR ACT.

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

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

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

1 (RELATING TO ADMINISTRATIVE LAW AND PROCEDURE).

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

5 SECTION 6.1. PLAN APPROVALS AND PERMITS.--(A) [ON OR AFTER
6 JULY 1, 1972, NO] NO PERSON SHALL CONSTRUCT, ASSEMBLE, INSTALL
7 OR MODIFY ANY STATIONARY AIR CONTAMINATION SOURCE, OR INSTALL
8 THEREON ANY AIR POLLUTION CONTROL EQUIPMENT OR DEVICE [OR
9 REACTIVATE ANY AIR CONTAMINATION SOURCE AFTER SAID SOURCE HAS
10 BEEN OUT OF OPERATION OR PRODUCTION FOR A PERIOD OF ONE YEAR OR
11 MORE] UNLESS SUCH PERSON HAS APPLIED TO AND RECEIVED [FROM THE
12 DEPARTMENT] WRITTEN PLAN APPROVAL [SO TO DO] FROM THE DEPARTMENT
13 TO DO SO: PROVIDED, HOWEVER, THAT NO SUCH WRITTEN APPROVAL SHALL
14 BE NECESSARY WITH RESPECT TO NORMAL ROUTINE MAINTENANCE
15 OPERATIONS, NOR TO ANY SUCH SOURCE, EQUIPMENT OR DEVICE USED
16 SOLELY FOR THE SUPPLYING OF HEAT OR HOT WATER TO ONE STRUCTURE
17 INTENDED AS A ONE-FAMILY OR TWO-FAMILY DWELLING, [OR WITH
18 RESPECT TO ANY OTHER CLASS OF UNITS AS THE BOARD, BY RULE OR
19 REGULATION, MAY EXEMPT FROM THE REQUIREMENTS OF THIS SECTION.]
20 NOR WHERE CONSTRUCTION, ASSEMBLY, INSTALLATION OR MODIFICATION
21 IS SPECIFICALLY AUTHORIZED BY THE RULES OR REGULATIONS OF THE
22 DEPARTMENT TO BE CONDUCTED WITHOUT WRITTEN APPROVAL. ALL
23 APPLICATIONS FOR APPROVAL SHALL BE MADE IN WRITING AND SHALL BE
24 ON SUCH FORMS AND CONTAIN SUCH INFORMATION AS THE DEPARTMENT
25 SHALL PRESCRIBE AND SHALL HAVE APPENDED THERETO DETAILED PLANS
26 AND SPECIFICATIONS RELATED TO THE PROPOSED INSTALLATION.

27 (B) (1) NO PERSON SHALL OPERATE ANY STATIONARY AIR
28 CONTAMINATION SOURCE [WHICH IS SUBJECT TO THE PROVISIONS OF
29 SUBSECTION (A) OF THIS SECTION] UNLESS THE DEPARTMENT SHALL HAVE
30 ISSUED TO SUCH PERSON A PERMIT TO OPERATE SUCH SOURCE UNDER THE

1 PROVISIONS OF THIS SECTION IN RESPONSE TO A WRITTEN APPLICATION
2 FOR A PERMIT SUBMITTED ON FORMS AND CONTAINING SUCH INFORMATION
3 AS THE DEPARTMENT MAY PRESCRIBE[.] OR WHERE CONSTRUCTION,
4 ASSEMBLY, INSTALLATION MODIFICATION IS SPECIFICALLY AUTHORIZED
5 BY THE RULES OR REGULATIONS OF THE DEPARTMENT TO BE CONDUCTED
6 WITHOUT WRITTEN APPROVAL. THE DEPARTMENT SHALL PROVIDE PUBLIC
7 NOTICE AND THE RIGHT TO COMMENT ON ALL PERMITS PRIOR TO ISSUANCE
8 OR DENIAL AND MAY HOLD PUBLIC HEARINGS CONCERNING ANY PERMIT.

9 (2) [NO PERMIT SHALL] A PERMIT MAY BE ISSUED AFTER THE
10 EFFECTIVE DATE OF THIS AMENDMENT TO ANY APPLICANT [UNLESS IT
11 APPEARS THAT, WITH RESPECT TO THE SOURCE,] FOR A STATIONARY AIR
12 CONTAMINATION SOURCE REQUIRING CONSTRUCTION, ASSEMBLY,
13 INSTALLATION OR MODIFICATION, WHERE THE REQUIREMENTS OF
14 SUBSECTION (A) OF THIS SECTION HAVE BEEN MET AND [THAT] THERE
15 HAS BEEN PERFORMED UPON SUCH SOURCE A TEST OPERATION OR
16 EVALUATION WHICH SHALL SATISFY THE DEPARTMENT THAT THE AIR
17 CONTAMINATION SOURCE WILL NOT DISCHARGE INTO THE OUTDOOR
18 ATMOSPHERE ANY AIR CONTAMINANTS AT A RATE IN EXCESS OF THAT
19 PERMITTED BY APPLICABLE REGULATION OF THE BOARD, OR IN VIOLATION
20 OF ANY PERFORMANCE OR EMISSION STANDARD OR OTHER REQUIREMENT
21 ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY OR THE
22 DEPARTMENT FOR SUCH SOURCE, AND WHICH WILL NOT CAUSE AIR
23 POLLUTION.

24 (3) A STATIONARY AIR CONTAMINATION SOURCE OPERATING LAWFULLY
25 WITHOUT A PERMIT FOR WHICH FEES REQUIRED BY SECTION 6.3 OF THIS
26 ACT OR THE REGULATIONS PROMULGATED UNDER THIS ACT HAVE BEEN PAID
27 IS AUTHORIZED TO CONTINUE TO OPERATE WITHOUT A PERMIT UNTIL ONE
28 HUNDRED TWENTY (120) DAYS AFTER THE DEPARTMENT PROVIDES NOTICE
29 TO THE SOURCE THAT A PERMIT IS REQUIRED OR UNTIL NOVEMBER 1,
30 1996, WHICHEVER OCCURS FIRST. IF THE APPLICANT SUBMITS A

1 COMPLETE PERMIT APPLICATION WITHIN THE TIME FRAMES IN THIS
2 SUBSECTION, AND THE DEPARTMENT FAILS TO ISSUE A PERMIT THROUGH
3 NO FAULT OF THE APPLICANT, THE SOURCE MAY CONTINUE TO OPERATE IF
4 THE FEES REQUIRED BY SECTION 6.3 OR THE REGULATIONS PROMULGATED
5 UNDER THIS ACT HAVE BEEN PAID AND THE SOURCE IS OPERATED IN
6 CONFORMANCE WITH THIS ACT, THE CLEAN AIR ACT AND THE REGULATIONS
7 PROMULGATED UNDER BOTH THIS ACT AND THE CLEAN AIR ACT. FOR ANY
8 PERFORMANCE OR EMISSION STANDARD OR OTHER REQUIREMENT
9 ESTABLISHED BY THE ENVIRONMENTAL PROTECTION AGENCY OR THE
10 DEPARTMENT FOR THE SOURCE SUBSEQUENT TO THE EFFECTIVE DATE OF
11 THIS ACT BUT PRIOR TO THE PERMIT ISSUANCE DATE, THE PERMIT MAY
12 CONTAIN A COMPLIANCE SCHEDULE AUTHORIZING THE SOURCE TO OPERATE
13 OUT OF COMPLIANCE AND REQUIRING THE SOURCE TO ACHIEVE COMPLIANCE
14 AS SOON AS POSSIBLE BUT NO LATER THAN THE TIME REQUIRED BY THIS
15 ACT, THE CLEAN AIR ACT OR THE REGULATIONS PROMULGATED UNDER
16 EITHER THIS ACT OR THE CLEAN AIR ACT. FOR PURPOSES OF THIS
17 SUBSECTION, A SOURCE IS OPERATING LAWFULLY WITHOUT A PERMIT
18 WHERE IT IS A SOURCE FOR WHICH NO PERMIT WAS PREVIOUSLY REQUIRED
19 AND THE SOURCE IS OPERATING IN COMPLIANCE WITH APPLICABLE
20 REGULATORY REQUIREMENTS.

21 (4) FOR REPERMITTING OF ANY STATIONARY AIR CONTAMINATION
22 SOURCE WHICH IS OPERATING UNDER A VALID PERMIT ON THE EFFECTIVE
23 DATE OF THIS ACT OR WHICH HAS RECEIVED A PERMIT UNDER THE
24 PROVISIONS OF CLAUSES (2) AND (3) OF THIS SUBSECTION AND WHICH
25 IS REQUIRED TO MEET PERFORMANCE OR EMISSION STANDARDS OR OTHER
26 REQUIREMENTS ESTABLISHED SUBSEQUENT TO THE ISSUANCE OF THE
27 EXISTING PERMIT, THE NEW PERMIT MAY CONTAIN A COMPLIANCE
28 SCHEDULE AUTHORIZING THE SOURCE TO OPERATE OUT OF COMPLIANCE AND
29 REQUIRING THE SOURCE TO ACHIEVE COMPLIANCE AS SOON AS POSSIBLE
30 BUT NO LATER THAN THE TIME REQUIRED BY THIS ACT, THE CLEAN AIR

1 ACT OR THE REGULATIONS PROMULGATED UNDER EITHER THIS ACT OR THE
2 CLEAN AIR ACT.

3 (B.1) [PERMITS] A PERMIT OR PLAN APPROVAL ISSUED HEREUNDER
4 MAY CONTAIN SUCH TERMS AND CONDITIONS AS THE DEPARTMENT DEEMS
5 NECESSARY TO ASSURE THE PROPER OPERATION OF THE SOURCE. [EACH
6 PERMITTEE, ON OR BEFORE THE ANNIVERSARY DATE SET FORTH IN HIS
7 PERMIT, SHALL SUBMIT TO THE DEPARTMENT AN ANNUAL REPORT
8 CONTAINING SUCH INFORMATION AS THE DEPARTMENT SHALL PRESCRIBE
9 RELATIVE TO THE OPERATION AND MAINTENANCE OF THE INSTALLATION
10 UNDER PERMIT.

11 (C) ANY PERMIT ISSUED HEREUNDER MAY BE REVOKED OR SUSPENDED
12 IF THE PERMITTEE OPERATES THE SOURCE SUBJECT TO THE PERMIT IN
13 SUCH A MANNER AS TO BE IN VIOLATION OF THE CONDITIONS OF ANY
14 PERMIT OR RULE OR REGULATION OF THE BOARD OR IN SUCH A MANNER AS
15 TO CAUSE AIR POLLUTION, IF THE PERMITTEE FAILS TO PROPERLY OR
16 ADEQUATELY MAINTAIN OR REPAIR ANY AIR POLLUTION CONTROL DEVICE
17 OR EQUIPMENT ATTACHED TO OR OTHERWISE MADE A PART OF THE SOURCE,
18 OR IF THE PERMITTEE HAS FAILED TO SUBMIT ANY ANNUAL REPORT AS
19 REQUIRED UNDER THIS SECTION.

20 (D) THE DEPARTMENT MAY REFUSE TO GRANT APPROVAL FOR ANY
21 STATIONARY AIR CONTAMINATION SOURCE SUBJECT TO THE PROVISIONS OF
22 SUBSECTION (A) OF THIS SECTION OR TO ISSUE A PERMIT TO OPERATE
23 SUCH SOURCE IF IT APPEARS, FROM THE DATA AVAILABLE TO THE
24 DEPARTMENT, THAT THE PROPOSED SOURCE, OR PROPOSED CHANGES IN
25 SUCH SOURCE, ARE LIKELY EITHER TO CAUSE AIR POLLUTION OR TO
26 VIOLATE ANY BOARD RULE OR REGULATION APPLICABLE TO SUCH SOURCE,
27 OR IF, IN THE DESIGN OF SUCH SOURCE, NO PROVISION IS MADE FOR
28 ADEQUATE FACILITIES TO CONDUCT SOURCE TESTING. THE DEPARTMENT
29 MAY ALSO REFUSE TO ISSUE A PERMIT TO ANY PERSON WHO HAS
30 CONSTRUCTED, INSTALLED OR MODIFIED ANY AIR CONTAMINATION SOURCE,

1 OR INSTALLED ANY AIR POLLUTION CONTROL EQUIPMENT OR DEVICE ON
2 SUCH SOURCE CONTRARY TO THE PLANS AND SPECIFICATIONS APPROVED BY
3 THE DEPARTMENT.] THE BOARD SHALL BY REGULATION ESTABLISH A
4 PERMIT SHIELD FOR PERMITS ISSUED UNDER THE AUTHORITY DELEGATED
5 TO THE COMMONWEALTH BY THE EPA UNDER TITLE V OF THE CLEAN AIR
6 ACT. THE PROGRAM SHALL BE CONSISTENT WITH THE REQUIREMENTS OF
7 SECTION 504(F) OF THE CLEAN AIR ACT AND THE REGULATIONS
8 PROMULGATED THEREUNDER. EACH PERMITTEE, ON A SCHEDULE
9 ESTABLISHED BY THE DEPARTMENT, SHALL SUBMIT REPORTS TO THE
10 DEPARTMENT CONTAINING SUCH INFORMATION AS THE DEPARTMENT MAY
11 PRESCRIBE RELATIVE TO THE OPERATION AND MAINTENANCE OF THE
12 SOURCE.

13 (B.2) A PERMIT ISSUED OR REISSUED UNDER SUBSECTION (B) OF
14 THIS SECTION SHALL BE ISSUED FOR A FIVE (5) YEAR TERM UNLESS A
15 SHORTER TERM IS REQUIRED TO COMPLY WITH THE CLEAN AIR ACT AND
16 REGULATIONS PROMULGATED THEREUNDER OR THE PERMITTEE REQUESTS A
17 SHORTER TERM, EXCEPT THAT A PERMIT FOR ACID DEPOSITION CONTROL
18 SHALL BE ISSUED FOR A FIVE (5) YEAR TERM. A PERMIT MAY BE
19 TERMINATED, MODIFIED, SUSPENDED OR REVOKED AND REISSUED FOR
20 CAUSE. THE TERMS AND CONDITIONS OF AN EXPIRED PERMIT ARE
21 AUTOMATICALLY CONTINUED PENDING THE ISSUANCE OF A NEW PERMIT
22 WHERE THE PERMITTEE HAS SUBMITTED A TIMELY AND COMPLETE
23 APPLICATION FOR A NEW PERMIT AND PAID THE FEES REQUIRED BY
24 SECTION 6.3 OR THE REGULATIONS PROMULGATED UNDER THIS ACT AND
25 THE DEPARTMENT IS UNABLE, THROUGH NO FAULT OF THE PERMITTEE, TO
26 ISSUE OR DENY A NEW PERMIT BEFORE THE EXPIRATION DATE OF THE
27 PREVIOUS PERMIT. FAILURE OF THE DEPARTMENT TO ISSUE OR DENY A
28 NEW PERMIT PRIOR TO THE EXPIRATION DATE OF THE PREVIOUS PERMIT
29 SHALL BE AN APPEALABLE ACTION AS DESCRIBED IN SECTION 10.2. THE
30 HEARING BOARD MAY REQUIRE THAT THE DEPARTMENT TAKE ACTION ON AN

1 APPLICATION WITHOUT ADDITIONAL DELAY.

2 (B.3) THE BOARD SHALL, BY REGULATION, ESTABLISH ADEQUATE,
3 STREAMLINED AND REASONABLE PROCEDURES FOR EXPEDITIOUSLY
4 DETERMINING WHEN APPLICATIONS ARE COMPLETE AND FOR EXPEDITIOUS
5 REVIEW OF APPLICATIONS. THE DEPARTMENT SHALL APPROVE OR
6 DISAPPROVE A COMPLETE APPLICATION, CONSISTENT WITH THE
7 PROCEDURES ESTABLISHED BY THE BOARD FOR CONSIDERATION OF SUCH
8 APPLICATIONS, WITHIN EIGHTEEN (18) MONTHS AFTER THE DATE OF
9 RECEIPT OF THE COMPLETE APPLICATION EXCEPT THAT THE DEPARTMENT
10 SHALL ESTABLISH A PHASED SCHEDULE FOR ACTING ON PERMIT
11 APPLICATIONS SUBMITTED WITHIN THE FIRST FULL YEAR AFTER THE
12 EFFECTIVE DATE OF THE TITLE V PERMIT PROGRAM ESTABLISHED TO
13 IMPLEMENT THE REQUIREMENTS OF THE CLEAN AIR ACT. THE SCHEDULE
14 SHALL ASSURE THAT AT LEAST ONE-THIRD OF SUCH PERMITS SHALL BE
15 ACTED UPON BY THE DEPARTMENT ANNUALLY OVER A PERIOD NOT TO
16 EXCEED THREE (3) YEARS AFTER SUCH EFFECTIVE DATE. FAILURE OF THE
17 DEPARTMENT TO ISSUE OR DENY A PERMIT BY A DEADLINE ESTABLISHED
18 BY THIS SUBSECTION SHALL BE AN APPEALABLE ACTION AS DESCRIBED IN
19 SECTION 10.2 OF THIS ACT. THE HEARING BOARD MAY REQUIRE THAT THE
20 DEPARTMENT TAKE ACTION ON AN APPLICATION WITHOUT ADDITIONAL
21 DELAY.

