



APPENDIX A:

Documents Provided for Reference Purposes Only Which are Not to be Approved Into the SIP

- A-1 1998 Agreement for Implementation of the Allegheny County Air Pollution Control Program
- A-2 2010 Agreement for Implementation of the Philadelphia County Air Pollution Control Program
- A-3 Air Pollution Control Act of 1959
- A-4 DEP Statewide 2013 Annual Network Review EPA Approval Letter
- A-5 Allegheny County 2013 Annual Network Review EPA Approval Letter
- A-6 Philadelphia County 2013 Annual Network Review EPA Approval Letter

[This page intentionally left blank.]



APPENDIX A-1:

1998 Agreement for Implementation of the Allegheny County Air Pollution Control Program

**Bureau of Air Quality
Department of Environmental Protection**

[This page intentionally left blank.]

**COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION
BUREAU OF AIR QUALITY CONTROL**

**ALLEGHENY COUNTY AIR QUALITY PROGRAM
APPROVAL WITH CONDITIONS**

The Department of Environmental Protection (DEP or Department) hereby approves the Allegheny County Air Quality program under Section 12 of the Air Pollution Control Act (APCA), 35 P.S. §4012, subject to the following conditions:

I. GENERAL CONDITIONS

- a. Allegheny County will implement the Allegheny County Air Pollution Control Program in a manner consistent with the regulations contained in Article XXI of the rules and regulations of the Allegheny County Health Department submitted to and approved by the Department along with any amendments to these rules and regulations approved by the Department.
- b. Allegheny County shall implement regulatory requirements promulgated by the Department applicable to air contamination sources including mobile sources located in Allegheny County. Allegheny County shall also promulgate regulations to implement regulations promulgated by the Department. Allegheny County will describe the process and timing for implementation of these regulations in the Annual Program Plan.
- c. Any provisions to the contrary notwithstanding, Allegheny County shall not implement the Nitrogen Oxides Allowance Requirements program at 25 Pa. Code Sections 123.101 through 123.120. The Department shall retain authority to implement this program for sources located in Allegheny County. The Department shall also retain authority to implement any regulatory programs developed to implement the EPA NO_x State Implementation Plan (SIP) call in Pennsylvania including any program to implement Phase III of the Ozone Transport Commission NO_x Memorandum of Understanding.
- d. The requirements for notification, enforcement and program suspension or rescission are contained in Section 12(c), (d), (e) and (f) of the APCA (35 P.S. §4012(c), (d), (e) and (f)).
- e. The Department shall have access to and the right to examine and copy any pertinent books, documents, letters, reports or records related to the Allegheny County Program.

f. Under 25 Pa. Code §127.706(b), no later than November 15 of each year, Allegheny County shall submit to DEP a description of the implementation of the Allegheny County Air Pollution Control Program for the following calendar year, including the Title V operating permit program, along with a detailed accounting of the costs of implementation.

g. Allegheny County will, during a period of time agreeable to both Allegheny County and the Department, work with the Department to establish a procedure to provide Allegheny County's stationary point source information to the Department's Air Information Management System (AIMS) through the exchange of data. The Department agrees to provide training and the necessary support to Allegheny County as needed.

h. The Department will provide Allegheny County with policy and guidance documents and technical interpretations related to implementation of the Department's air quality program. Allegheny County shall have an opportunity to comment during the development of these documents. Allegheny County shall follow these policy and guidance documents and technical interpretations when implementing regulations promulgated by the Department or, where applicable, to the implementation of appropriate rules and regulations of Allegheny County.

i. Until a Title V Operating Permits Program Implementation Agreement is executed by Allegheny County, the Department and the U.S. Environmental Protection Agency, Allegheny County agrees to implement the requirements of the Title V Operating Permits Program Implementation Agreement executed by the Department and EPA applicable in Allegheny County.

