

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1282 Session of 2010

INTRODUCED BY ERICKSON, PILEGGI, MUSTO, FONTANA, O'PAKE, ARGALL, BAKER, PIPPY, RAFFERTY, BRUBAKER, ALLOWAY, FARNESE, McILHINNEY, D. WHITE, GORDNER, LEACH, MELLOW, EARLL, BROWNE, GREENLEAF, TOMLINSON, VANCE, VOGEL, YAW, BOSCOLA, FOLMER, DINNIMAN, WASHINGTON, STACK, MENSCH AND COSTA, MARCH 18, 2010

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 18, 2010

AN ACT

1 Amending the act of July 10, 2008 (P.L.1009, No.78), entitled  
 2 "An act providing for the study and mandated content of  
 3 biofuels," further providing for definitions, for biodiesel  
 4 content in diesel fuel sold for on-road use, for agency  
 5 responsibilities and for infrastructure reports; and  
 6 providing for Biofuel Development Fund.

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

9 Section 1. Section 2 of the act of July 10, 2008 (P.L.1009,  
 10 No.78), known as the Biofuel Development and In-State Production  
 11 Incentive Act, is amended by adding definitions to read:

12 Section 2. Definitions.

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

16 "American Society for Testing and Materials International" or  
 17 "ASTM." A private organization that utilizes committees of  
 18 industry representatives and regulators to develop product

1 quality standards and test methods to be used by industries,  
2 regulatory agencies and purchasing agents.

3 "Annualized basis." The sum of three consecutive months of  
4 in-State production multiplied by four.

5 "Approved biodiesel blending method." A blending method  
6 where biodiesel, diesel fuel, off-road diesel fuel or oilheat  
7 fuel are blended to maintain a consistent blend throughout the  
8 entire volume and done at a facility capable of maintaining the  
9 biodiesel at ten degrees Fahrenheit above the cloud point of the  
10 biodiesel through the use of department-approved meters to track  
11 the volume of each product individually and maintaining the  
12 blend percentage within a margin of one half of one percent of  
13 the total volume of biodiesel required to make the desired  
14 blending percentage.

15 "ASTM specification." A standard quality specification  
16 developed and published by the American Society for Testing and  
17 Materials International. Each specification includes references  
18 to standard test methods, also developed and published by ASTM.

19 \* \* \*

20 "Biodiesel blend." A blend of biodiesel, diesel fuel, off-  
21 road diesel fuel or oilheat fuel intended to be sold or offered  
22 for sale to ultimate consumers in this Commonwealth for use in  
23 on-road or off-road compression ignition engines or for  
24 residential, commercial or industrial heating applications.

25 \* \* \*

26 "Consumer." A person that purchases biodiesel blend, diesel  
27 fuel, off-road diesel fuel or oilheat fuel for purposes other  
28 than resale.

29 \* \* \*

30 "Diesel fuel." Petroleum diesel fuel that complies with ASTM

1 D975 or its successor standard having a maximum allowable  
2 sulphur content at the point of use of no more than 15 parts per  
3 million (PPM).

4 "Distributor." A person that manufactures, refines, receives  
5 for storage, distributes or sells diesel fuel, off-road diesel  
6 fuel or oilheat fuel biodiesel or biodiesel blend in this  
7 Commonwealth for subsequent distribution to another person other  
8 than the consumer.

9 "Fund." The Biofuel Development Fund established in section  
10 8(a).

11 "Manufacture." To produce, mix, blend, repackage or further  
12 process.

13 \* \* \*

14 "Off-road diesel fuel." Fuel as defined in 75 Pa.C.S. § 9002  
15 (relating to definitions) as "dyed diesel fuel" which is  
16 intended to be sold for or used in off-road compression ignition  
17 engines that complies with ASTM D975 or its successor standard  
18 having a maximum allowable sulphur content at the point of use  
19 of no more than 500 parts per million (PPM), or other lower  
20 maximum allowable sulphur content as shall become required by  
21 Federal law.