22 (B.4) (1) DURING THE TERM OF A PERMIT, A PERMITTEE MAY
23 REACTIVATE ANY SOURCE UNDER THE PERMIT THAT HAS BEEN OUT OF
24 OPERATION OR PRODUCTION FOR A PERIOD OF ONE YEAR OR MORE:
25 PROVIDED, THAT THE PERMITTEE HAS SUBMITTED A REACTIVATION PLAN
26 TO AND RECEIVED WRITTEN APPROVAL FROM THE DEPARTMENT. THE
27 REACTIVATION PLAN SHALL DESCRIBE THE MEASURES THAT WILL BE TAKEN
28 TO ENSURE THE SOURCE WILL BE REACTIVATED IN COMPLIANCE WITH ALL
29 APPLICABLE PERMIT REQUIREMENTS. A REACTIVATION PLAN MAY BE
30 SUBMITTED TO AND APPROVED BY THE DEPARTMENT AT ANY TIME DURING

1 THE TERM OF A PERMIT. THE DEPARTMENT SHALL TAKE ACTION ON THE
2 REACTIVATION PLAN WITHIN THIRTY (30) DAYS UNLESS THE DEPARTMENT
3 DETERMINES THAT ADDITIONAL TIME IS NEEDED BASED ON THE SIZE OR
4 COMPLEXITY OF THE REACTIVATED SOURCE.

5 (2) A REACTIVATION PLAN MAY ALSO BE SUBMITTED TO AND
6 APPROVED BY THE DEPARTMENT AS PART OF THE PLAN APPROVAL OR
7 PERMIT APPLICATION PROCESS. AN OWNER OR OPERATOR WHO HAS AN
8 APPROVED REACTIVATION PLAN SHALL NOTIFY THE DEPARTMENT PRIOR TO
9 THE REACTIVATION OF THE SOURCE.

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

14 (C) A PLAN APPROVAL OR PERMIT ISSUED HEREUNDER MAY BE
15 TERMINATED, MODIFIED, SUSPENDED OR REVOKED AND REISSUED IF THE
16 PERMITTEE CONSTRUCTS OR OPERATES THE SOURCE SUBJECT TO THE PLAN
17 APPROVAL OR PERMIT IN SUCH A MANNER AS TO BE IN VIOLATION OF
18 THIS ACT, THE CLEAN AIR ACT, THE REGULATIONS PROMULGATED UNDER
19 EITHER THIS ACT OR THE CLEAN AIR ACT, A PLAN APPROVAL OR PERMIT
20 OR IN SUCH A MANNER AS TO CAUSE AIR POLLUTION, IF THE PERMITTEE
21 FAILS TO PROPERLY OR ADEQUATELY MAINTAIN OR REPAIR ANY AIR
22 POLLUTION CONTROL DEVICE OR EQUIPMENT ATTACHED TO OR OTHERWISE
23 MADE A PART OF THE SOURCE, IF THE PERMITTEE HAS FAILED TO SUBMIT
24 A REPORT REQUIRED BY A PLAN APPROVAL OR OPERATING PERMIT UNDER
25 THIS SECTION OR IF THE ENVIRONMENTAL PROTECTION AGENCY
26 DETERMINES THAT THE PERMIT IS NOT IN COMPLIANCE WITH THE
27 REQUIREMENTS OF THE CLEAN AIR ACT OR THE REGULATIONS PROMULGATED
28 UNDER THE CLEAN AIR ACT.

29 (D) THE DEPARTMENT MAY REFUSE TO GRANT PLAN APPROVAL FOR ANY
30 STATIONARY AIR CONTAMINATION SOURCE SUBJECT TO THE PROVISIONS OF

1 SUBSECTION (A) OF THIS SECTION OR TO ISSUE A PERMIT TO ANY
2 SOURCE THAT THE DEPARTMENT DETERMINES IS LIKELY TO CAUSE AIR
3 POLLUTION OR TO VIOLATE THIS ACT, THE CLEAN AIR ACT OR THE
4 REGULATIONS PROMULGATED UNDER EITHER THIS ACT OR THE CLEAN AIR
5 ACT APPLICABLE TO SUCH SOURCE, OR IF, IN THE DESIGN OF SUCH
6 SOURCE, NO PROVISION IS MADE FOR ADEQUATE VERIFICATION OF
7 COMPLIANCE, INCLUDING SOURCE TESTING OR ALTERNATIVE MEANS TO
8 VERIFY COMPLIANCE. THE DEPARTMENT MAY ALSO REFUSE TO ISSUE A
9 PERMIT OR MAY FOR CAUSE TERMINATE OR REVOKE AND REISSUE ANY
10 PERMIT TO ANY PERSON IF THE ENVIRONMENTAL PROTECTION AGENCY
11 DETERMINES THAT THE PERMIT IS NOT IN COMPLIANCE WITH THE
12 REQUIREMENTS OF THE CLEAN AIR ACT OR THE REGULATIONS PROMULGATED
13 UNDER THE CLEAN AIR ACT OR IF THE APPLICANT HAS CONSTRUCTED,
14 INSTALLED, MODIFIED OR OPERATED ANY AIR CONTAMINATION SOURCE OR
15 INSTALLED ANY AIR POLLUTION CONTROL EQUIPMENT OR DEVICE ON SUCH
16 SOURCE CONTRARY TO THE PLANS AND SPECIFICATIONS APPROVED BY THE
17 DEPARTMENT.

18 (E) WHENEVER THE DEPARTMENT SHALL REFUSE TO GRANT AN
19 APPROVAL OR TO ISSUE OR REISSUE A PERMIT HEREUNDER OR TERMINATE,
20 MODIFY, SUSPEND OR REVOKE A PLAN APPROVAL OR PERMIT ALREADY
21 ISSUED, SUCH ACTION SHALL BE IN THE FORM OF A WRITTEN NOTICE TO
22 THE PERSON AFFECTED THEREBY INFORMING HIM OF THE ACTION TAKEN BY
23 THE DEPARTMENT AND SETTING FORTH, IN SUCH NOTICE, A FULL AND
24 COMPLETE STATEMENT OF THE REASONS FOR SUCH ACTION. SUCH NOTICE
25 SHALL BE SERVED UPON THE PERSON AFFECTED, EITHER PERSONALLY OR
26 BY CERTIFIED MAIL, AND THE ACTION SET FORTH IN THE NOTICE SHALL
27 BE FINAL AND NOT SUBJECT TO REVIEW UNLESS, WITHIN THIRTY (30)
28 DAYS OF THE SERVICE OF SUCH NOTICE, ANY PERSON AFFECTED THEREBY
29 SHALL APPEAL TO THE HEARING BOARD, SETTING FORTH WITH
30 PARTICULARITY THE GROUNDS RELIED UPON. THE HEARING BOARD SHALL

1 HEAR THE APPEAL PURSUANT TO THE PROVISIONS OF THE RULES AND
2 REGULATIONS RELATING TO PRACTICE AND PROCEDURE BEFORE THE
3 HEARING BOARD, AND THEREAFTER, SHALL ISSUE AN ADJUDICATION
4 AFFIRMING, MODIFYING OR OVERRULING THE ACTION OF THE DEPARTMENT.

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

9 (F) THE DEPARTMENT MAY, BY REGULATION, ESTABLISH A GENERAL
10 PLAN APPROVAL AND A GENERAL PERMIT PROGRAM. AFTER THE PROGRAM IS
11 ESTABLISHED, THE DEPARTMENT MAY GRANT GENERAL PLAN APPROVAL OR A
12 GENERAL PERMIT FOR ANY CATEGORY OF STATIONARY AIR CONTAMINATION
13 SOURCE IF THE DEPARTMENT DETERMINES THAT THE SOURCES IN SUCH
14 CATEGORY ARE SIMILAR IN NATURE, AND CAN BE ADEQUATELY REGULATED
15 USING STANDARDIZED SPECIFICATIONS AND CONDITIONS. ANY APPLICANT
16 PROPOSING TO USE A GENERAL PLAN APPROVAL OR GENERAL PERMIT SHALL
17 NOTIFY THE DEPARTMENT AND RECEIVE WRITTEN APPROVAL PRIOR TO THE
18 PROPOSED USE. THE DEPARTMENT SHALL TAKE ACTION ON A NOTIFICATION
19 WITHIN THIRTY (30) DAYS.

20 (G) THE DEPARTMENT MAY, BY REGULATION, ESTABLISH A PLAN
21 APPROVAL AND PERMIT PROGRAM FOR STATIONARY SOURCES OPERATED AT
22 MULTIPLE TEMPORARY LOCATIONS. AFTER THE PROGRAM IS ESTABLISHED,
23 THE DEPARTMENT MAY GRANT A PLAN APPROVAL OR ISSUE A SINGLE
24 PERMIT TO ANY STATIONARY AIR CONTAMINATION SOURCE THAT MAY BE
25 OPERATED AT MULTIPLE TEMPORARY LOCATIONS. SUCH APPROVAL OR
26 PERMIT SHALL REQUIRE THE OWNER OR OPERATOR TO NOTIFY THE
27 DEPARTMENT AND MUNICIPALITY WHERE THE OPERATION SHALL TAKE PLACE
28 IN ADVANCE OF EACH CHANGE IN LOCATION AND MAY REQUIRE A SEPARATE
29 APPLICATION AND PERMIT OR APPROVAL FEE FOR OPERATIONS AT EACH
30 LOCATION. ANY APPLICANT PROPOSING TO USE THE PLAN APPROVAL OR

1 PERMIT AUTHORIZED BY THIS SUBSECTION SHALL NOTIFY THE DEPARTMENT
2 AND RECEIVE WRITTEN APPROVAL PRIOR TO THE PROPOSED USE. THE
3 DEPARTMENT SHALL TAKE ACTION ON A REQUEST WITHIN THIRTY (30)
4 DAYS.

5 (H) THE DEPARTMENT SHALL ESTABLISH COMPREHENSIVE PLAN
6 APPROVAL AND OPERATING PERMIT PROGRAMS WHICH MEET THE
7 REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT.

8 (I) THE BOARD SHALL BY REGULATION ESTABLISH PROVISIONS TO
9 ALLOW CHANGES WITHIN A PERMITTED FACILITY OR ONE OPERATING
10 PURSUANT TO CLAUSE (3) OF SUBSECTION (B) OF SECTION 6.1 WITHOUT
11 REQUIRING A PERMIT REVISION, IF THE CHANGES ARE NOT
12 MODIFICATIONS UNDER ANY PROVISION OF 42 U.S.C. CH. 85 SUBCH. I
13 (RELATING TO PROGRAMS AND ACTIVITIES) AND THE CHANGES DO NOT
14 EXCEED THE EMISSIONS ALLOWABLE UNDER THE PERMIT WHETHER
15 EXPRESSED THEREIN AS A RATE OF EMISSIONS OR IN TERMS OF TOTAL
16 EMISSIONS: PROVIDED, THAT THE FACILITY PROVIDES THE
17 ADMINISTRATOR AND THE DEPARTMENT WITH WRITTEN NOTIFICATION AT
18 LEAST SEVEN (7) DAYS IN ADVANCE OF THE PROPOSED CHANGES, UNLESS
19 THE BOARD PROVIDES IN ITS REGULATIONS A DIFFERENT TIME FRAME FOR
20 EMERGENCIES.

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

24 (K) THE DEPARTMENT SHALL REQUIRE REVISIONS TO ANY PERMIT TO
25 INCORPORATE APPLICABLE STANDARDS AND REGULATIONS PROMULGATED
26 UNDER THE CLEAN AIR ACT AFTER THE ISSUANCE OF SUCH PERMIT. SUCH
27 REVISIONS SHALL OCCUR AS EXPEDITIOUSLY AS PRACTICABLE, BUT NOT
28 LATER THAN EIGHTEEN (18) MONTHS AFTER THE PROMULGATION OF SUCH
29 STANDARDS AND REGULATIONS. NO SUCH REVISION SHALL BE REQUIRED IF
30 THE EFFECTIVE DATE OF THE STANDARDS OR REGULATIONS IS A DATE

1 AFTER THE EXPIRATION OF THE PERMIT TERM OR IF LESS THAN THREE
2 (3) YEARS REMAIN ON THE PERMIT. SUCH PERMIT REVISION SHALL BE
3 TREATED AS A PERMIT RENEWAL IF IT COMPLIES WITH THE REQUIREMENTS
4 OF THIS ACT REGARDING RENEWALS.

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

7 SECTION 6.2. EMERGENCY PROCEDURE.--(A) ANY OTHER PROVISION
8 OF LAW TO THE CONTRARY NOTWITHSTANDING, IF THE DEPARTMENT FINDS,
9 IN ACCORDANCE WITH THE RULES AND REGULATIONS OF THE BOARD
10 ADOPTED UNDER THE PROVISIONS OF CLAUSE (5) OF SECTION 5 OF THIS
11 ACT, THAT A GENERALIZED CONDITION OF AIR POLLUTION EXISTS AND
12 THAT IT CREATES AN EMERGENCY REQUIRING IMMEDIATE ACTION TO
13 PROTECT HUMAN HEALTH OR SAFETY, THE DEPARTMENT, WITH THE
14 CONCURRENCE OF THE GOVERNOR, SHALL ORDER OR DIRECT PERSONS
15 CAUSING OR CONTRIBUTING TO THE AIR POLLUTION TO IMMEDIATELY
16 REDUCE OR DISCONTINUE THE EMISSION OF AIR CONTAMINANTS.

17 * * *

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

19 SECTION 6.3. FEES.--(A) THIS SECTION AUTHORIZES THE
20 ESTABLISHMENT OF FEES SUFFICIENT TO COVER THE INDIRECT AND
21 DIRECT COSTS OF ADMINISTERING THE AIR POLLUTION CONTROL PLAN
22 APPROVAL PROCESS, OPERATING PERMIT PROGRAM REQUIRED BY TITLE V
23 OF THE CLEAN AIR ACT, OTHER REQUIREMENTS OF THE CLEAN AIR ACT
24 AND THE INDIRECT AND DIRECT COSTS OF ADMINISTERING THE SMALL
25 BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL
26 COMPLIANCE ASSISTANCE PROGRAM, COMPLIANCE ADVISORY COMMITTEE AND
27 OFFICE OF SMALL BUSINESS OMBUDSMAN. THIS SECTION ALSO AUTHORIZES
28 THE BOARD BY REGULATION TO ESTABLISH FEES TO SUPPORT THE AIR
29 POLLUTION CONTROL PROGRAM AUTHORIZED BY THIS ACT AND NOT COVERED
30 BY FEES REQUIRED BY SECTION 502(B) OF THE CLEAN AIR ACT.

1 (B) AN ANNUAL INTERIM AIR EMISSION FEE OF FOURTEEN DOLLARS
2 (\$14.00) PER TON ON EMISSIONS OF SULFUR DIOXIDE, NITROGEN
3 OXIDES, PARTICULATE MATTER OF TEN (10) MICRONS OR LESS AND
4 VOLATILE ORGANIC COMPOUNDS IS HEREBY ESTABLISHED TO COVER THE
5 REASONABLE DIRECT AND INDIRECT COSTS OF DEVELOPING AND
6 ADMINISTERING THE AIR POLLUTION CONTROL OPERATING PERMIT PROGRAM
7 REQUIRED BY TITLE V OF THE CLEAN AIR ACT, OTHER REQUIREMENTS OF
8 THE CLEAN AIR ACT AND THE REASONABLE INDIRECT AND DIRECT COSTS
9 OF ADMINISTERING THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL
10 AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM, COMPLIANCE
11 ADVISORY COMMITTEE AND THE OFFICE OF SMALL BUSINESS OMBUDSMAN TO
12 BE COLLECTED DURING FISCAL YEAR 1992-1993 COVERING ACTUAL
13 EMISSIONS OCCURRING IN CALENDAR YEAR 1991, FISCAL YEAR 1993-94
14 COVERING ACTUAL EMISSIONS OCCURRING IN CALENDAR YEAR 1992, AND
15 FISCAL YEAR 1994-1995 COVERING ACTUAL EMISSIONS OCCURRING DURING
16 CALENDAR YEAR 1993. THE INTERIM FEE SHALL NOT APPLY TO AIR
17 EMISSIONS OF LESS THAN ONE HUNDRED (100) TONS FOR ANY OF THE
18 LISTED POLLUTANTS, PROVIDED THAT WHEN EMISSIONS EXCEED ONE
19 HUNDRED (100) TONS THE ENTIRE AMOUNT OF ALL AIR EMISSIONS FOR
20 ANY OF THE LISTED POLLUTANTS UP TO FIVE THOUSAND FIVE HUNDRED
21 (5,500) TONS SHALL BE CHARGEABLE EMISSIONS FOR INTERIM FEE
22 PURPOSES.