II. FINANCIAL ASSISTANCE

a. Allegheny County shall collect the Title V emission fees applicable to facilities located in Allegheny County under 25 Pa. Code Section 127.705 and shall provide information needed by the Department to evaluate the adequacy of these fees and proper use of the fees.

b. Allegheny County shall deposit all Title V fees collected by the county into a restricted account established by Allegheny County to implement the Title V program. All interest earned on account funds shall be paid to the restricted account. Funds used from this account shall be used exclusively to implement the requirements of the Title V program in Allegheny County.

c. Allegheny County agrees to designate a financial assistance officer who, on its behalf, shall be the primary contact with the Department for financial issues.

d. A list of emission fees collected from Title V facilities shall be maintained Allegheny County.

e. An accounting of how Title V emission fees were expended by Allegheny County shall be provided to the Department on a calendar quarterly basis. This information shall be submitted within 30 days after the end of the quarter.

f. Audit

1. Allegheny County shall use generally accepted accounting procedures for all Title V fees using at a minimum invoices, subcontracts, time reports and employee expense reports and shall keep separate, appropriate books and records that will establish the receipt and expenditure of all Title V fees. Such records shall be retained and made available for audit for a period of three (3) years.

2. Allegheny County shall, on an annual basis, on or before September 1, submit to the Department a financial audit of the Title V restricted account.

III. ANNUAL PROGRAM PLAN

Allegheny County (County) shall submit an annual work plan to the Department for review. The plan shall describe how the County will implement the air pollution control program for the following calendar year and shall be submitted by November 15 of the preceding year. The plan shall provide a workload projection for the following year including but not limited to the number of construction and operating permits to be issued, the number of compliance inspections to be conducted, the number of complaints to be investigated, the number of source tests to be observed, and any other activities that would account for substantial workload for the Allegheny County staff. The plan shall also include major objectives/goals scheduled to be completed during the following year and the expected completion dates.

IV. EMISSIONS REPORTING

Allegheny County shall implement an emissions reporting program as follows:

Emission Inventory

Allegheny County shall maintain a computerized emission inventory for all facilities that are classified as major facilities for Title V, RACT, NSR or PSD and

also for any other categories of facilities identified by DEP. DEP will notify Allegheny County of any changes to the list at least 90 days prior to the next reporting period and allow Allegheny County 60 days for review and comment. Allegheny County shall update the inventory at the frequency specified in DEP's Rules and Regulations. The inventory will have sufficient detail to determine the potential and actual emissions and emission rates from each source for CO, NO_x, SO_x, VOC, PM₁₀ and the Section 112(b) air toxic pollutants. The inventory shall detail actual emissions for each source on a monthly basis unless otherwise agreed upon by DEP and Allegheny County.

Emission Statements

Allegheny County shall require an annual emission statement from facilities that emit VOC or NO_x. Except as otherwise required by Allegheny County's regulations, if the facility category is listed on the exemption list published at 23 Pa. Bulletin 1994-1995, and any amendments to that exemptions list, then only those facilities with an actual emission rate of 25 tons per year or more of VOC or NO_x need to submit a statement. The emission statement must indicate the actual emissions of VOC and NO_x, the method used to calculate the emissions, and a certification by a company officer or plant manager that the information is accurate. Facilities subject to the Emission Statement regulation must also provide an estimate of the average pounds of NO_x and VOC emitted per day during the ozone season (June - August) for each source within the facility. The average pounds per day must not be diluted by non-operational periods during the ozone season. The statement shall be required by March 1 for the preceding calendar year. Allegheny County shall enter the actual emissions from each facility into the computerized emission inventory on an annual basis.

V. EMISSION REPORTING REQUIREMENTS

Allegheny County shall provide the following to DEP on an annual basis in a method mutually agreed upon by both agencies:

1. The names of all facilities which provided emission inventory and/or emission statement information for the preceding calendar year.
2. An opportunity to review the complete emission inventory/emission statement for facilities identified by DEP. DEP will use AIMS to the maximum extent possible for this purpose.

VI. SOURCE MONITORING

Inspections

Allegheny County shall conduct at least one Level II inspection, as defined by EPA, at the Class A and B facilities, as defined by EPA in AIRS, selected for inspection in the annual plan.

Allegheny County will conduct low RVP gasoline, Stage I/II and NESHAP asbestos removal inspections in accordance with the annual plan. Inspection reports should clearly indicate the results of the inspections. Inspectors must be adequately trained in inspection methods including bulk sampling techniques (asbestos, fuel oil, VOC, etc.) and certified to read visible emissions in accordance with EPA Method 9 or other DEP approved methods including procedures provided in the Source Testing Manual established by Allegheny County and approved by the DEP in writing.

Complaint Handling

Allegheny County shall have a system in place to record complaints and ensure that they are responded to appropriately within a reasonable time frame. Inspection reports shall clearly indicate the results of an investigation. Allegheny County shall notify complainants regarding the outcome of their complaints as appropriate.