22 "Oilheat fuel." Petroleum heating fuel that complies with  
23 ASTM D396 or its successor standard having a maximum allowable  
24 sulphur content at the point of use of no more than 2,000 parts  
25 per million (PPM), or other lower maximum allowable sulphur  
26 content as shall become required by this act and intended to be  
27 sold for or used in residential, commercial or industrial  
28 heating applications.

29 "Person." An individual, corporation, partnership, stock  
30 company, society, association or business unit or agent or

1 employee thereof.

2 "Petroleum load rack terminals." A location, supplied by  
3 pipeline, barge, or direct refinery access, where the commercial  
4 transfer of diesel fuel, off-road diesel fuel or oilheat fuel,  
5 biodiesel and biodiesel blend, at the wholesale level is  
6 conducted utilizing meters employed in the measurement of  
7 product delivered to a seller by a buyer.

8 "Producer." A person that purchases component elements and  
9 blends them to produce biodiesel blend.

10 "Refinery" or "terminal." A petroleum refinery, pipeline  
11 terminal, river terminal, load rack terminal, storage facility,  
12 producer facility or other point of origin of diesel fuel, off-  
13 road diesel fuel or oilheat fuel, biodiesel and biodiesel blend,  
14 that is manufactured, blended or imported by rail, truck, barge  
15 or pipe and held, stored, transferred, offered for distribution,  
16 distributed, offered for sale or sold.

17 \* \* \*

18 "Retailer." A person that sells diesel fuel, off-road diesel  
19 fuel or oilheat fuel, biodiesel or biodiesel blend to the  
20 consumer.

21 "Sale," "sell" or "sold." To transfer title for  
22 consideration.

23 "Unclassified importer." A person that imports or causes to  
24 be imported diesel fuel, off-road diesel fuel or oilheat fuel,  
25 biodiesel or biodiesel blend for use, distribution or sale in  
26 this Commonwealth, but that does not qualify as a distributor.

27 Section 2. Section 3 heading and subsections (a) and (f) of  
28 the act are amended to read:

29 Section 3. Biodiesel and sulphur content in diesel fuel sold  
30 for on-road [use] or off-road use and oilheat fuel.

1 (a) [Volume standards] Standards.--The following standards  
2 shall apply:

3 (1) All diesel fuel sold or offered for sale to ultimate  
4 consumers in this Commonwealth for use in on-road compression  
5 ignition engines must [contain] be blended with biodiesel so  
6 as to achieve a biodiesel blend of at least 2% biodiesel by  
7 volume one year after the in-State production volume of  
8 40,000,000 gallons of biodiesel has been reached and  
9 sustained for three months on an annualized basis as  
10 determined by the department. The biodiesel blend shall  
11 comply with ASTM specification D975 or its successor  
12 standard.

13 (2) All diesel fuel sold or offered for sale to ultimate  
14 consumers in this Commonwealth for use in on-road compression  
15 ignition engines must [contain] be blended with biodiesel so  
16 as to achieve a biodiesel blend of at least 5% biodiesel by  
17 volume one year after the in-State production volume of  
18 100,000,000 gallons of biodiesel has been reached and  
19 sustained for three months on an annualized basis as  
20 determined by the department. The biodiesel blend shall  
21 comply with ASTM specification D975 or its successor  
22 standard.

23 (3) All diesel fuel sold or offered for sale to ultimate  
24 consumers in this Commonwealth for use in on-road compression  
25 ignition engines must [contain] be blended with biodiesel so  
26 as to achieve a biodiesel blend of at least 10% biodiesel by  
27 volume one year after the in-State production volume of  
28 200,000,000 gallons of biodiesel has been reached and  
29 sustained for three months on an annualized basis as  
30 determined by the department. The biodiesel blend shall

1 comply with ASTM specification D7467 or its successor  
2 standard.