23 (C) THE BOARD SHALL ESTABLISH, BY REGULATION, A PERMANENT
24 ANNUAL AIR EMISSION FEE AS REQUIRED FOR REGULATED POLLUTANTS BY
25 SECTION 502(B) OF THE CLEAN AIR ACT TO COVER THE REASONABLE
26 DIRECT AND INDIRECT COSTS OF ADMINISTERING THE OPERATING PERMIT
27 PROGRAM REQUIRED BY TITLE V OF THE CLEAN AIR ACT, OTHER RELATED
28 REQUIREMENTS OF THE CLEAN AIR ACT AND THE REASONABLE INDIRECT
29 AND DIRECT COSTS OF ADMINISTERING THE SMALL BUSINESS STATIONARY
30 SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE

1 PROGRAM, COMPLIANCE ADVISORY COMMITTEE AND THE OFFICE OF SMALL
2 BUSINESS OMBUDSMAN TO BE COLLECTED STARTING IN FISCAL YEAR 1995-
3 1996 COVERING AIR EMISSIONS OCCURRING DURING CALENDAR YEAR 1994.
4 IN NO CASE SHALL THE AMOUNT OF THE PERMANENT FEE BE MORE THAN
5 THAT WHICH IS NECESSARY TO COMPLY WITH SECTION 502(B) OF THE
6 CLEAN AIR ACT. THE PERMANENT FEE SHALL NOT APPLY TO EMISSIONS OF
7 MORE THAN FOUR THOUSAND (4,000) TONS FOR ANY REGULATED
8 POLLUTANT. IN THE EVENT A FINAL REGULATION CONTAINING THE
9 PERMANENT ANNUAL AIR EMISSION FEE IS NOT EFFECTIVE BY JULY 1,
10 1995, THE PERMANENT ANNUAL AIR EMISSION FEE FOR SOURCES SUBJECT
11 TO THE TITLE V OPERATING PERMIT PROGRAM SHALL BE THE ADJUSTED
12 MINIMUM DOLLAR AMOUNT SET UNDER SECTION 502(B) OF THE CLEAN AIR
13 ACT UNTIL SUCH TIME AS THE FINAL REGULATION IS EFFECTIVE.

14 (D) UNLESS PRECLUDED BY THE CLEAN AIR ACT, THE BOARD SHALL
15 ESTABLISH A PERMANENT AIR EMISSION FEE WHICH CONSIDERS THE SIZE
16 OF THE AIR CONTAMINATION SOURCE, THE RESOURCES NECESSARY TO
17 PROCESS THE APPLICATION FOR PLAN APPROVAL OR AN OPERATING
18 PERMIT, THE COMPLEXITY OF THE PLAN APPROVAL OR OPERATING PERMIT,
19 THE QUANTITY AND TYPE OF EMISSIONS FROM THE SOURCES, THE AMOUNT
20 OF FEES CHARGED IN NEIGHBORING STATES, THE IMPORTANCE OF NOT
21 PLACING EXISTING OR PROSPECTIVE SOURCES IN THIS COMMONWEALTH AT
22 A COMPETITIVE DISADVANTAGE AND OTHER RELEVANT FACTORS.

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

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

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

30 (F) NO EMISSIONS FEE ESTABLISHED UNDER SUBSECTION (B), (C)

1 OR (J) OF THIS SECTION SHALL BE PAYABLE BY ANY STATE ENTITY OR
2 POLITICAL SUBDIVISION IN RELATION TO ANY PUBLICLY OWNED OR
3 OPERATED FACILITY.

4 (G) ANY FEES IMPOSED UNDER THIS SECTION IN AREAS WITH
5 APPROVED LOCAL AIR POLLUTION CONTROL PROGRAMS SHALL BE DEPOSITED
6 IN A RESTRICTED ACCOUNT ESTABLISHED BY THE GOVERNING BODY
7 AUTHORIZING THE LOCAL PROGRAM FOR USE BY THAT PROGRAM TO
8 IMPLEMENT THE PROVISIONS OF THIS ACT FOR WHICH THEY ARE
9 RESPONSIBLE. THE GOVERNING BODY SHALL ANNUALLY SUBMIT TO THE
10 DEPARTMENT AN AUDIT OF THE ACCOUNT IN ORDER TO INSURE THE FUNDS
11 WERE PROPERLY SPENT.

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

19 (2) AN AIR CONTAMINATION SOURCE THAT FAILS TO PAY THE FEES
20 WITHIN THE TIME FRAME ESTABLISHED BY THIS ACT OR BY REGULATION
21 SHALL PAY A PENALTY OF FIFTY PER CENTUM OF THE FEE AMOUNT, PLUS
22 INTEREST ON THE FEE AMOUNT COMPUTED IN ACCORDANCE WITH SECTION
23 6621(A)(2) OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC LAW 99-
24 514, 26 U.S.C. § 1 ET SEQ.) FROM THE DATE THE FEE WAS REQUIRED
25 TO BE PAID. IN ADDITION, SUCH SOURCE MAY HAVE ITS PERMIT
26 TERMINATED OR SUSPENDED. THE FEE, PENALTY AND INTEREST MAY BE
27 COLLECTED FOLLOWING THE PROCESS FOR ASSESSMENT AND COLLECTION OF
28 A CIVIL PENALTY CONTAINED IN SECTION 9.1.

29 (I) THE PERMANENT AIR EMISSION FEE IMPOSED UNDER SUBSECTION
30 (C) SHALL BE INCREASED IN EACH YEAR AFTER IMPLEMENTATION OF THE

FEE BY REGULATION BY THE PERCENTAGE, IF ANY, BY WHICH THE
CONSUMER PRICE INDEX FOR THE MOST RECENT CALENDAR YEAR EXCEEDS
THE CONSUMER PRICE INDEX FOR THE CALENDAR YEAR 1989. FOR
PURPOSES OF THIS SUBSECTION:

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

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

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

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

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

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

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

(K) NO ADMINISTRATIVE ACTION SHALL PREVENT THE DEPOSIT OF
THE FEES ESTABLISHED PURSUANT TO THIS SECTION IN THE CLEAN AIR
FUND ESTABLISHED IN SECTION 9.2 DURING THE FISCAL YEAR IN WHICH
THEY ARE COLLECTED. THE FEES SHALL ONLY BE USED FOR THE PURPOSES

1 AUTHORIZED IN THIS SECTION AND SECTION 9.2 AND SHALL NOT BE
2 TRANSFERRED OR DIVERTED TO ANY OTHER PURPOSE BY ADMINISTRATIVE
3 ACTION.

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

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

13 SECTION 6.4. FEE FOR CERTAIN OZONE AREAS.--(A) IF AN AREA
14 IDENTIFIED IN A STATE IMPLEMENTATION PLAN OR ANY REVISION AS A
15 SEVERE OR EXTREME OZONE NONATTAINMENT AREA HAS FAILED TO MEET
16 THE NATIONAL PRIMARY AMBIENT AIR QUALITY STANDARD FOR OZONE BY
17 THE APPLICABLE ATTAINMENT DATE, EACH MAJOR SOURCE OF VOLATILE
18 ORGANIC COMPOUNDS (VOCs), AS DEFINED IN THE CLEAN AIR ACT AND
19 THE REGULATIONS PROMULGATED UNDER THE CLEAN AIR ACT, LOCATED IN
20 THE AREA SHALL, EXCEPT WITH RESPECT TO EMISSIONS DURING ANY YEAR
21 TREATED AS AN EXTENSION YEAR UNDER SECTION 181(A)(5) OF THE
22 CLEAN AIR ACT, PAY A FEE TO THE DEPARTMENT AS A PENALTY FOR SUCH
23 FAILURE FOR EACH CALENDAR YEAR BEGINNING AFTER THE ATTAINMENT
24 DATE, UNTIL THE AREA IS REDESIGNATED AS AN ATTAINMENT AREA FOR
25 OZONE. THIS FEE SHALL BE ASSESSED AND COLLECTED FOLLOWING THE
26 PROCESS FOR COLLECTION AND ASSESSMENT OF A CIVIL PENALTY
27 CONTAINED IN SECTION 9.1.

28 (B) (1) THE FEE SHALL EQUAL FIVE THOUSAND DOLLARS
29 (\$5,000.00), ADJUSTED IN ACCORDANCE WITH CLAUSE (3) OF THIS
30 SUBSECTION, PER TON OF VOC EMITTED BY THE SOURCE DURING THE

1 CALENDAR YEAR IN EXCESS OF EIGHTY PER CENTUM OF THE BASELINE
2 AMOUNT, COMPUTED UNDER CLAUSE (2) OF THIS SUBSECTION. THE FEE
3 SHALL BE IN ADDITION TO ALL OTHER FEES REQUIRED TO BE PAID BY
4 THE SOURCE.

5 (2) (I) FOR PURPOSES OF THIS SECTION, THE BASELINE AMOUNT
6 SHALL BE COMPUTED, IN ACCORDANCE WITH SUCH GUIDANCE AS THE
7 ADMINISTRATOR MAY PROVIDE, AS THE LOWER OF THE AMOUNT OF ACTUAL
8 VOC EMISSIONS (REFERRED TO AS ACTUALS) OR VOC EMISSIONS ALLOWED
9 UNDER THE PERMIT APPLICABLE TO THE SOURCE OR, IF NO SUCH PERMIT
10 HAS BEEN ISSUED FOR THE ATTAINMENT YEAR, THE AMOUNT OF VOC
11 EMISSIONS ALLOWED UNDER THE APPLICABLE IMPLEMENTATION PLAN
12 (REFERRED TO AS ALLOWABLES) DURING THE ATTAINMENT YEAR.

13 (II) NOTWITHSTANDING SUBCLAUSE (I) OF THIS CLAUSE, THE
14 ADMINISTRATOR MAY ISSUE GUIDANCE AUTHORIZING THE BASELINE AMOUNT
15 TO BE DETERMINED IN ACCORDANCE WITH THE LOWER OF AVERAGE ACTUALS
16 OR AVERAGE ALLOWABLES, DETERMINED OVER A PERIOD OF MORE THAN ONE
17 CALENDAR YEAR. THIS GUIDANCE MAY PROVIDE THAT THE AVERAGE
18 CALCULATION FOR A SPECIFIC SOURCE MAY BE USED IF THAT SOURCE'S
19 EMISSIONS ARE IRREGULAR, CYCLICAL OR OTHERWISE VARY
20 SIGNIFICANTLY FROM YEAR TO YEAR.

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

24 (C) FOR AREAS WITH A TOTAL POPULATION UNDER TWO HUNDRED
25 THOUSAND (200,000) WHICH FAIL TO ATTAIN THE STANDARD BY THE
26 APPLICABLE ATTAINMENT DATE, NO SANCTION UNDER THIS SECTION OR
27 UNDER ANY OTHER PROVISIONS OF THIS ACT SHALL APPLY IF THE AREA
28 CAN DEMONSTRATE, CONSISTENT WITH GUIDANCE ISSUED BY THE
29 ENVIRONMENTAL PROTECTION AGENCY, THAT ATTAINMENT IN THE AREA IS
30 PREVENTED BECAUSE OF OZONE OR OZONE PRECURSORS TRANSPORTED FROM

1 OTHER AREAS. THE PROHIBITION APPLIES ONLY IN CASES IN WHICH THE
2 AREA HAS MET ALL REQUIREMENTS AND IMPLEMENTED ALL MEASURES
3 APPLICABLE TO THE AREA UNDER THE CLEAN AIR ACT.

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

8 (B) FOR PURPOSES OF THE PERMIT PROGRAM AUTHORIZED UNDER
9 SUBSECTION (A) OF THIS SECTION, THE DEFINITIONS IN SECTIONS 402
10 AND 501 OF THE CLEAN AIR ACT ARE INCORPORATED HEREIN BY
11 REFERENCE.

12 (C) THE OWNER OR OPERATOR OR THE DESIGNATED REPRESENTATIVE
13 OF EACH SOURCE AFFECTED UNDER SECTION 405 OF THE CLEAN AIR ACT
14 SHALL SUBMIT A PERMIT APPLICATION AND COMPLIANCE PLAN FOR THE
15 AFFECTED SOURCE TO THE DEPARTMENT NO LATER THAN JANUARY 1, 1996.
16 IN THE CASE OF AFFECTED SOURCES FOR WHICH APPLICATION AND PLANS
17 ARE TIMELY RECEIVED, THE PERMIT APPLICATION AND THE COMPLIANCE
18 PLAN, INCLUDING AMENDMENTS THERETO, SHALL BE BINDING ON THE
19 OWNER OR OPERATOR OR THE DESIGNATED REPRESENTATIVE OF THE OWNERS
20 OR OPERATORS AND SHALL BE ENFORCEABLE AS A PERMIT FOR PURPOSES
21 OF THIS SECTION UNTIL A PERMIT IS ISSUED BY THE DEPARTMENT. ANY
22 PERMIT ISSUED BY THE DEPARTMENT SHALL REQUIRE THE SOURCE TO
23 ACHIEVE COMPLIANCE AS SOON AS POSSIBLE BUT NO LATER THAN THE
24 DATE REQUIRED BY THIS ACT, THE CLEAN AIR ACT OR THE REGULATIONS
25 PROMULGATED UNDER EITHER THIS ACT OR THE CLEAN AIR ACT FOR THE
26 SOURCE.

27 (D) AT ANY TIME AFTER THE SUBMISSION OF A PERMIT APPLICATION
28 AND COMPLIANCE PLAN, THE APPLICANT MAY SUBMIT A REVISED
29 APPLICATION AND COMPLIANCE PLAN. IN CONSIDERING ANY PERMIT
30 APPLICATION AND COMPLIANCE PLAN UNDER THIS SECTION, THE

1 DEPARTMENT SHALL COORDINATE WITH THE PENNSYLVANIA PUBLIC UTILITY
2 COMMISSION CONSISTENT WITH REQUIREMENTS THAT MAY BE ESTABLISHED
3 BY THE ADMINISTRATOR.

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

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

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

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

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

14 SECTION 6.6. HAZARDOUS AIR POLLUTANTS.--(A) THE REGULATIONS
15 ESTABLISHING PERFORMANCE OR EMISSION STANDARDS PROMULGATED UNDER
16 SECTION 112 OF THE CLEAN AIR ACT ARE INCORPORATED BY REFERENCE
17 INTO THE DEPARTMENT'S PERMITTING PROGRAM. AFTER THE EFFECTIVE
18 DATE OF THE PERFORMANCE OR EMISSION STANDARD, NEW,
19 RECONSTRUCTED, MODIFIED AND EXISTING SOURCES SHALL COMPLY WITH
20 THE PERFORMANCE OR EMISSION STANDARDS PURSUANT TO THE COMPLIANCE
21 SCHEDULE ESTABLISHED UNDER SECTION 112 OF THE CLEAN AIR ACT AND
22 THE REGULATIONS PROMULGATED UNDER THE CLEAN AIR ACT. THE
23 ENVIRONMENTAL QUALITY BOARD MAY NOT ESTABLISH A MORE STRINGENT
24 PERFORMANCE OR EMISSION STANDARD FOR HAZARDOUS AIR POLLUTANT
25 EMISSIONS FROM EXISTING SOURCES, EXCEPT AS PROVIDED IN
26 SUBSECTION (D). THIS SECTION SHALL NOT APPLY TO RULES AND
27 REGULATIONS ADOPTED AS FINAL PRIOR TO THE EFFECTIVE DATE OF THIS
28 ACT AND SHALL NOT BE CONSTRUED TO WEAKEN STANDARDS FOR
29 INDIVIDUAL SOURCES OR FACILITIES IN EFFECT PRIOR TO THE
30 EFFECTIVE DATE OF THIS ACT. THE BOARD MAY ESTABLISH PERFORMANCES

1 OR EMISSION STANDARDS FOR SOURCES OR CATEGORIES OF SOURCES WHICH
2 ARE NOT INCLUDED ON THE LIST OF SOURCE CATEGORIES ESTABLISHED
3 UNDER SECTION 112(C) OF THE CLEAN AIR ACT. FOR PURPOSES OF THIS
4 SECTION, THE TERM "PERFORMANCE STANDARD" INCLUDES DESIGN,
5 EQUIPMENT, WORK PRACTICE OR OPERATIONAL STANDARDS OR ANY
6 COMBINATION THEREOF.