VII. SOURCE MONITORING REPORTING REQUIREMENTS

Allegheny County shall provide the following to DEP on a quarterly basis, within 30 days after the end of each quarter, using a method mutually agreed upon by both agencies. For purposes of this approval, the first calendar quarter will end on March 31st unless specifically stated otherwise.

1. A list of the Class A and B facilities inspected during the calendar quarter. The list shall include the company name, plant name, plant address and the date of the inspection.
2. The number of low RVP gasoline and Stage I/II inspections conducted during the calendar quarter.
3. The number of NESHAP asbestos removal notifications received and the number of NESHAP asbestos inspections conducted during the calendar quarter.

4. The number of complaints received and investigated during the calendar quarter.

5. An opportunity to audit inspection reports which are to be identified by DEP at least 30 days in advance.

VIII. ENFORCEMENT

When non-compliance with any regulation contained in the PA SIP is documented, Allegheny County shall take reasonable and necessary action to achieve compliance including notifying the operator of the violation and taking enforcement action. DEP recognizes the discretionary nature of enforcement and, to the maximum extent possible, will rely on Allegheny County's judgment in determining what level of enforcement is appropriate. If DEP determines that Allegheny County is unwilling or unable to resolve a violation, DEP may pursue resolution of the violation in accordance with Section 12 of the APCA, 35 P.S. §4012, after providing notice to Allegheny County and an opportunity for discussion between DEP and Allegheny County.

Allegheny County will provide enforcement information to EPA consistent with its grant agreement with EPA for the year. DEP will make its computerized compliance system available to Allegheny County for this purpose.

IX. ENFORCEMENT REPORTING REQUIREMENTS

Allegheny County shall provide the following to DEP quarterly, within 30 days after the end of the quarter, using a method mutually agreed upon by both agencies:

1. A summary of the enforcement actions taken in that calendar quarter.
2. A copy of any enforcement policy or penalty policy revised or created during the preceding calendar quarter.
3. An opportunity to conduct a detailed audit of enforcement actions identified by DEP.

X. AMBIENT AIR MONITORING

Allegheny County shall conduct an ambient air monitoring program which meets the requirements of 40 CFR Part 58 (Ambient Air Quality Surveillance).

Allegheny County will develop a mechanism to provide the Department with real-time access to Allegheny County air monitoring database as required by DEP for access to air monitoring data and standard reports. This capability will be jointly managed by Allegheny County and the DEP COPAMS staff.

XI. AMBIENT AIR MONITORING REPORTING REQUIREMENTS

Allegheny County shall provide the following to DEP using a method mutually agreed upon by both agencies:

1. A quarterly report verifying the ambient air monitoring data submission to the EPA AIRS/AQS database within 90 days after the end of the quarter. This report shall include a summary of the reporting sites and devices, the percent data capture for each device, and the associated quality assurance statistical reports (precision checks and audits) for data not directly submitted to AIRS.
2. An opportunity for DEP to comment on the annual SLAMS network review (40 CFR 58.20d). Comments will be included in the annual review report submitted to EPA along with any air monitoring network modifications required and agreed upon by Allegheny County and DEP in writing.

XII. STACK TESTING REQUIREMENTS

Each stack test required by Allegheny County shall meet the applicable requirements specified in 25 Pa. Code Chapter 139 and DEP's Source Testing Manual and procedures provided in the Source Testing Manual established by Allegheny County that have been approved by the DEP.

XIII. STACK TESTING REPORTING REQUIREMENTS

Allegheny County shall provide the following to the DEP quarterly, within 30 days after the end of each quarter, using a method mutually agreed upon by both agencies:

1. A copy of the quarterly report submitted to the EPA indicating the stack tests performed during the quarter, or some other equivalent report.
2. An opportunity to review stack test information for tests identified by DEP which can include the test report summary, Allegheny County's decision regarding the acceptability of the test results, and Allegheny County's observation report.

XIV. CONTINUOUS EMISSION MONITORING

Allegheny County shall, at a minimum, implement a continuous emission monitoring program in accordance with *25 Pa. Code Chapter 139* unless modifications of the requirements are approved by DEP in writing.