3 (4) All diesel fuel sold or offered for sale to ultimate  
4 consumers in this Commonwealth for use in on-road compression  
5 ignition engines must [contain] be blended with biodiesel so  
6 as to achieve a biodiesel blend of at least 20% biodiesel by  
7 volume one year after the in-State production volume of  
8 400,000,000 gallons of biodiesel has been reached and  
9 sustained for three months on an annualized basis as  
10 determined by the department. The biodiesel blend shall  
11 comply with ASTM specification D7467 or its successor  
12 standard.

13 (5) All oilheat fuel and off-road diesel fuel sold or  
14 offered for sale to ultimate consumers in this Commonwealth  
15 must be blended with biodiesel to achieve a biodiesel blend  
16 of at least 5% biodiesel by volume after May 1, 2011.

17 (6) All oilheat fuel and off-road diesel fuel sold or  
18 offered for sale to ultimate consumers in this Commonwealth  
19 must be blended with biodiesel to achieve a biodiesel blend  
20 of at least 10% biodiesel by volume after May 1, 2013,  
21 provided one of the following conditions is met:

22 (i) The national biodiesel board and the national  
23 oilheat research alliance both certify by resolution to  
24 the department that a blend of oilheat fuel and biodiesel  
25 of at least 10% biodiesel by volume is not detrimental to  
26 the operation of a residential, commercial or industrial  
27 heating system if used for its intended use.

28 (ii) The ASTM amends its standard D396 to include  
29 blends of at least 10% biodiesel.

30 (7) (i) On or after May 1, 2011, oilheat fuel sold for

1 use in residential, commercial or industrial heating  
2 within this Commonwealth shall have a sulphur content of  
3 no more than 15 parts per million (PPM).

4 (ii) The department, with the concurrence of the  
5 Department of Environmental Protection, may suspend or  
6 modify to increase the allowable sulphur content of  
7 oilheat fuel required by this subsection if the  
8 department determines the suspension or modification is  
9 warranted by an insufficient quantity of reasonable  
10 available oilheat fuel of the required sulphur content in  
11 a particular geographic area.

12 \* \* \*

13 (f) Exception.--The requirements of this section shall not  
14 apply [to aviation fuel, home heating fuel or where prohibited  
15 by law.]:

- 16 (1) to aviation fuel;  
17 (2) to locomotive fuel;  
18 (3) to marine fuel;  
19 (4) to grades of fuel oil other than grades numbered 1  
20 and 2 under ASTM specifications D396 AND D975;  
21 (5) to diesel fuel produced from 100% Pennsylvania grade  
22 crude oil by a small refiner, as defined in 40 CFR 80.1101(g)  
23 (relating to definitions), through December 31, 2010; or  
24 (6) where prohibited by law.

25 Section 3. Section 5 of the act is amended by adding  
26 subsections to read:

27 Section 5. Agency responsibilities.

28 \* \* \*

29 (e) Enforcement.--

- 30 (1) The department is charged with the general

1 enforcement of this act. The department may employ all proper  
2 means for the enforcement of this act, including issuing  
3 notices and orders, filing violations for criminal  
4 prosecution, seeking injunctive relief, imposing civil  
5 penalties and entering into consent agreements.

6 (2) Any person that imports, transfers, offers for sale  
7 or sells biodiesel, diesel fuel, off-road diesel fuel,  
8 oilheat fuel or biodiesel blend in this Commonwealth for use  
9 in on-road or off-road compression ignition engines or for  
10 residential, commercial or industrial heating applications  
11 shall register with the department.

12 (3) Biodiesel blend shall be created using an approved  
13 biodiesel blending method at such a time and place where the  
14 diesel fuel, off-road diesel fuel or oilheat fuel is loaded  
15 out of a petroleum load rack terminal in this Commonwealth  
16 for further distribution, storage, transfer, offer for sale  
17 or sale in this Commonwealth.