7 (B) IN THE EVENT THE ADMINISTRATOR HAS NOT PROMULGATED A
8 STANDARD TO CONTROL THE EMISSIONS OF HAZARDOUS AIR POLLUTANTS
9 FOR A CATEGORY OR SUBCATEGORY OF MAJOR SOURCES UNDER SECTION 112
10 OF THE CLEAN AIR ACT, PURSUANT TO A SCHEDULE ESTABLISHED
11 PURSUANT TO SECTION 112(C) OF THE CLEAN AIR ACT, THE DEPARTMENT
12 SHALL HAVE THE AUTHORITY TO ESTABLISH A PERFORMANCE OR EMISSION
13 STANDARD ON A CASE-BY-CASE BASIS FOR INDIVIDUAL SOURCES OR A
14 CATEGORY OF SOURCES. THE DEPARTMENT SHALL HAVE THE AUTHORITY TO
15 MAKE THE DETERMINATIONS REQUIRED BY SECTION 112(G)(2) OF THE
16 CLEAN AIR ACT REGARDING THE CONSTRUCTION, RECONSTRUCTION AND
17 MODIFICATION OF SOURCES. ANY PERSON CHALLENGING THE PERFORMANCE
18 OR EMISSION STANDARDS ESTABLISHED BY THE DEPARTMENT SHALL HAVE
19 THE BURDEN TO DEMONSTRATE THAT THE PERFORMANCE OR EMISSION
20 STANDARD DOES NOT MEET THE REQUIREMENTS OF SECTION 112 OF THE
21 CLEAN AIR ACT. THE DEPARTMENT SHALL INCORPORATE THE STANDARD TO
22 CONTROL THE EMISSIONS OF HAZARDOUS AIR POLLUTANTS INTO THE PLAN
23 APPROVAL OR OPERATING PERMIT OF ANY SOURCE WITHIN THE CATEGORY
24 OR SUBCATEGORY. THE PERFORMANCE OR EMISSION STANDARD ESTABLISHED
25 ON A CASE-BY-CASE BASIS BY THE DEPARTMENT SHALL BE EQUIVALENT TO
26 THE LIMITATION THAT WOULD APPLY TO THE SOURCE IF A PERFORMANCE
27 OR EMISSION STANDARD HAD BEEN PROMULGATED BY THE ADMINISTRATOR
28 UNDER SECTION 112 OF THE CLEAN AIR ACT.

29 (C) THE DEPARTMENT IS AUTHORIZED TO REQUIRE THAT NEW SOURCES
30 DEMONSTRATE IN THE PLAN APPROVAL APPLICATION THAT THE SOURCE

1 WILL REDUCE OR CONTROL EMISSIONS OF AIR POLLUTANTS, INCLUDING
2 HAZARDOUS AIR POLLUTANTS, BY USING THE BEST AVAILABLE
3 TECHNOLOGY.

4 (D) WHEN NEEDED TO PROTECT PUBLIC HEALTH, WELFARE AND THE
5 ENVIRONMENT FROM EMISSIONS OF HAZARDOUS AIR POLLUTANTS FROM NEW
6 AND EXISTING SOURCES, THE DEPARTMENT MAY IMPOSE HEALTH RISK-
7 BASED EMISSION STANDARDS OR OPERATING PRACTICE REQUIREMENTS. IN
8 DEVELOPING SUCH HEALTH RISK-BASED EMISSION STANDARDS OR
9 OPERATING PRACTICE REQUIREMENTS, THE DEPARTMENT SHALL PROVIDE AN
10 EXPLANATION AND RATIONALE FOR SUCH STANDARDS OR REQUIREMENTS AND
11 PROVIDE FOR PUBLIC REVIEW AND COMMENTS ON PLAN APPROVALS,
12 OPERATING PERMITS, GUIDELINES AND REGULATIONS WHICH CONTAIN
13 HEALTH RISK-BASED EMISSION STANDARDS OR OPERATING PRACTICE
14 REQUIREMENTS. STANDARDS OR REQUIREMENTS ADOPTED PURSUANT TO THIS
15 SUBSECTION SHALL BE DEVELOPED USING AN ANALYSIS WHICH, AMONG
16 OTHER FACTORS, CONSIDERS, WHERE APPROPRIATE FOR A SOURCE OR
17 SOURCE CATEGORY, THE CRITERIA SET FORTH IN SECTION 112(F)(1) OF
18 THE CLEAN AIR ACT IN ASSESSING THE PROPOSED RISK TO THE PUBLIC
19 HEALTH, WELFARE AND THE ENVIRONMENT FROM THE SOURCE.

20 (E) THE DEPARTMENT SHALL HAVE THE AUTHORITY TO REQUIRE, IN
21 THE PLAN APPROVAL AND OPERATING PERMIT, REASONABLE MONITORING,
22 RECORDKEEPING AND REPORTING REQUIREMENTS FOR SOURCES WHICH EMIT
23 HAZARDOUS AIR POLLUTANTS.

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

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

1 SECTION 6.7. CONTROL OF VOLATILE ORGANIC COMPOUNDS FROM
2 GASOLINE DISPENSING FACILITIES.--(A) AFTER THE DATE SPECIFIED
3 IN SUBSECTION (B) OR (C) OF THIS SECTION NO OWNER OR OPERATOR OF
4 A GASOLINE DISPENSING FACILITY SUBJECT TO THIS SECTION MAY
5 TRANSFER OR ALLOW THE TRANSFER OF GASOLINE INTO A MOTOR VEHICLE
6 FUEL TANK UNLESS THE DISPENSING FACILITY IS EQUIPPED WITH A
7 DEPARTMENT APPROVED AND PROPERLY OPERATING STAGE II VAPOR
8 RECOVERY OR VAPOR COLLECTION SYSTEM. UNLESS A HIGHER PERCENT
9 REDUCTION IS REQUIRED BY EPA UNDER SECTION 182 OF THE CLEAN AIR
10 ACT, APPROVAL BY THE DEPARTMENT OF A STAGE II VAPOR COLLECTION
11 SYSTEM WILL BE BASED ON A DETERMINATION THAT THE SYSTEM WILL
12 COLLECT AT LEAST NINETY PER CENTUM BY WEIGHT OF THE GASOLINE
13 VAPORS THAT ARE DISPLACED OR DRAWN FROM A VEHICLE FUEL TANK
14 DURING REFUELING AND THE CAPTURED VAPORS ARE RETURNED TO A VAPOR
15 TIGHT HOLDING SYSTEM OR VAPOR CONTROL SYSTEM.

16 (B) (1) THIS SUBSECTION APPLIES TO GASOLINE DISPENSING
17 FACILITIES LOCATED IN AREAS CLASSIFIED AS MODERATE, SERIOUS OR
18 SEVERE OZONE NONATTAINMENT AREAS UNDER SECTION 181 OF THE CLEAN
19 AIR ACT, INCLUDING THE COUNTIES OF ALLEGHENY, ARMSTRONG, BEAVER,
20 BERKS, BUCKS, BUTLER, CHESTER, DELAWARE, FAYETTE, MONTGOMERY,
21 PHILADELPHIA, WASHINGTON AND WESTMORELAND WITH MONTHLY
22 THROUGHPUTS GREATER THAN 10,000 GALLONS (37,850 LITERS). IN THE
23 CASE OF INDEPENDENT SMALL BUSINESS MARKETERS OF GASOLINE AS
24 DEFINED IN SECTION 325 OF THE CLEAN AIR ACT THIS SECTION SHALL
25 NOT APPLY IF THE MONTHLY THROUGHPUT IS LESS THAN 50,000 GALLONS
26 (189,250 LITERS).

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

30 (3) FACILITIES WHICH DISPENSE GREATER THAN 100,000 GALLONS

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

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

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

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

(E) OWNERS OR OPERATORS, OR BOTH, OF GASOLINE DISPENSING FACILITIES SUBJECT TO THE REQUIREMENTS OF THIS SECTION SHALL:

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

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

(3) IMMEDIATELY REMOVE FROM SERVICE AND TAG ANY DEFECTIVE NOZZLE OR DISPENSING SYSTEM UNTIL THE DEFECTIVE COMPONENT IS REPLACED OR REPAIRED. A COMPONENT REMOVED FROM SERVICE SHALL NOT BE RETURNED TO SERVICE UNTIL THE DEFECT IS CORRECTED. IF THE DEPARTMENT FINDS THAT A DEFECTIVE NOZZLE OR DISPENSING SYSTEM IS

1 NOT PROPERLY TAGGED DURING AN INSPECTION, THE COMPONENT SHALL
2 NOT BE RETURNED TO SERVICE UNTIL THE DEFECT IS CORRECTED, AND
3 THE DEPARTMENT APPROVES ITS RETURN TO SERVICE.

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

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

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

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

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

19 (F) IN THE EVENT AN AREA IS RECLASSIFIED FROM ATTAINMENT OR
20 MARGINAL NONATTAINMENT TO SERIOUS, SEVERE OR MODERATE
21 NONATTAINMENT UNDER SECTION 181 OF THE CLEAN AIR ACT, GASOLINE
22 DISPENSING FACILITIES LOCATED IN THE RECLASSIFIED AREA SHALL BE
23 SUBJECT TO THE REQUIREMENTS OF SUBSECTION (B)(1). FOR PURPOSES
24 OF ESTABLISHING AN EFFECTIVE DATE FOR THE RECLASSIFIED AREA,
25 THAT DATE SHALL BE THE DATE OF PUBLICATION OF FINAL NOTICE OF
26 RECLASSIFICATION IN THE FEDERAL REGISTER.

27 (G) IF AT ANY TIME PRIOR TO NOVEMBER 15, 1996, THE UNITED
28 STATES ENVIRONMENTAL PROTECTION AGENCY PROMULGATES A REQUIREMENT
29 FOR ALTERNATIVE AUTOMOBILE REFUELING EMISSIONS CONTROL SYSTEMS
30 IDENTIFIED IN SECTION 7521 OF THE CLEAN AIR ACT, THE

REQUIREMENTS OF THIS SECTION SHALL NOT APPLY TO GASOLINE
DISPENSING FACILITIES LOCATED IN AREAS CLASSIFIED AS MODERATE
OZONE NONATTAINMENT AREAS UNDER SECTION 181 OF THE CLEAN AIR
ACT, INCLUDING THE COUNTIES OF ALLEGHENY, ARMSTRONG, BEAVER,
BERKS, BUTLER, FAYETTE, WASHINGTON AND WESTMORELAND.

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

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

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

(D) A PERMITTEE OR APPLICANT MAY APPEAL ANY VIOLATION

1 ARISING UNDER THIS ACT WHICH THE DEPARTMENT PLACES ON THE
2 COMPLIANCE DOCKET.

3 SECTION 7.2. PERMIT COMPLIANCE SCHEDULES.--IN ADDITION TO
4 THE OTHER ENFORCEMENT PROVISIONS OF THIS ACT, THE DEPARTMENT MAY
5 ISSUE A PERMIT UNDER CLAUSES (3) AND (4) OF SUBSECTION (B) OF
6 SECTION 6.1 TO A SOURCE THAT IS OUT OF COMPLIANCE WITH THIS ACT,
7 THE CLEAN AIR ACT OR THE REGULATIONS PROMULGATED UNDER EITHER
8 THIS ACT OR THE CLEAN AIR ACT. ANY SUCH PERMIT MUST CONTAIN AN
9 ENFORCEABLE SCHEDULE REQUIRING THE SOURCE TO ATTAIN COMPLIANCE.
10 THE COMPLIANCE SCHEDULE MAY CONTAIN INTERIM MILESTONE DATES FOR
11 COMPLETING ANY PHASE OF THE REQUIRED WORK, AS WELL AS A FINAL
12 COMPLIANCE DATE, AND MAY CONTAIN STIPULATED PENALTIES FOR
13 FAILURE TO MEET THE COMPLIANCE SCHEDULE. IF THE PERMITTEE FAILS
14 TO ACHIEVE COMPLIANCE BY THE FINAL COMPLIANCE DATE, THE PERMIT
15 SHALL TERMINATE. THE PERMIT SHALL BE PART OF AN OVERALL
16 RESOLUTION OF THE OUTSTANDING NONCOMPLIANCE AND MAY INCLUDE THE
17 PAYMENT OF AN APPROPRIATE CIVIL PENALTY FOR PAST VIOLATIONS AND
18 SHALL CONTAIN SUCH OTHER TERMS AND CONDITIONS AS THE DEPARTMENT
19 DEEMS APPROPRIATE. A PERMIT MAY INCORPORATE BY REFERENCE A
20 COMPLIANCE SCHEDULE CONTAINED WITHIN A CONSENT ORDER AND
21 AGREEMENT, INCLUDING ALL PROVISIONS RELATED TO IMPLEMENTATION OR
22 ENFORCEMENT OF THE COMPLIANCE SCHEDULE OR CONSENT ORDER AND
23 AGREEMENT.

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

1 TAKE SUCH ACTION.

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

10 SECTION 7.4. INTERSTATE TRANSPORT COMMISSION.--(A) THE
11 COMMONWEALTH THROUGH ITS REPRESENTATIVES ON AN INTERSTATE
12 TRANSPORT COMMISSION FORMED UNDER THE CLEAN AIR ACT SHALL
13 PROVIDE PUBLIC REVIEW OF RECOMMENDATIONS FOR ADDITIONAL CONTROL
14 MEASURES PRIOR TO FINAL COMMISSION ACTION CONSISTENT WITH THE
15 COMMISSION'S PUBLIC REVIEW REQUIREMENTS UNDER SECTION 184(C)(1)
16 OF THE CLEAN AIR ACT. THE OPPORTUNITY FOR PUBLIC REVIEW
17 ESTABLISHED UNDER THIS SECTION SHALL RUN CONCURRENTLY WITH THE
18 COMMISSION'S PUBLIC COMMENT PERIOD ESTABLISHED UNDER SECTION
19 184(C)(1) OF THE CLEAN AIR ACT.

20 (B) CONTROL STRATEGIES APPROVED BY AN INTERSTATE TRANSPORT
21 COMMISSION AND BY THE COMMONWEALTH'S REPRESENTATIVES AND SET
22 FORTH IN RESOLUTIONS OR MEMORANDA OF UNDERSTANDING SHALL BE
23 CONSIDERED COMMITMENTS BY THE EXECUTIVE TO PURSUE SUBSEQUENT
24 LEGISLATIVE, REGULATORY OR OTHER ADMINISTRATIVE ACTIONS TO
25 IMPLEMENT THE CONTROL STRATEGIES.

26 (C) THE COMMONWEALTH STRONGLY RECOMMENDS THAT AN INTERSTATE
27 TRANSPORT COMMISSION ADOPT FORMAL PROCEDURES WHICH ALLOW FOR AN
28 OPEN PUBLIC REVIEW AND COMMENT PERIOD PRIOR TO THE ADOPTION OF
29 RESOLUTIONS OR CONSIDERATION OF MEMORANDA OF UNDERSTANDING OR
30 OTHER ACTIONS WHICH RECOMMEND THAT STATES ADOPT CONTROL

1 STRATEGIES. THE COMMONWEALTH'S REPRESENTATIVES SHALL TAKE
2 ACTIONS CONSISTENT WITH THIS RECOMMENDATION.

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

4 (A) A STATE IMPLEMENTATION PLAN REQUIRED BY THE CLEAN AIR ACT
5 WHICH COMMITS THE COMMONWEALTH TO ADOPT AIR POLLUTION CONTROL
6 MEASURES OR PROCEDURES SHALL BE THE SUBJECT OF A PUBLIC COMMENT
7 PERIOD. THE PUBLIC COMMENT PERIOD SHALL BE NO LESS THAN SIXTY
8 (60) DAYS AND THE DEPARTMENT MAY, AT ITS DISCRETION, HOLD PUBLIC
9 INFORMATIONAL MEETINGS OR PUBLIC HEARINGS AS PART OF THE COMMENT
10 PERIOD.

11 (B) NOTICE OF A PROPOSED STATE IMPLEMENTATION PLAN SHALL BE
12 PUBLISHED IN THE PENNSYLVANIA BULLETIN AND IN SUFFICIENT
13 NEWSPAPERS HAVING GENERAL CIRCULATION IN THE AREA COVERED BY THE
14 STATE IMPLEMENTATION PLAN. IF THE STATE IMPLEMENTATION PLAN
15 COVERS THE ENTIRE STATE, NOTICE SHALL BE PUBLISHED IN AT LEAST
16 SIX (6) NEWSPAPERS OF GENERAL CIRCULATION THROUGHOUT THE
17 COMMONWEALTH.

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

20 (1) STATEMENTS CLEARLY INDICATING THE SPECIFIC PROVISIONS OF
21 THE CLEAN AIR ACT WITH WHICH THE STATE IMPLEMENTATION PLAN IS
22 INTENDED TO COMPLY.

23 (2) AN ANALYSIS OF THE ALTERNATIVE CONTROL STRATEGIES
24 CONSIDERED IF APPLICABLE IN ARRIVING AT THE RECOMMENDED CONTROL
25 STRATEGIES AND THE REASONS THE DEPARTMENT OR OTHER AGENCY
26 SELECTED THE FINAL STRATEGY.