XV. CONTINUOUS EMISSION MONITORING REPORTING REQUIREMENTS

Allegheny County shall provide a list of all monitors approved in the County. Allegheny County shall provide the following to DEP quarterly, within 30 days after the end of the quarter, by a method mutually agreed upon by both agencies:

1. A list of continuous emission monitors approved during the calendar quarter.
2. A list of continuous emission monitors pending approval.
3. An opportunity to audit the complete approval for continuous emission monitors identified by DEP.

XVI. AIR QUALITY PERMITTING

- a. Allegheny County shall continue to implement an air contamination source permitting program, as approved by DEP, that is at least as stringent as the requirements of *25 Pa. Code Chapter 127*. Allegheny County's permitting program shall conform to or be more stringent than that of DEP, and be implemented in accordance with DEP policies and procedures, unless modifications are approved by DEP in writing. Allegheny County's permitting program may be more stringent than the Department's permitting program.

b. Allegheny County's permitting program shall include, at a minimum, the following program elements necessary to conduct reviews and approve/deny plans to construct, modify and operate air contamination sources:

1. Title V permits;
 2. Synthetic Minor source permits;
 3. NSPS source permits in conformance with EPA specifications;
 4. PSD source permits in conformance with EPA specifications;
 5. NSR review and permitting;
 6. Operating permits to facilities that do not otherwise meet federal permitting thresholds, and do not qualify for the exemptions published at 23 Pa. *Bulletin* 1994-1995 and any amendments to that exemptions list.
 7. MACT operating permits;
 8. Section 111(d) of the Clean Air Act operating permits;
 9. RACT operating permits;
 10. BACT permitting requirements in accordance with DEP policies and procedures or any more stringent Allegheny County policies and procedures for new and newly modified sources that are not otherwise required to meet BACT or LAER as defined by EPA; and
 11. Permits for construction of new sources and modification of existing sources that do not qualify for the exemptions published at 23 Pa. *Bulletin* 1994-1995 and any amendments to that exemptions list.
- c. Allegheny County shall participate in DEP's regularly scheduled Title V and Engineering Services staff meetings.
- d. Allegheny County may use application forms of their own design, adapt or utilize the Department's forms.
- e. The review of major sources new source review for non-attainment pollutants, shall be conducted in accordance with 25 Pa. *Code* Chapter 127, Subchapter E requirements. Allegheny County shall verify that emission reduction credits (ERCs) from sources in Allegheny County are permanent, enforceable, quantifiable and surplus. Onsite inspections shall be conducted to verify

shutdowns. If equipment has not been dismantled or removed, Allegheny County shall annually receive certification of the continuance of the shutdown. Documentation sufficient for the registry and transfer of ERCs shall be provided to the Department's Bureau of Air Quality Control, Division of Permits for entry in the ERC registry system.

f. Title V operating permits shall be issued by Allegheny County in accordance with the Implementation Agreement between the DEP, Allegheny County and EPA, Region III. Title V operating permits shall follow the format DEP has developed in consultation with EPA unless modifications are approved by DEP and EPA. These permits need not be produced through DEP's Air Information Management System, but Allegheny County will consider its eventual use.

XVII. AIR QUALITY PERMITTING REPORTING REQUIREMENTS

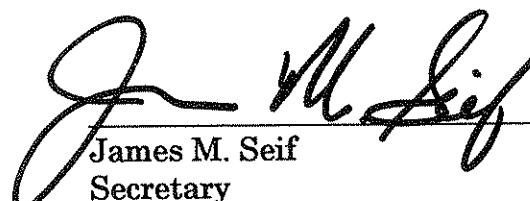
a. Allegheny County shall provide the following to DEP by a method mutually agreed upon by both agencies:

1. Copies of all draft Title V permits sent to the EPA.
2. Copies of all final Title V permits.
3. Copies of other permits and plan approvals requested by DEP.

b. DEP shall have the right to comment on or object in writing to the issuance of all construction and operating permits proposed by Allegheny County. The County shall respond to all comments. Allegheny County shall not issue a permit if DEP objects to its issuance in writing. Allegheny County shall not issue the permit until DEP withdraws its objection when satisfied that Allegheny County has resolved the basis for the objection.

October 30, 1998

Date



James M. Seif
Secretary
Department of Environmental Protection



APPENDIX A-2:

2010 Agreement for Implementation of the Philadelphia County Air Pollution Control Program

**Bureau of Air Quality
Department of Environmental Protection**

[This page intentionally left blank.]