18 (4) Diesel fuel, off-road diesel fuel and oilheat fuel  
19 imported into this Commonwealth must be imported by  
20 registered importers and must be blended with biodiesel to  
21 create biodiesel blend by an approved biodiesel blending  
22 method before the fuel may be sold or offered for sale within  
23 this Commonwealth to any person other than the importer.

24 (5) If a person has multiple locations where the person  
25 conducts the activities set forth in paragraphs (2), (3) and  
26 (4), each location shall be separately registered, but may be  
27 submitted in a single electronic form. This paragraph  
28 includes in-State and out-of-State persons, such as  
29 refineries, terminals, distributors, producers, retailers and  
30 unclassified importers that transfer, sell or offer for sale



1 biodiesel and biodiesel blend products for use in on-road or  
2 off-road compression ignition engines or for residential,  
3 commercial or industrial heating applications in this  
4 Commonwealth.

5 (6) Any time biodiesel blend is sold or transferred from  
6 a refinery, terminal, distributor, producer, unclassified  
7 importer or any person, for sale to ultimate consumers in  
8 this Commonwealth, either directly or through a retailer or  
9 other person, a bill of lading or shipping manifest shall be  
10 provided to the person that receives the biodiesel blend. The  
11 shipping manifest or bill of lading shall accompany the  
12 biodiesel blend to the retailer. For direct consumer sales of  
13 biodiesel blend by a refinery, terminal, distributor,  
14 producer, unclassified importer or any person other than a  
15 retailer, such bills of lading or shipping manifest shall be  
16 retained at the point of sale. A copy of such records shall  
17 be retained by the refinery, terminal, distributor, producer,  
18 unclassified importer or person conducting the sale for a  
19 period of one year from delivery of the biodiesel blend  
20 product or for a longer period of time if part of an  
21 enforcement action. For biodiesel blend, the bill of lading  
22 or shipping manifest shall contain and disclose the following  
23 information:

24 (i) The Pennsylvania registration number, name and  
25 location of the terminal, refinery, distributor,  
26 producer, unclassified importer or person that created  
27 the biodiesel blend.

28 (ii) The biodiesel content, stating volume  
29 percentage, based upon gallons of biodiesel per gallons  
30 of diesel fuel base-stock, or an ASTM "Bxx" designation

1 where "xx" denotes the volume percentage biodiesel  
2 included in the blended product.

3 (iii) The ASTM specification of the biodiesel used  
4 in the biodiesel blend.

5 (iv) The grade and ASTM specification of the diesel  
6 fuel, off-road diesel fuel or oilheat fuel used in the  
7 biodiesel blend and, for biodiesel blends made with  
8 oilheat fuel, the sulfur content of the oilheat fuel.

9 (v) The ASTM specification of the biodiesel blend.

10 (vi) The total gallons of biodiesel blend sold,  
11 shipped or transferred.

12 (vii) A certification signed by the refinery,  
13 terminal, distributor, producer, unclassified importer or  
14 other person that created the biodiesel blend stating  
15 that it was created by an approved biodiesel blending  
16 method and the information contained in the bill of  
17 lading or shipping manifest is true and correct subject  
18 to the penalties of 18 Pa.C.S. § 4904 (relating to  
19 unsworn falsification to authorities).

20 (7) Retailers offering a biodiesel blend product for  
21 ultimate sale to consumers for use in on-road or off-road  
22 compression ignition engines or for residential, commercial  
23 or industrial heating applications in this Commonwealth  
24 shall:

25 (i) Assure they receive and retain a copy of the  
26 bills of lading and shipping manifests required by this  
27 section.