27 (3) AN ANALYSIS OF THE ECONOMIC IMPACT OF THE ALTERNATIVE
28 CONTROL STRATEGIES AND THE SELECTED STRATEGIES ON THE REGULATED
29 COMMUNITY AND LOCAL GOVERNMENTS.

30 (4) AN ANALYSIS OF THE STAFF AND TECHNICAL RESOURCES NEEDED

1 BY THE DEPARTMENT OR OTHER AGENCY TO IMPLEMENT THE CONTROL
2 STRATEGY.

3 (D) AFTER THE PUBLIC COMMENT PERIOD AND PRIOR TO THE
4 SUBMISSION TO EPA OF ANY STATE IMPLEMENTATION PLAN REQUIRED BY
5 THE CLEAN AIR ACT WHICH COMMITS THE COMMONWEALTH TO ADOPT AIR
6 POLLUTION CONTROL MEASURES OR PROCEDURES, THE DEPARTMENT SHALL
7 SUBMIT A FINAL STATE IMPLEMENTATION PLAN TO THE BOARD FOR ITS
8 REVIEW TOGETHER WITH A DOCUMENT WHICH RESPONDS TO ALL COMMENTS
9 MADE DURING THE PUBLIC COMMENT PERIOD.

10 (E) THESE PROVISIONS SHALL ALSO APPLY IN THE CASE OF STATE
11 IMPLEMENTATION PLANS REQUIRED BY THE CLEAN AIR ACT WHICH ARE
12 DEVELOPED BY STATE AGENCIES OTHER THAN THE DEPARTMENT WHICH
13 COMMIT THE COMMONWEALTH TO THE ADOPTION OF AIR POLLUTION CONTROL
14 MEASURES OR PROCEDURES.

15 (F) SUBSECTIONS (C) AND (D) OF THIS SECTION SHALL NOT APPLY
16 TO STATE IMPLEMENTATION PLANS OR PORTIONS THEREOF COMPRISED OF
17 PERMIT, EMISSION OFFSET OR REASONABLY AVAILABLE CONTROL
18 TECHNOLOGY REQUIREMENTS FOR INDIVIDUAL SOURCES; CONSENT ORDERS
19 AND AGREEMENTS; OR REGULATIONS.

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

23 SECTION 7.6. ADVICE TO DEPARTMENT.--(A) THE DEPARTMENT
24 SHALL CONSULT WITH THE CITIZENS ADVISORY COUNCIL ESTABLISHED
25 UNDER SECTION 448 OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175),
26 KNOWN AS "THE ADMINISTRATIVE CODE OF 1929," AS APPROPRIATE, IN
27 THE 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 SHALL 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 THEREOF COMPRISED OF:
PERMIT, EMISSION OFFSET OR OF REASONABLY AVAILABLE CONTROL
TECHNOLOGY REQUIREMENTS FOR INDIVIDUAL SOURCES; CONSENT ORDERS
AND AGREEMENTS; OR REGULATIONS. THE REQUIREMENTS OF THIS SECTION
SHALL NOT APPLY TO STATE IMPLEMENTATION PLANS SUBMITTED BY A
LOCAL AIR POLLUTION CONTROL AGENCY.

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

(2) THE COMMITTEE, AT THE REQUEST OF THE DEPARTMENT, MAY BE
UTILIZED TO PROVIDE TECHNICAL ADVICE ON DEPARTMENT POLICIES,
GUIDANCE AND REGULATIONS NEEDED TO IMPLEMENT THE CLEAN AIR ACT.
THE COMMITTEE MAY ALSO REQUEST TO REVIEW A DEPARTMENT POLICY,
GUIDANCE OR REGULATION NEEDED TO IMPLEMENT THE CLEAN AIR ACT.

SECTION 7.7. SMALL BUSINESS COMPLIANCE ASSISTANCE PROGRAM.--

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

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

(2) ADEQUATE MECHANISMS FOR ASSISTING SMALL BUSINESS

1 STATIONARY SOURCES WITH POLLUTION PREVENTION AND ACCIDENTAL
2 RELEASE DETECTION AND PREVENTION, INCLUDING PROVIDING
3 INFORMATION CONCERNING ALTERNATIVE TECHNOLOGIES, PROCESS CHANGES
4 AND PRODUCTS AND METHODS OF OPERATION THAT HELP REDUCE AIR
5 POLLUTION.

6 (3) A COMPLIANCE ASSISTANCE PROGRAM FOR SMALL BUSINESS
7 STATIONARY SOURCES WHICH ASSISTS SMALL BUSINESS STATIONARY
8 SOURCES IN DETERMINING APPLICABLE REQUIREMENTS AND IN RECEIVING
9 PERMITS UNDER THIS ACT IN A TIMELY AND EFFICIENT MANNER.

10 (4) ADEQUATE MECHANISMS TO ASSURE THAT SMALL BUSINESS
11 STATIONARY SOURCES RECEIVE NOTICE OF THEIR RIGHTS UNDER THIS ACT
12 AND THE CLEAN AIR ACT IN SUCH MANNER AND FORM AS TO ASSURE
13 REASONABLY ADEQUATE TIME FOR SUCH SOURCES TO EVALUATE COMPLIANCE
14 METHODS AND ANY RELEVANT OR APPLICABLE PROPOSED OR FINAL
15 RULEMAKING PLAN, STATE IMPLEMENTATION PLAN REVISION, OR PROGRAM
16 ISSUED UNDER THIS ACT AND THE CLEAN AIR ACT.

17 (5) ADEQUATE MECHANISMS FOR INFORMING SMALL BUSINESS
18 STATIONARY SOURCES OF THEIR OBLIGATIONS UNDER THIS ACT AND THE
19 CLEAN AIR ACT, INCLUDING MECHANISMS FOR REFERRING THESE SOURCES
20 TO QUALIFIED AUDITORS OR, AT THE DEPARTMENT'S OPTION, FOR
21 PROVIDING AUDITS OF THE OPERATIONS OF SUCH SOURCES TO DETERMINE
22 COMPLIANCE WITH THIS ACT.

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

25 (I) ANY WORK PRACTICE OR TECHNOLOGICAL METHOD OF COMPLIANCE;
26 OR

27 (II) THE SCHEDULE OF MILESTONES FOR IMPLEMENTING SUCH WORK
28 PRACTICE OR METHOD OF COMPLIANCE PRECEDING ANY APPLICABLE
29 COMPLIANCE DATE, BASED ON THE TECHNOLOGICAL AND FINANCIAL
30 CAPABILITY OF ANY SMALL BUSINESS STATIONARY SOURCES. NO

1 MODIFICATION MAY BE GRANTED UNLESS IT IS IN COMPLIANCE WITH THE
2 APPLICABLE REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT,
3 INCLUDING THE REQUIREMENTS OF THE APPLICABLE IMPLEMENTATION
4 PLAN. WHERE APPLICABLE REQUIREMENTS ARE SET FORTH IN FEDERAL
5 REGULATIONS, ONLY MODIFICATIONS AUTHORIZED IN SUCH REGULATIONS
6 MAY BE ALLOWED.

7 (7) PROCEDURES FOR SOLICITING INPUT FROM AND EXCHANGING
8 INFORMATION WITH THE OFFICE OF SMALL BUSINESS OMBUDSMAN
9 REGARDING COMPLIANCE REQUIREMENTS FOR SMALL BUSINESS STATIONARY
10 SOURCES.

11 (8) ADEQUATE MECHANISMS FOR THE COLLECTION AND DISSEMINATION
12 OF INFORMATION TO SMALL BUSINESS STATIONARY SOURCES, INCLUDING,
13 BUT NOT LIMITED TO:

14 (I) DEVELOPING OF SMALL BUSINESS STATIONARY SOURCES GUIDANCE
15 MANUALS INDICATING THE CATEGORIES OF SMALL BUSINESSES SUBJECT TO
16 THE REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT, SPECIFIC
17 COMPLIANCE REQUIREMENTS AND OPTIONS, A SCHEDULE OF COMPLIANCE
18 DEADLINES AND OTHER PERTINENT INFORMATION.

19 (II) ESTABLISHMENT OF A TOLL-FREE TELEPHONE NUMBER DEDICATED
20 TO QUESTIONS INVOLVING SMALL BUSINESS STATIONARY SOURCE
21 COMPLIANCE.

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

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

27 (B) THE DEPARTMENT SHALL EVALUATE THE FEASIBILITY OF
28 CONTRACTING WITH CONSULTANTS TO ADMINISTER ALL OR PART OF THE
29 SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL
30 COMPLIANCE ASSISTANCE PROGRAM. THE DEPARTMENT SHALL SUBMIT A

1 REPORT TO THE GOVERNOR, THE GENERAL ASSEMBLY, THE COMPLIANCE
2 ADVISORY COMMITTEE AND THE OFFICE OF SMALL BUSINESS OMBUDSMAN
3 SUMMARIZING THE RESULTS OF THIS EVALUATION AND THE DEPARTMENT'S
4 RECOMMENDATIONS.

5 (C) THE DEPARTMENT SHALL CONSULT WITH THE COMPLIANCE
6 ADVISORY COMMITTEE ESTABLISHED IN SECTION 7.8 AND THE OFFICE OF
7 SMALL BUSINESS OMBUDSMAN ESTABLISHED IN SECTION 7.9, IN
8 DEVELOPING THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
9 ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.

10 (D) THE DEPARTMENT SHALL PROVIDE A REASONABLE OPPORTUNITY
11 FOR PUBLIC COMMENT ON THE PROPOSED SMALL BUSINESS STATIONARY
12 SOURCE TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE
13 PROGRAM.

14 (E) THE DEPARTMENT IS AUTHORIZED TO EXPEND FUNDS FROM THE
15 CLEAN AIR FUND COLLECTED PURSUANT TO SUBSECTION (A), (B) OR (C)
16 OF SECTION 6.3 TO SUPPORT THE DEVELOPMENT AND IMPLEMENTATION OF
17 THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL
18 COMPLIANCE ASSISTANCE PROGRAM, THE OFFICE OF SMALL BUSINESS
19 OMBUDSMAN AND THE COMPLIANCE ADVISORY COMMITTEE.

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

27 (G) THE DEPARTMENT, IN CONSULTATION WITH THE ADMINISTRATOR
28 AND THE ADMINISTRATOR OF THE SMALL BUSINESS ADMINISTRATION, AND
29 AFTER PROVIDING NOTICE AND OPPORTUNITY FOR PUBLIC HEARING, MAY
30 EXCLUDE FROM THE DEFINITION OF "SMALL BUSINESS STATIONARY

1 SOURCE" IN SECTION 3 ANY CATEGORY OR SUBCATEGORY OF SOURCES THAT
2 THE DEPARTMENT DETERMINES TO HAVE SUFFICIENT TECHNICAL AND
3 FINANCIAL CAPABILITIES TO MEET THE REQUIREMENTS OF THIS ACT AND
4 THE CLEAN AIR ACT WITHOUT THE APPLICATION OF THIS SECTION.

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

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

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

15 (2) RENDER ADVISORY OPINIONS CONCERNING THE EFFECTIVENESS OF
16 THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL
17 COMPLIANCE ASSISTANCE PROGRAM, DIFFICULTIES ENCOUNTERED AND
18 DEGREE AND SEVERITY OF ENFORCEMENT.

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

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

24 (5) HAVE THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
25 ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM SERVE AS THE
26 SECRETARIAT FOR THE DEVELOPMENT AND DISSEMINATION OF SUCH
27 REPORTS AND ADVISORY OPINIONS.

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

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

4 (B) THE COMMITTEE SHALL CONSIST OF ELEVEN MEMBERS AS
5 FOLLOWS:

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

9 (2) FOUR MEMBERS, EACH OF WHOM SHALL BE AN OWNER OR THE
10 REPRESENTATIVE OF AN OWNER OF A SMALL BUSINESS STATIONARY
11 SOURCE. OF THESE FOUR MEMBERS, ONE SHALL BE APPOINTED BY EACH OF
12 THE FOLLOWING:

13 (I) THE MAJORITY LEADER OF THE SENATE.

14 (II) THE MINORITY LEADER OF THE SENATE.

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

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

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

18 (4) THE SECRETARY OF ENVIRONMENTAL RESOURCES OR HIS
19 DESIGNEE.

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

21 (C) THE TERMS OF APPOINTED MEMBERS SHALL BE FOR FOUR (4)
22 YEARS. VACANCIES SHALL BE FILLED BY THE ORIGINAL APPOINTING
23 MEMBER FOR THE REMAINDER OF THE UNEXPIRED TERM. INITIAL TERMS OF
24 APPOINTED MEMBERS SHALL BE AS FOLLOWS:

25 (1) OF THE MEMBERS APPOINTED BY THE GOVERNOR UNDER CLAUSE

26 (1) OF SUBSECTION (B) OF THIS SECTION:

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

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

29 (2) OF THE MEMBERS APPOINTED UNDER CLAUSE (2) OF SUBSECTION
30 (B) OF THIS SECTION:

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

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

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

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

9 SECTION 7.9. SMALL BUSINESS OMBUDSMAN.--(A) THERE IS HEREBY
10 ESTABLISHED AN OFFICE OF SMALL BUSINESS OMBUDSMAN WITHIN THE
11 DEPARTMENT OF COMMERCE FOR THE PURPOSE OF SERVING AS THE PRIMARY
12 POINT OF CONTACT FOR SMALL BUSINESS ON ISSUES RELATING TO
13 COMPLIANCE WITH THIS ACT AND THE CLEAN AIR ACT.

14 (B) THE OFFICE OF SMALL BUSINESS OMBUDSMAN SHALL PERFORM ALL
15 FUNCTIONS NECESSARY TO IMPLEMENT THE REQUIREMENTS OF SECTION
16 507(A)(3) OF THE CLEAN AIR ACT. THE OFFICE OF SMALL BUSINESS
17 OMBUDSMAN SHALL PERFORM ALL OF THE FOLLOWING FUNCTIONS TO THE
18 EXTENT THEY ARE CONSISTENT WITH THE GUIDELINES DEVELOPED BY THE
19 ENVIRONMENTAL PROTECTION AGENCY:

20 (1) SOLICIT INPUT FROM SMALL BUSINESSES REGARDING COMPLIANCE
21 WITH THIS ACT AND THE CLEAN AIR ACT AND INTERACT WITH
22 ORGANIZATIONS REPRESENTING SMALL BUSINESSES, INCLUDING SMALL
23 BUSINESS DEVELOPMENT CENTERS, THE SMALL BUSINESS ADMINISTRATION,
24 INDUSTRY AND TRADE ASSOCIATIONS AND OTHER ENTITIES.

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

28 (3) MAKE RECOMMENDATIONS TO THE DEPARTMENT REGARDING THE
29 CONTENT AND OPERATION OF THE SMALL BUSINESS STATIONARY SOURCE
30 TECHNICAL AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM.

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

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

7 (6) SERVE ON THE COMPLIANCE ADVISORY COMMITTEE ESTABLISHED
8 BY SECTION 7.8.

9 (7) CONDUCT INDEPENDENT EVALUATIONS OF ALL ASPECTS OF THE
10 SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND ENVIRONMENTAL
11 COMPLIANCE ASSISTANCE PROGRAM.

12 (8) REVIEW AND PROVIDE COMMENTS AND RECOMMENDATIONS TO THE
13 ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT REGARDING THE
14 DEVELOPMENT AND IMPLEMENTATION OF REGULATIONS THAT IMPACT SMALL
15 BUSINESSES.

16 (9) ARRANGE FOR AND ASSIST IN THE PREPARATION OF GUIDANCE
17 DOCUMENTS BY THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL AND
18 ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM TO ENSURE THAT THE
19 LANGUAGE IS READILY UNDERSTANDABLE BY THE LAY PERSON.

20 (10) ASSIST SMALL BUSINESSES IN LOCATING SOURCES OF FUNDING
21 FOR COMPLIANCE WITH THE REQUIREMENTS OF THIS ACT AND THE CLEAN
22 AIR ACT.

23 (C) THE OFFICE OF SMALL BUSINESS OMBUDSMAN SHALL REPORT
24 ANNUALLY TO THE GOVERNOR AND GENERAL ASSEMBLY ON THE
25 EFFECTIVENESS OF THE SMALL BUSINESS STATIONARY SOURCE TECHNICAL
26 AND ENVIRONMENTAL COMPLIANCE ASSISTANCE PROGRAM AND OTHER ISSUES
27 RELATING TO THE IMPACT OF THE CLEAN AIR ACT IMPLEMENTATION ON
28 SMALL BUSINESSES IN THE COMMONWEALTH.