**AGREEMENT FOR IMPLEMENTATION OF
THE PHILADELPHIA COUNTY
AIR POLLUTION CONTROL PROGRAM**

THIS AGREEMENT is made this _____ day of _____ 2010, by and between the Commonwealth of Pennsylvania, Department of Environmental Protection (hereinafter called DEP or the Department) and the City of Philadelphia Department of Public Health (hereinafter called Philadelphia County).

WHEREAS, DEP is authorized under Section 4(1) of the Act of January 8, 1960 (P.L.(1959) 2119), as amended, known as the Air Pollution Control Act (hereinafter called the APC) (35 P.S. §4004(1)) to implement the provisions of the Clean Air Act (42 U.S.C. §7401- 7671) in the Commonwealth; and,

WHEREAS, DEP is authorized under Section 4(18) of the APC (35 P.S. §4004(18)) to prepare and develop a general comprehensive plan for the control and abatement of existing air pollution and air contamination and for the abatement, control and prevention of any new air pollution and air contamination, recognizing varying requirements for the different areas of the Commonwealth and to submit a comprehensive plan to the Environmental Quality Board (EQB) for its consideration and approval; and,

WHEREAS, the EQB promulgated regulations at 25 Pa. Code Article III Air Resources to implement the provisions of the Clean Air Act and to control and abate air pollution and air contamination; and,

WHEREAS, under Section 12(b) of the APC (35 P.S. §4012(b)), the administrative procedures for the abatement, reduction, prevention and control of air pollution set forth in the APC shall not apply to any county of the first class of the Commonwealth which has and implements an air pollution control program that, at a minimum, meets the requirements of the APC, the Clean Air Act and the rules and regulations promulgated under the APC and the Clean Air Act; and,

WHEREAS 25 Pa. Code §127.706 establishes a financial assistance program for Philadelphia County and requires submission of the Philadelphia County program to the DEP for review and approval; and,

WHEREAS, Philadelphia County has developed and implemented an air quality program to meet the requirements of the Clean Air Act and the Air Pollution Control Act and has previously received delegation from the Environmental Protection Agency (hereinafter EPA) for implementation of National Emission Standards for Hazardous Air Pollutants, New Source Performance Standards, Prevention of Significant Deterioration and New Source Review Programs, and has operated as a Pennsylvania approved program.

NOW THEREFORE, the parties hereto intending to be legally bound hereby agree as follows:

I. GENERAL CONDITIONS

- a. The Department hereby approves the Philadelphia County Air Pollution Control Program (Philadelphia County Program) under Section 12(b) of the APCA (35 P.S. §4012(b)).
- b. Philadelphia County will implement the Philadelphia County Air Pollution Control Program in a manner consistent with the Program Description and Implementation Plan attached hereto and incorporated herein as Attachments A and B respectively along with any amendments agreed to by the parties. Changes to the Program Description and Implementation Plan may be made by the parties without the need to amend this Agreement.
- c. Philadelphia County shall implement regulatory requirements, promulgated by the Department applicable to Philadelphia County. Philadelphia County shall also promulgate regulations to implement regulations promulgated by the Department. Philadelphia County will describe the process and timing for implementation of these regulations in the Annual Workload Projection prepared as required in the Implementation Plan.
- d. Any provision to the contrary notwithstanding, Philadelphia County shall assist in implementing emission trading programs adopted in 25 Pa. Code Chapter 145 (relating to interstate pollution transport reduction). The Department will retain responsibility for allocating allowances under Chapter 145. Philadelphia County and the Department shall discuss implementation of EPA adopted trading programs, as necessary.
- e. The requirements for notification, enforcement and program suspension or rescission are contained in Section 12(c), (d), (e) and (f) of the APCA (35 P.S. §4012(c), (d), (e) and (f)).
- f. The Department shall have access to and the right to examine and copy any pertinent books, documents, letters, reports or records related to the Philadelphia County Program.
- g. Under 25 Pa. Code §127 .706(b), no later than April 30 of each year, Philadelphia County shall submit to DEP a description of the implementation of the local air pollution control program during the current year as described in the Implementation Plan, including the Title V operating permit program in the county along with a detailed accounting of the costs of implementation.
- h. Philadelphia County will submit to DEP the information required by the Implementation Plan attached hereto and incorporated herein as Attachment B.

i. Philadelphia County will, during a period of time agreeable to both Philadelphia County and the Department, work with the Department to establish a procedure to provide Philadelphia County's stationary point source information to the Department's Air Information Management System through the exchange of data. The Department agrees to provide training and the necessary support to Philadelphia County as needed.

j. Until a Title V Operating Permits Program Implementation Agreement is executed by Philadelphia County, the Department and the U.S. Environmental Protection Agency, Philadelphia County agrees to implement the requirements of the Title V Operating Permits Program Implementation Agreement executed by the Department and EPA applicable in the Philadelphia County area to the extent that Philadelphia County is authorized to implement that agreement.

k. Philadelphia County will register and participate in DEP training regarding regulations, guidance, inspection procedures or other matters relevant to the Title V operating permit program.