28 (ii) With regard to the sale or delivery of  
29 biodiesel blending utilizing oilheat fuel, provide the  
30 consumer as part of the sale or delivery a receipt

1 showing the Pennsylvania registration number of the  
2 person that created the biodiesel blend and the biodiesel  
3 and sulfur content as required to be included in the  
4 bills of lading by subsection (e) (6) (ii) and (iv). These  
5 records shall be retained for a period of one year from  
6 receipt of the biodiesel blend product, or for a longer  
7 period of time if requested by the department as part of  
8 an enforcement action, either at the facility where the  
9 product is sold or at the corporate headquarters, so long  
10 as the bills of lading and shipping manifests remain at  
11 the facility where the product is sold until such time as  
12 that product is sold or is no longer present at the  
13 facility. Notwithstanding the provisions of this  
14 subsection, no retailer shall be found in violation of  
15 this act for failure to make the records required by this  
16 section immediately available to the department upon  
17 inspection of the facility where the product is sold,  
18 provided that the records are submitted to the department  
19 within two business days.

20 (8) Any time biodiesel is sold or transferred from any  
21 person to be sold or offered for sale to ultimate consumers  
22 in this Commonwealth for use in on-road or off-road  
23 compression ignition engines or for residential, commercial  
24 or industrial heating applications as part of a biodiesel  
25 blend, a certification shall be provided to the person that  
26 receives the biodiesel. The certification shall accompany the  
27 biodiesel to the person that creates the biodiesel blend and  
28 shall accompany the biodiesel blend into which the biodiesel  
29 has been incorporated to the retailer. The certification  
30 shall be signed by the person selling or transferring the

1 biodiesel and state that the biodiesel is compliant with the  
2 definition and quality standards for biodiesel under this  
3 act, including ASTM D-6751-02, or its successor standard, and  
4 be made subject to the penalties of 18 Pa.C.S. § 4904. A copy  
5 of the certification shall be retained by the person selling  
6 or transferring the biodiesel, the person creating the  
7 biodiesel blend and by the retailer for a period of one year  
8 from delivery of the biodiesel or biodiesel blend, as  
9 applicable, or for a longer period of time if requested by  
10 the department as part of an enforcement action. With regard  
11 to a retailer, a copy of the certification may be retained at  
12 the corporate headquarters so long as the certification  
13 remains at the facility where the product is sold until such  
14 time as that product is sold or is no longer present at the  
15 facility. Notwithstanding the provisions of this subsection,  
16 no retailer shall be found in violation of this act for  
17 failure to make the records required by this section  
18 immediately available to the department upon inspection of  
19 the facility where the product is sold, provided that the  
20 records are submitted to the department within two business  
21 days.

22 (9) The department shall have the following authority:

23 (i) To conduct unannounced random inspections of any  
24 person or establishment located in this Commonwealth that  
25 stores, holds, blends, sells or offers for sale diesel  
26 fuel, off-road diesel fuel, oilheat fuel, biodiesel or  
27 biodiesel blend. Inspections shall include the premises,  
28 tanks, storage facilities, transportation and storage  
29 vehicles, dispensing devices and any other place where  
30 diesel fuel, off-road diesel fuel, oilheat fuel,

1 biodiesel or biodiesel blend is stored, held, blended,  
2 sold or offered for sale.

3 (ii) To take samples of and test the diesel fuel,  
4 off-road diesel fuel, oilheat fuel, biodiesel and  
5 biodiesel blend being stored, held, blended, sold or  
6 offered for sale.

7 (iii) To audit the books and records, including  
8 copying, pertaining to the diesel fuel, off-road diesel  
9 fuel, oilheat fuel, biodiesel or biodiesel blend being  
10 stored, held, sold or offered for sale, and its component  
11 parts, including:

12 (A) Delivery invoices, bills of lading and  
13 shipping manifests.

14 (B) Sales invoices, bills of lading and shipping  
15 manifests.

16 (C) Inventory records.

17 (D) Contracts and agreements between suppliers,  
18 buyers and sellers.