29 (D) FOR EACH PROPOSED RULEMAKING SIGNIFICANTLY AFFECTING
30 SMALL BUSINESSES, THE OFFICE OF SMALL BUSINESS OMBUDSMAN SHALL

1 PREPARE A REPORT WHICH CONTAINS A DETAILED ANALYSIS OF THE
2 ECONOMIC IMPACT OF SUCH PROPOSED RULEMAKING ON SMALL BUSINESSES.
3 THE ECONOMIC IMPACT REPORT SHALL BE COMPLETED NO LATER THAN
4 NINETY (90) DAYS FROM THE DATE THAT THE BOARD APPROVES THE
5 PROPOSED RULEMAKING AND SHALL BE SUBMITTED TO THE BOARD FOR
6 CONSIDERATION PRIOR TO APPROVAL OF THE FINAL RULEMAKING PACKAGE;
7 PROVIDED THE REPORT IS AVAILABLE WITHIN THE TIME PERIOD
8 PRESCRIBED BY THIS SECTION. THE DEPARTMENT SHALL PROVIDE THE
9 OMBUDSMAN WITH A REASONABLE OPPORTUNITY TO REVISE THE REPORT TO
10 REFLECT ANY PROPOSED SUBSTANTIAL CHANGE IN THE RULEMAKING WHICH
11 AFFECTS THE INITIAL REPORT.

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

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

15 (2) DATA ON COMPARABLE REGULATORY PROGRAMS OR PLANS
16 ADMINISTERED BY OTHER STATES.

17 (3) AN ASSESSMENT OF THE ECONOMIC IMPACT OF ALTERNATIVE
18 CONTROL STRATEGIES.

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

21 SECTION 7.10. TRANSPORTATION MANAGEMENT ASSOCIATIONS.--(A)
22 THE DEPARTMENT, IN CONSULTATION WITH THE DEPARTMENT OF
23 TRANSPORTATION, MAY, AFTER PUBLIC NOTICE AND COMMENT, DESIGNATE
24 ONE OR MORE TRANSPORTATION MANAGEMENT ASSOCIATIONS TO SERVE
25 SPECIFIC REGIONS OF THIS COMMONWEALTH TO PROVIDE SERVICES TO
26 EMPLOYERS REQUIRED BY THE CLEAN AIR ACT TO REDUCE EMPLOYEE
27 VEHICLE TRIPS AND ENCOURAGE THE USE OF CARPOOLING, VANPOOLING
28 AND PUBLIC TRANSPORTATION TO REDUCE AIR POLLUTION.

29 (B) FOR PURPOSES OF THIS SECTION, TRANSPORTATION MANAGEMENT
30 ASSOCIATIONS SHALL CONSIST OF NONPROFIT CORPORATIONS DESIGNATED

1 BY THE DEPARTMENT TO BROKER TRANSPORTATION SERVICES, INCLUDING,
2 BUT NOT LIMITED TO, PUBLIC TRANSPORTATION, VANPOOLS, CARPOOLS,
3 BICYCLING AND PEDESTRIAN MODES, AS WELL AS STRATEGIES SUCH AS
4 FLEXTIME, STAGGERED WORK HOURS AND COMPRESSED WORK WEEKS FOR
5 CORPORATIONS, EMPLOYES, DEVELOPERS, INDIVIDUALS AND OTHER
6 GROUPS.

7 SECTION 7.11. NOTICE OF SANCTIONS.--(A) WHENEVER THE
8 COMMONWEALTH IS NOTIFIED THAT THE ENVIRONMENTAL PROTECTION
9 AGENCY HAS MADE A FINAL OR PROPOSED FINDING ON A STATE
10 IMPLEMENTATION PLAN SUBMITTED BY THE COMMONWEALTH OR A LOCAL AIR
11 POLLUTION CONTROL AGENCY, THE DEPARTMENT SHALL NOTIFY WITHIN TEN
12 (10) WORKING DAYS OF RECEIPT OF THE NOTICE THE ENVIRONMENTAL
13 RESOURCES AND ENERGY COMMITTEE OF THE SENATE AND THE
14 CONSERVATION COMMITTEE OF THE HOUSE OF REPRESENTATIVES OF THE
15 AGENCY'S FINDINGS.

16 (B) WHENEVER THE COMMONWEALTH IS FORMALLY NOTIFIED THAT IT
17 IS SUBJECT TO DISCRETIONARY OR MANDATORY SANCTIONS UNDER SECTION
18 179 OF THE CLEAN AIR ACT, THE DEPARTMENT SHALL WITHIN TEN (10)
19 WORKING DAYS OF THE RECEIPT OF THIS NOTICE NOTIFY THE
20 ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE OF THE SENATE AND
21 THE CONSERVATION COMMITTEE OF THE HOUSE OF REPRESENTATIVES.

22 SECTION 7.12. MISSED FEDERAL DEADLINES.--WHENEVER THE
23 ENVIRONMENTAL PROTECTION AGENCY HAS MISSED A DEADLINE FOR
24 DEVELOPING REGULATIONS OR GUIDANCE ON WHICH STATES MUST RELY TO
25 COMPLY WITH DEADLINES IN THE CLEAN AIR ACT BY MORE THAN NINETY
26 (90) DAYS AND, IN THE OPINION OF THE DEPARTMENT, THE
27 ENVIRONMENTAL PROTECTION AGENCY HAS FAILED TO PROVIDE IT WITH
28 TIMELY GUIDANCE NEEDED TO COMPLY WITH THE ACT IN A TIMELY
29 MANNER, THE DEPARTMENT MAY BRING A LEGAL ACTION AGAINST THE
30 ENVIRONMENTAL PROTECTION AGENCY IN A COURT OF COMPETENT

1 JURISDICTION SEEKING AN INJUNCTION TO RESTRAIN THE ENVIRONMENTAL
2 PROTECTION AGENCY FROM ENFORCING THE APPLICABLE CLEAN AIR ACT
3 DEADLINE ON THE COMMONWEALTH UNTIL AND UNLESS THE ENVIRONMENTAL
4 PROTECTION AGENCY DEVELOPS THE APPROPRIATE REGULATION OR
5 GUIDANCE WHICH ALLOWS THE COMMONWEALTH A REASONABLE OPPORTUNITY
6 TO COMPLY WITH THE CLEAN AIR ACT.

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

10 SECTION 8. UNLAWFUL CONDUCT.--IT SHALL BE UNLAWFUL TO FAIL
11 TO COMPLY WITH [ANY RULE OR REGULATION OF THE BOARD], OR TO
12 CAUSE OR ASSIST IN THE VIOLATION OF, ANY OF THE PROVISIONS OF
13 THIS ACT OR THE RULES AND REGULATIONS ADOPTED UNDER THIS ACT OR
14 TO FAIL TO COMPLY WITH ANY ORDER, PLAN APPROVAL, PERMIT OR OTHER
15 REQUIREMENT OF THE DEPARTMENT[, TO VIOLATE OR TO ASSIST IN THE
16 VIOLATION OF ANY OF THE PROVISIONS OF THIS ACT OR RULES AND
17 REGULATIONS ADOPTED HEREUNDER, TO CAUSE AIR POLLUTION, OR TO IN
18 ANY MANNER HINDER, OBSTRUCT, DELAY, RESIST, PREVENT OR IN ANY
19 WAY INTERFERE OR ATTEMPT TO INTERFERE WITH THE DEPARTMENT OR ITS
20 PERSONNEL IN THE PERFORMANCE OF ANY DUTY HEREUNDER.] OR TO CAUSE
21 A PUBLIC NUISANCE; OR TO CAUSE AIR POLLUTION, SOIL OR WATER
22 POLLUTION RESULTING FROM AN AIR POLLUTION INCIDENT; OR TO
23 HINDER, OBSTRUCT, PREVENT OR INTERFERE WITH THE DEPARTMENT OR
24 ITS PERSONNEL IN THEIR PERFORMANCE OF ANY DUTY HEREUNDER,
25 INCLUDING DENYING THE DEPARTMENT ACCESS TO THE SOURCE OR
26 FACILITY; OR TO VIOLATE THE PROVISIONS OF 18 PA.C.S. § 4903
27 (RELATING TO FALSE SWEARING) OR 4904 (RELATING TO UNSWORN
28 FALSIFICATION TO AUTHORITIES) IN REGARD TO PAPERS REQUIRED TO BE
29 SUBMITTED UNDER THIS ACT. THE OWNER OR OPERATOR OF AN AIR
30 CONTAMINATION SOURCE SHALL NOT ALLOW POLLUTION OF THE AIR, WATER

1 OR OTHER NATURAL RESOURCES OF THE COMMONWEALTH RESULTING FROM
2 THE SOURCE. FOR ANY AIR POLLUTANT FOR WHICH THE BOARD HAS SET AN
3 EMISSIONS STANDARD OR FOR ANY SOURCE FOR WHICH A PERMIT HAS BEEN
4 ISSUED BY THE DEPARTMENT, A RELEASE OF SUCH POLLUTANT IN
5 ACCORDANCE WITH THAT STANDARD OR PERMIT SHALL NOT CONSTITUTE A
6 VIOLATION OF THIS ACT.

7 [SECTION 9. PENALTIES.--(A) SUMMARY OFFENSE. ANY PERSON AS
8 HEREIN DEFINED, EXCEPT A DEPARTMENT, BOARD, BUREAU OR AGENCY OF
9 THE COMMONWEALTH, ENGAGING IN UNLAWFUL CONDUCT AS SET FORTH IN
10 SECTION 8 OF THIS ACT, SHALL, FOR EACH OFFENSE, UPON CONVICTION
11 THEREOF IN A SUMMARY PROCEEDING BEFORE A DISTRICT JUSTICE,
12 MAGISTRATE, ALDERMAN OR JUSTICE OF THE PEACE, BE SENTENCED TO
13 PAY THE COSTS OF PROSECUTION AND A FINE OF NOT LESS THAN ONE
14 HUNDRED DOLLARS (\$100.00) NOR MORE THAN ONE THOUSAND DOLLARS
15 (\$1,000.00), AND, IN DEFAULT THEREOF, TO UNDERGO IMPRISONMENT OF
16 NOT LESS THAN TEN (10) DAYS NOR MORE THAN THIRTY (30) DAYS.

17 (B) MISDEMEANORS. ANY PERSON AS HEREIN DEFINED, EXCEPT A
18 DEPARTMENT, BOARD, BUREAU OR AGENCY OF THE COMMONWEALTH, WHO,
19 WITHIN TWO YEARS AFTER BEING CONVICTED OF A SUMMARY OFFENSE
20 PURSUANT TO SUBSECTION (A) OF THIS SECTION, ENGAGES IN SIMILAR
21 UNLAWFUL CONDUCT, SHALL BE GUILTY OF A MISDEMEANOR AND, UPON
22 CONVICTION THEREOF, SHALL, FOR EACH SEPARATE OFFENSE, BE SUBJECT
23 TO A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS (\$500.00) NOR
24 MORE THAN FIVE THOUSAND DOLLARS (\$5,000.00), OR TO IMPRISONMENT
25 FOR A PERIOD OF NOT MORE THAN ONE YEAR FOR EACH SEPARATE OFFENSE
26 HEREUNDER, OR BOTH. FOR THE PURPOSES OF THIS SUBSECTION, SIMILAR
27 UNLAWFUL CONDUCT SHALL MEAN A VIOLATION OF THE SAME ORDER OF THE
28 DEPARTMENT, OR A VIOLATION OF THE SAME PROVISION OF ANY RULE OR
29 REGULATION OF THE DEPARTMENT BY THE SAME ORGANIZATIONAL UNIT OF
30 THE DEFENDANT.

1 (C) FOR THE PURPOSE OF THIS SECTION, VIOLATIONS ON SEPARATE
2 DAYS SHALL BE CONSIDERED SEPARATE OFFENSES. WHERE A PERSON
3 ENGAGES IN CONTINUING UNLAWFUL CONDUCT, SUCH PERSON SHALL BE
4 GUILTY OF SEPARATE OFFENSES FOR EACH DAY SUCH CONDUCT CONTINUES
5 UP UNTIL THE TIME OF HEARING OR TRIAL.

6 (D) UPON CONVICTION OF AN ASSOCIATION, PARTNERSHIP OR
7 CORPORATION OF AN OFFENSE UNDER SUBSECTION (A) OR (B) OF THIS
8 SECTION, THE RESPONSIBLE MEMBERS, OFFICERS, EMPLOYEES OR AGENTS
9 MAY BE IMPRISONED FOR THE TERM PROVIDED THEREIN WHICH SHALL RUN
10 CONCURRENTLY WITH ANY TERM OF IMPRISONMENT IMPOSED UPON SUCH
11 PERSONS INDIVIDUALLY UPON CONVICTION FOR THE SAME OFFENSE.

12 SECTION 9.1. CIVIL PENALTIES.--IN ADDITION TO PROCEEDING
13 UNDER ANY OTHER REMEDY AVAILABLE AT LAW, OR IN EQUITY, FOR A
14 VIOLATION OF A PROVISION OF THIS ACT, OR A RULE OR REGULATION OF
15 THE BOARD, OR AN ORDER OF THE DEPARTMENT, THE HEARING BOARD,
16 AFTER HEARING, MAY ASSESS A CIVIL PENALTY UPON A PERSON FOR SUCH
17 VIOLATION. SUCH A PENALTY MAY BE ASSESSED WHETHER OR NOT THE
18 VIOLATION WAS WILFUL. THE CIVIL PENALTY SO ASSESSED SHALL NOT
19 EXCEED TEN THOUSAND DOLLARS (\$10,000.00), PLUS UP TO TWO
20 THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) FOR EACH DAY OF
21 CONTINUED VIOLATION. IN DETERMINING THE AMOUNT OF THE CIVIL
22 PENALTY, THE HEARING BOARD SHALL CONSIDER THE WILFULNESS OF THE
23 VIOLATION, DAMAGE OR INJURY TO THE OUTDOOR ATMOSPHERE OF THE
24 COMMONWEALTH OR ITS USES, AND OTHER RELEVANT FACTORS. IT SHALL
25 BE PAYABLE TO THE COMMONWEALTH OF PENNSYLVANIA AND SHALL BE
26 COLLECTIBLE IN ANY MANNER PROVIDED AT LAW FOR THE COLLECTION OF
27 DEBT. IF ANY PERSON LIABLE TO PAY ANY SUCH PENALTY NEGLECTS OR
28 REFUSES TO PAY THE SAME AFTER DEMAND, THE AMOUNT, TOGETHER WITH
29 INTEREST AND ANY COSTS THAT MAY ACCRUE, SHALL BE A LIEN IN FAVOR
30 OF THE COMMONWEALTH UPON THE PROPERTY, BOTH REAL AND PERSONAL,

1 OF SUCH PERSON, BUT ONLY AFTER SAME HAS BEEN ENTERED AND
2 DOCKETED OF RECORD BY THE PROTHONOTARY OF THE COUNTY WHERE SUCH
3 IS SITUATED. THE HEARING BOARD MAY, AT ANY TIME, TRANSMIT TO THE
4 PROTHONOTARIES OF THE RESPECTIVE COUNTIES CERTIFIED COPIES OF
5 ALL SUCH LIENS, AND IT SHALL BE THE DUTY OF EACH PROTHONOTARY TO
6 ENTER AND DOCKET THE SAME OF RECORD IN HIS OFFICE, AND TO INDEX
7 THE SAME AS JUDGMENTS ARE INDEXED, WITHOUT REQUIRING THE PAYMENT
8 OF COSTS AS A CONDITION PRECEDENT TO THE ENTRY THEREOF.]

9 SECTION 9. PENALTIES.--(A) ANY PERSON WHO VIOLATES ANY
10 PROVISION OF THIS ACT, ANY RULE OR REGULATION ADOPTED UNDER THIS
11 ACT, ANY ORDER OF THE DEPARTMENT OR ANY CONDITION OR TERM OF ANY
12 PLAN APPROVAL OR PERMIT ISSUED PURSUANT TO THIS ACT COMMITS A
13 SUMMARY OFFENSE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY
14 A FINE OF NOT LESS THAN ONE HUNDRED DOLLARS (\$100.00) NOR MORE
15 THAN TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) FOR EACH
16 SEPARATE OFFENSE, AND, IN DEFAULT OF THE PAYMENT OF SUCH FINE,
17 MAY BE SENTENCED TO IMPRISONMENT FOR NINETY (90) DAYS FOR EACH
18 SEPARATE OFFENSE. EMPLOYES OF THE DEPARTMENT AUTHORIZED TO
19 CONDUCT INSPECTIONS OR INVESTIGATIONS ARE HEREBY DECLARED TO BE
20 LAW ENFORCEMENT OFFICERS AUTHORIZED TO ISSUE OR FILE CITATIONS
21 FOR SUMMARY VIOLATIONS UNDER THIS ACT, AND THE GENERAL COUNSEL
22 IS HEREBY AUTHORIZED TO PROSECUTE THESE OFFENSES. FOR PURPOSES
23 OF THIS SUBSECTION, A SUMMARY OFFENSE MAY BE PROSECUTED BEFORE
24 ANY DISTRICT JUSTICE IN THE COUNTY WHERE THE OFFENSE OCCURRED.
25 THERE IS NO ACCELERATED REHABILITATIVE DISPOSITION AUTHORIZED
26 FOR A SUMMARY OFFENSE.