II. FINANCIAL ASSISTANCE

a. The Department may provide payment of a portion of the Title V emission fees collected by the Department as necessary, appropriate and available to assist Philadelphia County in implementation of the Title V operating permit program in the county.

b. The Department may withhold this financial assistance if Philadelphia County has not implemented the Title V program in the manner substantially required by this agreement.

c. Philadelphia County will use this financial assistance only to cover the reasonable direct and indirect costs of administering the operating permit program required by Title V of the Clean Air Act.

d. Philadelphia County shall deposit all Title V fees collected by the county and all financial assistance provided by the Department into a restricted account established by Philadelphia County to implement the Title V program. All interest earned on account funds shall be paid to the restricted account in a manner consistent with procedures established by the City of Philadelphia Grants Accounting Unit and attached hereto and incorporated herein as Attachment D.

e. Philadelphia County agrees to designate a financial assistance officer who, on its behalf, shall be the primary contact with the Department for issues related to financial assistance during the duration of this Agreement.

f. Payment provisions.

1. An Application for Available Funds (hereinafter Application) shall be in writing on a form approved by the Department. The Application shall be received by

the deadline established by the Department. The Application shall include a budget outlining anticipated expenses.

2. The approved Application for the first agreement year is attached to and made a part of this agreement as Attachment C. Applications and budgets for subsequent contract years shall be submitted by Philadelphia County for review and approval by the Department on or before March 31st without the need to amend this agreement.

3. Claims for payment must be submitted to the Department within thirty (30) days of the end of each quarter except for the final quarter. Such claim will be submitted no later than 100 days after the end of each agreement year. The days for claims submittal are October 30, January 30, April 30, and October 8. Payment for approved expenditures shall be made by the Department as soon as reasonably possible. The first claim for payment for the first agreement year will be for July 2010 through December 2010 and will be submitted upon execution of this agreement.

4. The Department may suspend claim processing until receipt of required reports or the substantial completion of all conditions of this agreement.

5. Philadelphia County shall have discretionary authority to spend the funds made available by this Agreement for the work performed, with allowance for deviation of the amounts allocated to the budget categories so long as the total budget amount is not exceeded. However, DEP shall be informed prior to any such deviation and shall have the right to approve/disapprove any reallocation greater than 10% of the total annual amount in any year.

6. Except as otherwise provided in Section II, the Department shall provide financial assistance to Philadelphia County in the quarterly amounts approved by the Department in the budget of each annual Application.

7. Upon request by the County, the Department may increase the financial assistance for each agreement year. To be valid, any request to increase the funding for a agreement year must be in writing and approved by the DEP Deputy Secretary of Air, Recycling, and Radiation Protection, DEP Agency Attorney, and the DEP Comptroller. Without the duly authorized funding increase, the DEP obligation to Philadelphia County shall not exceed the authorized funding previously approved according to the approved application for each annual agreement period.

g. Audit.

1. Philadelphia County agrees to account for all Title V fees and financial assistance funds using invoices, subcontracts, time reports and employee expense reports and to keep separate, appropriate books and records that will establish the receipt and expenditure of all Title V fees and Financial Assistance. Such records shall be retained

and made available for audit for a period of three (3) years after final payment is made and all pending matters are resolved.

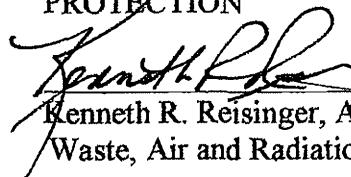
2. Philadelphia County shall on an annual basis submit to the Department a financial audit, in accordance with the "Single Audit" report issued by the Finance Department and performed by the County's Controller's office.

3. The audit shall be submitted each year on the "Single Audit" submission date as required by federal regulations.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.