19 (10) The department is authorized to access, during  
20 regular business hours, the premises, including the tanks,  
21 storage facilities, transportation and storage vehicles,  
22 dispensing devices and any other place where diesel fuel,  
23 off-road diesel fuel, oilheat fuel, biodiesel or biodiesel  
24 blend is stored, held, blended, sold or offered for sale, and  
25 the records of any establishment, located in this  
26 Commonwealth, where diesel fuel, off-road diesel fuel,  
27 oilheat fuel, biodiesel or biodiesel blend is stored, held,  
28 processed, distributed, offered or exposed for sale or sold  
29 in this Commonwealth for the purpose of investigation and  
30 enforcement of this act, including auditing records and

1 taking samples of diesel fuel, off-road diesel fuel, oilheat  
2 fuel, biodiesel or biodiesel blend from tanks, storage  
3 facilities, transportation and storage vehicles, dispensing  
4 devices and any other place where diesel fuel, off-road  
5 diesel fuel, oilheat fuel, biodiesel or biodiesel blend is  
6 stored, held, blended, sold or offered for sale. A person  
7 that willfully and intentionally interferes with an employee  
8 of the department in the performance of duties or activities  
9 authorized under this act commits a misdemeanor of the third  
10 degree.

11 (11) The department shall have the authority to issue  
12 stop-sale orders with respect to all biodiesel and biodiesel  
13 blend stored, held, blended, sold or offered for sale to  
14 ultimate consumers in this Commonwealth for use in on-road or  
15 off-road compression ignition engines or for residential,  
16 commercial or industrial heating applications where the  
17 department determines, after sampling and analysis, that the  
18 biodiesel or biodiesel blend does not comply with the  
19 standards established by this act or the regulations  
20 promulgated under this act and would be detrimental to the  
21 operation of on-road or off-road compression ignition engines  
22 or residential, commercial or industrial heating if used for  
23 its intended use. The department shall release the  
24 noncompliant biodiesel or biodiesel blend for sale only when  
25 the department determines the biodiesel or biodiesel blend is  
26 either brought into compliance with this act or regulations  
27 promulgated under this act or it would no longer be  
28 detrimental to the operation of on-road or off-road  
29 compression ignition engines or residential, commercial or  
30 industrial heating systems if used for its intended use. All

1 such biodiesel or biodiesel blend must be properly labeled as  
2 to its noncompliant characteristics if released and permitted  
3 to be sold without being brought into compliance with this  
4 act or regulations promulgated under this act. A person that  
5 knowingly sells or offers for sale biodiesel or biodiesel  
6 blend subject to a stop-sale order in this Commonwealth for  
7 use by ultimate consumers in on-road or off-road compression  
8 ignition engines or for residential, commercial or industrial  
9 heating applications commits a misdemeanor of the third  
10 degree.

11 (f) Penalties.--

12 (1) The department may assess a civil penalty of not  
13 less than \$100 nor more than \$1,000 per day for each knowing  
14 violation of this act or a regulation promulgated under this  
15 act.

16 (2) The department shall provide written notice of the  
17 penalty amount as well as the general factual and legal basis  
18 for the penalty and shall advise the affected person that,  
19 within 15 days of receipt of the notice, the person may file  
20 with the Secretary of Agriculture a written request for an  
21 administrative hearing. Unless a timely request has been  
22 filed, the written notice shall become final. If a written  
23 request for a hearing is timely filed, the hearing on the  
24 penalty assessment shall be held in accordance with the  
25 provisions of 2 Pa.C.S. Chs. 5 Subch. A (relating to practice  
26 and procedure of Commonwealth agencies) and 7 Subch. A  
27 (relating to judicial review of Commonwealth agency action).

28 (3) In cases of inability to collect the civil penalty  
29 or failure of any person to pay all or a portion of the  
30 penalty, the department may refer the matter to the Office of

1 General Counsel or the Office of Attorney General, which  
2 shall institute an action in the appropriate court to recover  
3 the penalty.

4 (4) A person that knowingly violates a provision of this  
5 act or a rule or regulation adopted or order issued under  
6 this act:

7 (i) Unless otherwise specified in this act, for the  
8 first offense, commits a summary offense and shall, upon  
9 conviction, be sentenced to pay a fine of not less than  
10 \$100 nor more than \$500 plus costs of prosecution or to  
11 imprisonment for not more than 90 days, or both.