27 (B) (1) ANY PERSON WHO WILFULLY OR NEGLIGENTLY VIOLATES ANY
28 PROVISION OF THIS ACT, ANY RULE OR REGULATION ADOPTED UNDER THIS
29 ACT OR ANY ORDER OF THE DEPARTMENT OR ANY CONDITION OR TERM OF
30 ANY PLAN APPROVAL OR PERMIT ISSUED PURSUANT TO THIS ACT COMMITS

A MISDEMEANOR OF THE SECOND DEGREE AND SHALL, UPON CONVICTION,
BE SENTENCED TO PAY A FINE OF NOT LESS THAN ONE THOUSAND DOLLARS
(\$1,000.00) NOR MORE THAN FIFTY THOUSAND DOLLARS (\$50,000.00)
FOR EACH SEPARATE OFFENSE OR TO IMPRISONMENT FOR A PERIOD OF NOT
MORE THAN TWO (2) YEARS FOR EACH SEPARATE OFFENSE, OR BOTH.

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

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

(C) (1) ANY PERSON WHO KNOWINGLY RELEASES INTO THE AMBIENT
AIR ANY HAZARDOUS AIR POLLUTANT LISTED UNDER SECTION 112 OF THE

1 CLEAN AIR ACT OR ANY EXTREMELY HAZARDOUS SUBSTANCE LISTED UNDER
2 SECTION 302(A)(2) OF THE SUPERFUND AMENDMENTS AND
3 REAUTHORIZATION ACT OF 1986 THAT IS NOT LISTED IN SECTION 112 OF
4 THE CLEAN AIR ACT AND WHO KNOWS AT THE TIME THAT HE THEREBY
5 PLACES ANOTHER PERSON IN IMMINENT DANGER OF DEATH OR SERIOUS
6 BODILY INJURY COMMITS A FELONY OF THE FIRST DEGREE AND SHALL,
7 UPON CONVICTION, BE SENTENCED TO PAY A FINE OF NOT LESS THAN
8 TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) NOR MORE THAN ONE
9 HUNDRED THOUSAND DOLLARS (\$100,000.00) PER DAY FOR EACH
10 VIOLATION OR TO IMPRISONMENT FOR A PERIOD OF NOT LESS THAN TWO
11 (2) YEARS NOR MORE THAN TWENTY (20) YEARS, OR BOTH. ANY PERSON
12 WHICH IS AN ORGANIZATION COMMITTING SUCH VIOLATION SHALL, UPON
13 CONVICTION UNDER THIS CLAUSE, BE SUBJECT TO A FINE OF NOT MORE
14 THAN ONE MILLION DOLLARS (\$1,000,000.00) PER DAY FOR EACH
15 VIOLATION. IF A CONVICTION OF ANY PERSON UNDER THIS CLAUSE IS
16 FOR A VIOLATION COMMITTED AFTER A FIRST CONVICTION OF SUCH
17 PERSON UNDER THIS CLAUSE, THE MAXIMUM PUNISHMENT SHALL BE
18 DOUBLED WITH RESPECT TO BOTH THE FINE AND IMPRISONMENT. FOR ANY
19 AIR POLLUTANT FOR WHICH THE BOARD HAS SET AN EMISSIONS STANDARD
20 OR FOR ANY SOURCE FOR WHICH A PERMIT HAS BEEN ISSUED BY THE
21 DEPARTMENT, A RELEASE OF SUCH POLLUTANT IN ACCORDANCE WITH THAT
22 STANDARD OR PERMIT SHALL NOT CONSTITUTE A VIOLATION OF THIS
23 SECTION.

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

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

29 (II) KNOWLEDGE POSSESSED BY A PERSON OTHER THAN THE
30 DEFENDANT, BUT NOT BY THE DEFENDANT, MAY NOT BE ATTRIBUTED TO

1 THE DEFENDANT; EXCEPT THAT, IN PROVING A DEFENDANT'S POSSESSION
2 OF ACTUAL KNOWLEDGE, CIRCUMSTANTIAL EVIDENCE MAY BE USED,
3 INCLUDING EVIDENCE THAT THE DEFENDANT TOOK AFFIRMATIVE STEPS TO
4 BE SHIELDED FROM RELEVANT INFORMATION.

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

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

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

18 (4) ALL GENERAL DEFENSES, AFFIRMATIVE DEFENSES AND BARS TO
19 PROSECUTION THAT MAY APPLY WITH RESPECT TO OTHER STATE CRIMINAL
20 OFFENSES MAY APPLY UNDER THIS CLAUSE AND SHALL BE DETERMINED BY
21 THE COURTS ACCORDING TO THE PRINCIPLES OF COMMON LAW. CONCEPTS
22 OF JUSTIFICATION AND EXCUSE APPLICABLE UNDER THIS SECTION MAY BE
23 DEVELOPED ACCORDING TO THOSE PRINCIPLES.

24 (5) FOR PURPOSES OF THIS SUBSECTION, THE TERM "ORGANIZATION"
25 MEANS A LEGAL ENTITY, OTHER THAN A GOVERNMENT, ESTABLISHED OR
26 ORGANIZED FOR ANY PURPOSE, AND THE TERM INCLUDES A CORPORATION,
27 A COMPANY, AN ASSOCIATION, A FIRM, A PARTNERSHIP, A JOINT STOCK
28 COMPANY, A FOUNDATION, AN INSTITUTION, A TRUST, A SOCIETY, A
29 UNION OR ANY OTHER ASSOCIATION OF PERSONS.

30 (D) FOR PURPOSES OF SUBSECTIONS (B) AND (C) OF THIS SECTION,

1 THE TERM "SERIOUS BODILY INJURY" MEANS BODILY INJURY WHICH
2 INVOLVES A SUBSTANTIAL RISK OF DEATH, UNCONSCIOUSNESS, EXTREME
3 PHYSICAL PAIN, PROTRACTED AND OBVIOUS DISFIGUREMENT OR
4 PROTRACTED LOSS OR IMPAIRMENT OF THE FUNCTION OF A BODILY
5 MEMBER, ORGAN OR MENTAL FACULTY.

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

9 (F) FOR PURPOSES OF THE PROVISIONS OF SUBSECTIONS (B) AND
10 (C) OF THIS SECTION AND SECTION 9.1, THE TERM "OPERATOR," AS
11 USED IN SUCH PROVISIONS, SHALL INCLUDE ANY PERSON WHO IS SENIOR
12 MANAGEMENT PERSONNEL OR A CORPORATE OFFICER. EXCEPT IN THE CASE
13 OF KNOWING AND WILFUL VIOLATIONS, SUCH TERM SHALL NOT INCLUDE
14 ANY PERSON WHO IS A STATIONARY ENGINEER OR TECHNICIAN
15 RESPONSIBLE FOR THE OPERATION, MAINTENANCE, REPAIR OR MONITORING
16 OF EQUIPMENT AND FACILITIES AND WHO OFTEN HAS SUPERVISORY AND
17 TRAINING DUTIES, BUT WHO IS NOT SENIOR MANAGEMENT PERSONNEL OR A
18 CORPORATE OFFICER. EXCEPT IN THE CASE OF KNOWING AND WILFUL
19 VIOLATIONS, FOR PURPOSES OF CLAUSE (3) OF SUBSECTION (B) OF THIS
20 SECTION, THE TERM "A PERSON" SHALL NOT INCLUDE AN EMPLOYEE WHO IS
21 CARRYING OUT HIS NORMAL ACTIVITIES AND WHO IS NOT A PART OF
22 SENIOR MANAGEMENT PERSONNEL OR A CORPORATE OFFICER. EXCEPT IN
23 THE CASE OF KNOWING AND WILFUL VIOLATIONS, FOR THE PURPOSES OF
24 CLAUSES (1) AND (2) OF SUBSECTION (B) AND SUBSECTION (C) OF THIS
25 SECTION, THE TERM "A PERSON" SHALL NOT INCLUDE AN EMPLOYEE WHO IS
26 CARRYING OUT HIS NORMAL ACTIVITIES AND WHO IS ACTING UNDER
27 ORDERS FROM THE EMPLOYER.

28 (G) FOR PURPOSES OF THIS SECTION, A PERSON ACTS NEGLIGENTLY
29 WITH RESPECT TO A MATERIAL ELEMENT OF AN OFFENSE WHEN HE SHOULD
30 BE AWARE OF A SUBSTANTIAL AND UNJUSTIFIABLE RISK THAT THE

1 MATERIAL ELEMENT EXISTS OR WILL RESULT FROM HIS CONDUCT. THE
2 RISK MUST BE OF SUCH A NATURE AND DEGREE THAT THE ACTOR'S
3 FAILURE TO PERCEIVE IT, CONSIDERING THE NATURE AND INTENT OF HIS
4 CONDUCT AND THE CIRCUMSTANCES KNOWN TO HIM, INVOLVES A GROSS
5 DEVIATION FROM THE STANDARD OF CARE THAT A REASONABLE PERSON
6 WOULD OBSERVE IN THE ACTOR'S SITUATION.

7 SECTION 9.1. CIVIL PENALTIES.--(A) IN ADDITION TO
8 PROCEEDING UNDER ANY OTHER REMEDY AVAILABLE AT LAW OR IN EQUITY
9 FOR A VIOLATION OF A PROVISION OF THIS ACT OR ANY RULE OR
10 REGULATION PROMULGATED UNDER THIS ACT OR ANY ORDER, PLAN
11 APPROVAL OR PERMIT ISSUED PURSUANT TO THIS ACT, THE DEPARTMENT
12 MAY ASSESS A CIVIL PENALTY FOR THE VIOLATION. THE PENALTY MAY BE
13 ASSESSED WHETHER OR NOT THE VIOLATION WAS WILFUL. THE CIVIL
14 PENALTY SO ASSESSED SHALL NOT EXCEED TEN THOUSAND DOLLARS
15 (\$10,000.00) PER DAY FOR EACH VIOLATION WHICH OCCURS IN THE
16 FIRST THREE (3) YEARS FOLLOWING ENACTMENT OF THIS SECTION;
17 FIFTEEN THOUSAND DOLLARS (\$15,000.00) PER DAY FOR EACH VIOLATION
18 WHICH OCCURS IN THE FOURTH YEAR FOLLOWING ENACTMENT OF THIS
19 SECTION; AND TWENTY-FIVE THOUSAND DOLLARS (\$25,000.00) PER DAY
20 FOR EACH VIOLATION WHICH OCCURS IN THE FIFTH YEAR AND ALL
21 SUBSEQUENT YEARS FOLLOWING ENACTMENT OF THIS SECTION. IN
22 DETERMINING THE AMOUNT OF THE PENALTY, THE DEPARTMENT SHALL
23 CONSIDER THE WILFULNESS OF THE VIOLATION; DAMAGE TO AIR, SOIL,
24 WATER OR OTHER NATURAL RESOURCES OF THE COMMONWEALTH OR THEIR
25 USES; FINANCIAL BENEFIT TO THE PERSON IN CONSEQUENCE OF THE
26 VIOLATION; DETERRENCE OF FUTURE VIOLATIONS; COST TO THE
27 DEPARTMENT; THE SIZE OF THE SOURCE OR FACILITY; THE COMPLIANCE
28 HISTORY OF THE SOURCE; THE SEVERITY AND DURATION OF THE
29 VIOLATION; DEGREE OF COOPERATION IN RESOLVING THE VIOLATION; THE
30 SPEED WITH WHICH COMPLIANCE IS ULTIMATELY ACHIEVED; WHETHER THE

VIOLATION WAS VOLUNTARILY REPORTED; OTHER FACTORS UNIQUE TO THE OWNERS OR OPERATOR OF THE SOURCE OR FACILITY; AND OTHER RELEVANT FACTORS.

(B) WHEN THE DEPARTMENT PROPOSES TO ASSESS A CIVIL PENALTY, IT SHALL INFORM THE PERSON OF THE PROPOSED AMOUNT OF THE PENALTY. THE PERSON CHARGED WITH THE PENALTY SHALL THEN HAVE THIRTY (30) DAYS TO PAY THE PROPOSED PENALTY IN FULL, OR IF THE PERSON WISHES TO CONTEST THE AMOUNT OF THE PENALTY OR THE FACT OF THE VIOLATION TO THE EXTENT NOT ALREADY ESTABLISHED, THE PERSON SHALL FORWARD THE PROPOSED AMOUNT OF THE PENALTY TO THE HEARING BOARD WITHIN THE THIRTY (30) DAY PERIOD FOR PLACEMENT IN AN ESCROW ACCOUNT WITH THE STATE TREASURER OR ANY COMMONWEALTH BANK OR POST AN APPEAL BOND TO THE HEARING BOARD WITHIN THIRTY (30) DAYS IN THE AMOUNT OF THE PROPOSED PENALTY, PROVIDED THAT SUCH BOND IS EXECUTED BY A SURETY LICENSED TO DO BUSINESS IN THE COMMONWEALTH AND IS SATISFACTORY TO THE DEPARTMENT. IF, THROUGH ADMINISTRATIVE OR FINAL JUDICIAL REVIEW OF THE PROPOSED PENALTY, IT IS DETERMINED THAT NO VIOLATION OCCURRED OR THAT THE AMOUNT OF THE PENALTY SHALL BE REDUCED, THE HEARING BOARD SHALL, WITHIN THIRTY (30) DAYS, REMIT THE APPROPRIATE AMOUNT TO THE PERSON WITH ANY INTEREST ACCUMULATED BY THE ESCROW DEPOSIT. FAILURE TO FORWARD THE MONEY OR THE APPEAL BOND AT THE TIME OF THE APPEAL SHALL RESULT IN A WAIVER OF ALL LEGAL RIGHTS TO CONTEST THE VIOLATION OR THE AMOUNT OF THE CIVIL PENALTY UNLESS THE APPELLANT ALLEGES FINANCIAL INABILITY TO PREPAY THE PENALTY OR TO POST THE APPEAL BOND. THE HEARING BOARD SHALL CONDUCT A HEARING TO CONSIDER THE APPELLANT'S ALLEGED INABILITY TO PAY WITHIN THIRTY (30) DAYS OF THE DATE OF THE APPEAL. THE HEARING BOARD MAY WAIVE THE REQUIREMENT TO PREPAY THE CIVIL PENALTY OR TO POST AN APPEAL BOND IF THE APPELLANT DEMONSTRATES AND THE

1 HEARING BOARD FINDS THAT THE APPELLANT IS FINANCIALLY UNABLE TO
2 PAY. THE HEARING BOARD SHALL ISSUE AN ORDER WITHIN THIRTY (30)
3 DAYS OF THE DATE OF THE HEARING TO CONSIDER THE APPELLANT'S
4 ALLEGED INABILITY TO PAY. THE AMOUNT ASSESSED AFTER
5 ADMINISTRATIVE HEARING OR AFTER WAIVER OF ADMINISTRATIVE HEARING
6 SHALL BE PAYABLE TO THE COMMONWEALTH AND SHALL BE COLLECTIBLE IN
7 ANY MANNER PROVIDED BY LAW FOR THE COLLECTION OF DEBTS,
8 INCLUDING THE COLLECTION OF INTEREST AT THE RATE ESTABLISHED IN
9 SUBSECTION (C) OF SECTION 6.3, WHICH SHALL RUN FROM THE DATE OF
10 ASSESSMENT OF THE PENALTY. IF ANY PERSON LIABLE TO PAY ANY SUCH
11 PENALTY NEGLECTS OR REFUSES TO PAY THE SAME AFTER DEMAND, THE
12 AMOUNT, TOGETHER WITH INTEREST AND ANY COSTS THAT MAY ACCRUE,
13 SHALL CONSTITUTE A DEBT OF SUCH PERSON, AS MAY BE APPROPRIATE,
14 TO THE CLEAN AIR FUND. THE DEBT SHALL CONSTITUTE A LIEN ON ALL
15 PROPERTY OWNED BY SAID PERSON WHEN A NOTICE OF LIEN
16 INCORPORATING A DESCRIPTION OF THE PROPERTY OF THE PERSON
17 SUBJECT TO THE ACTION IS DULY FILED WITH THE PROTHONOTARY OF THE
18 COURT OF COMMON PLEAS WHERE THE PROPERTY IS LOCATED. THE
19 PROTHONOTARY SHALL PROMPTLY ENTER UPON THE CIVIL JUDGMENT OR
20 ORDER DOCKET, AT NO COST TO THE DEPARTMENT, THE NAME AND ADDRESS
21 OF THE PERSON, AS MAY BE APPROPRIATE, AND THE AMOUNT OF THE LIEN
22 AS SET FORTH IN THE NOTICE OF LIEN. UPON ENTRY BY THE
23 PROTHONOTARY, THE LIEN SHALL ATTACH TO THE REVENUES AND ALL REAL
24 AND PERSONAL PROPERTY OF THE PERSON, WHETHER OR NOT THE PERSON
25 IS SOLVENT. THE NOTICE OF LIEN, FILED PURSUANT TO THIS
26 SUBSECTION, WHICH AFFECTS THE PROPERTY OF THE PERSON SHALL
27 CREATE A LIEN WITH PRIORITY OVER ALL SUBSEQUENT CLAIMS OR LIENS
28 WHICH ARE FILED AGAINST THE PERSON, BUT IT SHALL NOT AFFECT ANY
29 VALID LIEN, RIGHT OR INTEREST IN THE PROPERTY FILED IN
30 ACCORDANCE WITH ESTABLISHED PROCEDURE PRIOR TO THE FILING OF A

1 NOTICE OF LIEN UNDER THIS SUBSECTION.

2 SECTION 9.2. DISPOSITION OF FEES, FINES AND CIVIL
3 PENALTIES.--(A) ALL FINES, CIVIL PENALTIES AND FEES COLLECTED
4 UNDER THIS ACT SHALL BE PAID INTO THE TREASURY OF THE
5 COMMONWEALTH IN A SPECIAL FUND KNOWN AS THE ["]CLEAN AIR
6 FUND,["] HEREBY ESTABLISHED, WHICH, ALONG WITH INTEREST EARNED,
7 SHALL BE ADMINISTERED BY THE DEPARTMENT FOR USE IN THE
8 ELIMINATION OF AIR POLLUTION. THE DEPARTMENT MAY ESTABLISH SUCH
9 SEPARATE ACCOUNTS AS MAY BE NECESSARY OR APPROPRIATE TO
10 IMPLEMENT THE REQUIREMENTS OF THIS ACT AND THE CLEAN AIR ACT.
11 THE BOARD SHALL ADOPT RULES AND REGULATIONS FOR THE MANAGEMENT
12 AND USE OF THE MONEY IN THE FUND.

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

16 (C) THE CLEAN AIR FUND SHALL NOT BE SUBJECT TO 42 PA.C.S.
17 CH. 37 SUBCH. C (RELATING TO JUDICIAL COMPUTER SYSTEM).

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

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

25 SECTION 12. SECTION 10 OF THE ACT IS REPEALED.

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

27 SECTION 10.1. ENFORCEMENT ORDERS.--(A) THE DEPARTMENT MAY
28 ISSUE SUCH ORDERS AS ARE NECESSARY TO AID IN THE ENFORCEMENT OF
29 THE PROVISIONS OF THIS ACT. THESE ORDERS SHALL INCLUDE, BUT
30 SHALL NOT BE LIMITED TO, ORDERS MODIFYING, SUSPENDING,

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

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

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

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

28 SECTION 10.2. APPEALABLE ACTIONS.--ANY PERSON AGGRIEVED BY
29 AN ORDER OR OTHER ADMINISTRATIVE ACTION OF THE DEPARTMENT ISSUED
30 PURSUANT TO THIS ACT OR ANY PERSON WHO PARTICIPATED IN THE

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

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

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

16 SECTION 11. POWERS RESERVED TO THE DEPARTMENT UNDER EXISTING
17 LAWS.--NOTHING IN THIS ACT SHALL LIMIT IN ANY WAY WHATEVER THE
18 POWERS CONFERRED UPON THE DEPARTMENT UNDER LAWS OTHER THAN THIS
19 ACT, IT BEING EXPRESSLY PROVIDED THAT ALL SUCH POWERS ARE
20 PRESERVED TO THE DEPARTMENT AND MAY BE FREELY EXERCISED BY IT.
21 [THE DEPARTMENT SHALL HAVE THE RIGHT UPON APPROVAL OF THE
22 ATTORNEY GENERAL, TO PETITION A COURT OF COMPETENT JURISDICTION
23 TO ORDER THE ABATEMENT OF ANY NUISANCE OR CONDITION DETRIMENTAL
24 TO HEALTH. FOR THAT PURPOSE NO] NO COURT EXERCISING GENERAL
25 EQUITABLE JURISDICTION SHALL BE DEPRIVED OF SUCH JURISDICTION
26 EVEN THOUGH [SUCH] A NUISANCE OR CONDITION DETRIMENTAL TO HEALTH
27 IS SUBJECT TO REGULATION OR OTHER ACTION BY THE BOARD UNDER THIS
28 ACT.

29 SECTION 12. POWERS RESERVED TO POLITICAL SUBDIVISIONS.--(A)
30 NOTHING IN THIS ACT SHALL PREVENT COUNTIES, CITIES, TOWNS,

2 AIR POLLUTION WHICH WILL NOT BE LESS STRINGENT THAN THE
3 PROVISIONS OF THIS ACT, THE CLEAN AIR ACT OR THE RULES AND
4 REGULATIONS PROMULGATED [PURSUANT TO ITS PROVISIONS.] UNDER
5 EITHER THIS ACT OR THE CLEAN AIR ACT. THIS ACT SHALL NOT BE
6 CONSTRUED TO REPEAL EXISTING ORDINANCES, RESOLUTIONS OR
7 REGULATIONS OF THE AFOREMENTIONED POLITICAL SUBDIVISIONS
8 EXISTING AT THE TIME OF THE EFFECTIVE DATE OF THIS ACT, EXCEPT
9 AS THEY MAY BE LESS STRINGENT THAN THE PROVISIONS OF THIS
10 ACT[.], THE CLEAN AIR ACT OR THE RULES OR REGULATIONS ADOPTED
11 UNDER EITHER THIS ACT OR THE CLEAN AIR ACT.

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

22 (C) (1) WHENEVER, EITHER UPON COMPLAINT MADE TO OR
23 INITIATED BY THE DEPARTMENT, THE DEPARTMENT FINDS THAT ANY
24 PERSON IS IN VIOLATION OF AIR POLLUTION CONTROL STANDARDS, OR
25 RULES AND REGULATIONS PROMULGATED PURSUANT TO THE GRANT OF
26 AUTHORITY MADE IN SUBSECTION (B), THE DEPARTMENT SHALL GIVE
27 NOTIFICATION OF THAT FACT TO THAT PERSON AND TO THE AIR
28 POLLUTION CONTROL AGENCY OF THE [POLITICAL SUBDIVISION] COUNTY
29 INVOLVED.

30 (2) IF SUCH VIOLATION CONTINUES TO EXIST AFTER SAID

1 NOTIFICATION HAS BEEN GIVEN, THE DEPARTMENT MAY TAKE ANY
2 ABATEMENT ACTION PROVIDED FOR UNDER THE TERMS OF THIS ACT.

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

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

22 (F) WHENEVER THE DEPARTMENT TAKES ACTION UNDER THE
23 PROVISIONS OF SUBSECTIONS (D) OR (E) OF THIS SECTION, IT SHALL
24 GIVE WRITTEN NOTIFICATION TO THE AIR POLLUTION CONTROL AGENCY OF
25 THE [POLITICAL SUBDIVISION] COUNTY INVOLVED AND SUCH
26 NOTIFICATION SHALL BE [SUBJECT TO THE APPEAL PROVISIONS OF
27 CLAUSE (4.1) OF SECTION 4 OF THIS ACT.] AN APPEALABLE ACTION.

28 (G) IRRESPECTIVE OF SUBSECTION (B) ABOVE, AND IN ORDER THAT
29 THE CIVIL AND CRIMINAL PENALTIES AND EQUITABLE REMEDIES FOR AIR
30 POLLUTION VIOLATIONS SHALL BE UNIFORM [EXCEPT INSOFAR AS THEY

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

24 [(H) ANY PERSON, AS HEREIN DEFINED, EXCEPT A DEPARTMENT,
25 BOARD, BUREAU, OR AGENCY OF THE COMMONWEALTH, ENGAGING IN
26 CONDUCT IN VIOLATION OF A MUNICIPAL AIR POLLUTION CONTROL
27 ORDINANCE, SHALL, FOR EACH OFFENSE, UPON CONVICTION THEREOF IN A
28 CIVIL PROCEEDING BEFORE A JUDGE OF THE MUNICIPAL COURT OF
29 PHILADELPHIA, DISTRICT JUSTICE, MAGISTRATE, ALDERMAN OR JUSTICE
30 OF THE PEACE BE SENTENCED TO PAY THE COST OF PROSECUTION AND A

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

22 SECTION 12.1. CONSTRUCTION.--NOTHING IN THIS ACT SHALL BE
23 CONSTRUED AS ESTOPPING THE COMMONWEALTH, OR ANY DISTRICT
24 ATTORNEY OR SOLICITOR OF A MUNICIPALITY, FROM PROCEEDING IN
25 COURTS OF LAW OR EQUITY TO ABATE POLLUTIONS FORBIDDEN UNDER THIS
26 ACT, OR ABATE NUISANCES UNDER EXISTING LAW. IT IS HEREBY
27 DECLARED TO BE THE PURPOSE OF THIS ACT TO PROVIDE ADDITIONAL AND
28 CUMULATIVE REMEDIES TO ABATE THE POLLUTION OF THE AIR OF THIS
29 COMMONWEALTH, AND NOTHING CONTAINED IN THIS ACT SHALL IN ANY WAY
30 ABRIDGE OR ALTER RIGHTS OF ACTION OR REMEDIES NOW OR HEREAFTER

1 EXISTING IN EQUITY, OR UNDER THE COMMON LAW OR STATUTORY LAW,
2 CRIMINAL OR CIVIL, NOR SHALL ANY PROVISION OF THIS ACT, OR THE
3 GRANTING OF ANY PLAN APPROVAL OR PERMIT UNDER THIS ACT, OR ANY
4 ACT DONE BY VIRTUE OF THIS ACT, BE CONSTRUED AS ESTOPPING THE
5 COMMONWEALTH, PERSONS OR MUNICIPALITIES, IN THE EXERCISE OF
6 THEIR RIGHTS UNDER THE COMMON LAW OR DECISIONAL LAW OR IN
7 EQUITY, FROM PROCEEDING IN COURTS OF LAW OR EQUITY TO SUPPRESS
8 NUISANCES, OR TO ABATE ANY POLLUTION NOW OR HEREAFTER EXISTING,
9 OR ENFORCE COMMON LAW OR STATUTORY RIGHTS. NO COURTS OF THIS
10 COMMONWEALTH HAVING JURISDICTION TO ABATE PUBLIC OR PRIVATE
11 NUISANCE SHALL BE DEPRIVED OF SUCH JURISDICTION TO ABATE ANY
12 PRIVATE OR PUBLIC NUISANCE INSTITUTED BY ANY PERSON FOR THE
13 REASON THAT SUCH NUISANCE CONSTITUTES AIR POLLUTION.

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

20 SECTION 13. PUBLIC NUISANCES.--A VIOLATION OF THIS ACT OR OF
21 ANY RULE OR REGULATION PROMULGATED UNDER THIS ACT OR ANY ORDER,
22 PLAN APPROVAL OR PERMIT ISSUED BY THE DEPARTMENT UNDER THIS ACT
23 SHALL CONSTITUTE A PUBLIC NUISANCE. THE DEPARTMENT SHALL HAVE
24 THE AUTHORITY TO ORDER ANY PERSON CAUSING A PUBLIC NUISANCE TO
25 ABATE THE PUBLIC NUISANCE. IN ADDITION, THE DEPARTMENT OR ANY
26 COMMONWEALTH AGENCY WHICH UNDERTAKES TO ABATE A PUBLIC NUISANCE
27 MAY RECOVER THE EXPENSES OF ABATEMENT FOLLOWING THE PROCESS FOR
28 ASSESSMENT AND COLLECTION OF A CIVIL PENALTY CONTAINED IN
29 SECTION 9.1. WHENEVER THE NUISANCE IS MAINTAINED OR CONTINUED
30 CONTRARY TO THIS ACT OR ANY RULE OR REGULATION PROMULGATED UNDER

1 THIS ACT OR ANY ORDER, PLAN APPROVAL OR PERMIT, THE NUISANCE MAY
2 BE ABATABLE IN THE MANNER PROVIDED BY THIS ACT. ANY PERSON WHO
3 CAUSES THE PUBLIC NUISANCE SHALL BE LIABLE FOR THE COST OF
4 ABATEMENT.

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

20 SECTION 13.2. CONFIDENTIAL INFORMATION.--ALL RECORDS,
21 REPORTS OR INFORMATION OBTAINED BY THE DEPARTMENT OR REFERRED TO
22 AT PUBLIC HEARINGS UNDER THE PROVISIONS OF THIS ACT SHALL BE
23 AVAILABLE TO THE PUBLIC, EXCEPT THAT UPON CAUSE SHOWN BY ANY
24 PERSON THAT THE RECORDS, REPORTS OR INFORMATION, OR A PARTICULAR
25 PORTION THEREOF, BUT NOT EMISSION DATA, TO WHICH THE DEPARTMENT
26 HAS ACCESS UNDER THE PROVISIONS OF THIS ACT, IF MADE PUBLIC,
27 WOULD DIVULGE PRODUCTION OR SALES FIGURES OR METHODS, PROCESSES
28 OR PRODUCTION UNIQUE TO SUCH PERSON OR WOULD OTHERWISE TEND TO
29 AFFECT ADVERSELY THE COMPETITIVE POSITION OF SUCH PERSON BY
30 REVEALING TRADE SECRETS, INCLUDING INTELLECTUAL PROPERTY RIGHTS,

1 THE DEPARTMENT SHALL CONSIDER SUCH RECORD, REPORT OR
2 INFORMATION, OR PARTICULAR PORTION THEREOF CONFIDENTIAL IN THE
3 ADMINISTRATION OF THIS ACT. THE DEPARTMENT SHALL IMPLEMENT THIS
4 SECTION CONSISTENT WITH SECTIONS 112(D) AND 114(C) OF THE CLEAN
5 AIR ACT. NOTHING HEREIN SHALL BE CONSTRUED TO PREVENT DISCLOSURE
6 OF SUCH REPORT, RECORD OR INFORMATION TO FEDERAL, STATE OR LOCAL
7 REPRESENTATIVES AS NECESSARY FOR PURPOSES OF ADMINISTRATION OF
8 ANY FEDERAL, STATE OR LOCAL AIR POLLUTION CONTROL LAWS, OR WHEN
9 RELEVANT IN ANY PROCEEDING UNDER THIS ACT.

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

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

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

1 END, JURISDICTION IS HEREBY CONFERRED IN LAW AND EQUITY UPON
2 SUCH COURTS. EXCEPT IN CASES OF EMERGENCY WHERE, IN THE OPINION
3 OF THE COURT, THE EXIGENCIES OF THE CASE REQUIRE IMMEDIATE
4 ABATEMENT OF THE NUISANCE, THE COURT MAY, IN ITS DECREE, FIX A
5 REASONABLE TIME DURING WHICH THE PERSON RESPONSIBLE FOR THE
6 NUISANCE MAY MAKE PROVISION FOR THE ABATEMENT OF THE SAME.

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

23 (C) EXCEPT AS PROVIDED IN SUBSECTION (D) OF THIS SECTION,
24 ANY PERSON MAY COMMENCE A CIVIL ACTION TO COMPEL COMPLIANCE WITH
25 THIS ACT OR ANY RULE, REGULATION, ORDER OR PLAN APPROVAL OR
26 PERMIT ISSUED PURSUANT TO THIS ACT BY ANY OWNER OR OPERATOR
27 ALLEGED TO BE CAUSING OR CONTRIBUTING TO A VIOLATION OF ANY
28 PROVISION OF THIS ACT OR ANY RULE OR REGULATION PROMULGATED
29 UNDER THIS ACT OR ANY PLAN APPROVAL, PERMIT OR ORDER ISSUED BY
30 THE DEPARTMENT. IN ADDITION TO SEEKING TO COMPEL COMPLIANCE, ANY

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

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

23 (E) THE SIXTY (60) DAY NOTICE PROVISIONS OF SUBSECTION (D)
24 OF THIS SECTION TO THE CONTRARY NOTWITHSTANDING, ANY ACTION
25 PURSUANT TO SUBSECTION (C) OF THIS SECTION MAY BE INITIATED
26 IMMEDIATELY UPON WRITTEN NOTIFICATION TO THE DEPARTMENT IN THE
27 CASE WHERE THE VIOLATION OR CONDITION COMPLAINED OF CONSTITUTES
28 AN IMMINENT THREAT TO THE HEALTH OR SAFETY OF THE PLAINTIFF OR
29 WOULD IMMEDIATELY AFFECT A LEGAL INTEREST OF THE PLAINTIFF.

30 (F) THE COURT, IN ISSUING ANY FINAL ORDER IN ANY ACTION

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

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

10 (1) SECTION 4.2 OF THE ACT SHALL TAKE EFFECT IN 60 DAYS.

11 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT

12 IMMEDIATELY.