12 (ii) For a subsequent offense at a registered  
13 location that occurs within two years of sentencing for  
14 the prior violation, commits a misdemeanor of the third  
15 degree and shall, upon conviction, be sentenced to pay a  
16 fine of not less than \$500 nor more than \$1,000 plus  
17 costs of prosecution or to imprisonment of not more than  
18 one year, or both.

19 (5) In addition to any other remedies set forth under  
20 this act, a violation of this act or a regulation promulgated  
21 under this act shall be abatable in the manner provided by  
22 law or equity. In cases where the circumstances require it, a  
23 mandatory preliminary injunction, special injunction or  
24 temporary restraining order may be issued upon the terms  
25 prescribed by the court, provided notice of the application  
26 has been given to the respondent in accordance with the rules  
27 of equity practice. In any proceeding, the court shall issue  
28 a prohibitory or mandatory injunction if it finds that the  
29 respondent is engaging in unlawful conduct as defined under  
30 this act or is engaging in conduct which is causing immediate



1 and irreparable harm to the public. In addition to the  
2 injunction, the court, in the equity proceeding, may assess  
3 civil penalties in accordance with this section.

4 (g) Fees.--The department may impose registration and user  
5 fees to recover costs of enforcement, such as, sampling,  
6 inspection, lab analysis and testing, supplies, equipment and  
7 administration costs and other fixed overhead costs incurred in  
8 the enforcement and administration of this act. Unless otherwise  
9 specified in this chapter, such fees shall be established by the  
10 department through regulations.

11 Section 4. Section 6(a) of the act is amended to read:

12 Section 6. Infrastructure reports.

13 (a) Certification.--At least six months prior to the  
14 effective dates of the mandated content requirements contained  
15 in sections 3(a)(1), (2), (3) [and], (4), (5) and (6) and 4, the  
16 department and the Department of Transportation shall jointly  
17 make a certification as to whether there is sufficient  
18 transportation, distribution and other necessary infrastructure,  
19 including rail capability and terminal facilities, in this  
20 Commonwealth to meet the requirements of this act.

21 \* \* \*

22 Section 5. The act is amended by adding a section to read:

23 Section 8. Biofuel Development Fund.

24 (a) Establishment.--There is hereby established in the State  
25 Treasury a nonlapsing fund to be known as the Biofuel  
26 Development Fund. Fees, fines and penalties, including  
27 administrative, civil and criminal penalties and interest  
28 collected by the department under this act or regulations  
29 promulgated under it shall be paid into the fund.

30 (b) Appropriation.--Money and interest in the fund are

1 hereby appropriated to the department on a continuing basis for  
2 activities necessary to meet the requirements of the act and  
3 regulations promulgated under it.

4 (c) Supplements.--The Biofuel Development Fund may be  
5 supplemented by money received from the following sources:

6 (1) Federal funds appropriated to the department.

7 (2) State funds appropriated to the department.

8 (3) Proceeds from the sale of bonds made available to  
9 the department.

10 (4) Another source, including, gifts and other  
11 contributions from public and private sources.

12 (d) Administration.--The department shall have authority to  
13 adopt procedures for the use of money in the fund including the  
14 establishing of accounts within the fund for the purpose of  
15 administration of the act and regulations promulgated under it.

16 (e) Applicability.--The provisions of 42 Pa.C.S. Ch. 37  
17 Subch. C (relating to judicial computer system) shall not apply  
18 to the Biofuel Development Fund and fines collected as criminal  
19 penalties under the act.

20 (f) Deposit and use of money.--Administrative action shall  
21 not prevent the deposit of money into the fund in the fiscal  
22 year in which it is received. The money shall be used only for  
23 the purposes authorized under this act and shall not be  
24 transferred or diverted to another purpose by administrative  
25 action.

26 Section 6. This act shall take effect in 60 days.