ATTEST/WITNESS:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL
PROTECTION



Kenneth R. Reisinger, Acting Deputy Secretary for
Waste, Air and Radiation Management

APPROVED AS TO FORM
SHELLEY R. SMITH
CITY SOLICITOR

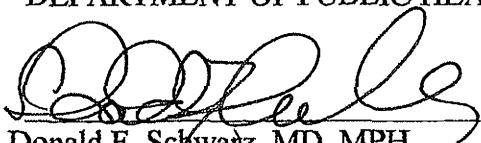


Patrick K. O'Neill

Divisional Deputy City Solicitor

Date: 10/1/2010

CITY AND COUNTY OF
PHILADELPHIA
DEPARTMENT OF PUBLIC HEALTH



Donald F. Schwarz, MD, MPH
Deputy Mayor, Health & Opportunity
Health Commissioner

Date: 9/30/10

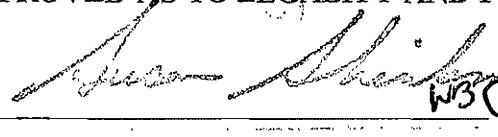
Federal Tax Identification

Number: 23-6405285

Vendor #: 679908 - 003

Project dates: July 1, 2010 – June 30, 2011

APPROVED AS TO LEGALITY AND FORM:

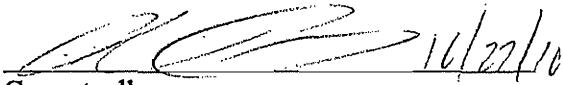


Chief/Assistant Counsel
WBC
Department of Environmental Protection



Office of Attorney General

I hereby approve this agreement and certify that funds in the amount of
\$700,000 are available under Appropriation
6600400-3522709000-3527027654-2007710000



Comptroller

10/27/10

ME #: 410054397

**PHILADELPHIA DEPARTMENT OF PUBLIC HEALTH
PUBLIC HEALTH SERVICES DIVISION
AIR MANAGEMENT SERVICES**

ATTACHMENT A

PROGRAM DESCRIPTION

I.	Program Authority and Responsibility	1
II.	Public Services	1
III.	Program Organization	2
IV.	Program Support Services	2
	A. Administrative Services	2
	B. Program Services	2
V.	Program Operations	3
	A. Regulatory Services	3
	B. Technical Services	5
VI.	Program Resources	7
	A. Program Service Locations	7
	B. Program Budget and Staffing.....	7

I. Program Authority and Responsibility

The Air Management Services (AMS) component of the Philadelphia Department of Public Health is the local air pollution control agency for the City and County of Philadelphia. AMS programs are conducted under authority provided by the Philadelphia Home Rule Charter, Philadelphia Code, the Pennsylvania Air Pollution Control Act, and the federal Clean Air Act. AMS is responsible for the prevention, abatement and control of air pollution and air pollution nuisances, as required to achieve and maintain federal national ambient air quality standards (NAAQS) within Philadelphia. AMS is also responsible for the control of airborne asbestos from building renovation and demolition projects, and for the abatement of community noise and vibration nuisances.

II. Public Services

AMS services to the public include review and evaluation of plans for proposed new and modified sources of air contaminant emissions; issuance of facility operating permits for approved sources; conducting facility compliance inspections, including source testing and the taking of samples; responding to community complaints of air pollution and odors; citing violations where observed; and initiating timely and appropriate enforcement actions to resolve violations. AMS also operates a citywide air monitoring network that continuously samples Philadelphia's air quality for compliance with federal standards, and provides daily information on air quality to the public through the media. AMS enforces community noise and vibration standards by responding to citizen complaints; conducting noise and vibration measurements; citing observed violations of noise and vibration standards; working with affected parties to

resolve noise and vibration problems; and initiating appropriate enforcement action as required. AMS activities to control the public's exposure to asbestos include review of applications and notifications for proposed asbestos abatement projects; issuance of permits for approved projects; conducting inspections at project work sites; responding to public inquiries and complaints regarding asbestos; citing violations of applicable standards and work practices; and taking appropriate enforcement actions. AMS also reviews license and certification applications for asbestos contractors, asbestos project inspectors, asbestos investigators, and analytical laboratories, and conducts audits at project work sites to monitor compliance with the state's asbestos worker certification requirements.

III. Program Organization

Organizationally, AMS is comprised of two central support groups, Administrative Services and Program Services, and two operating groups, Regulatory Services and Technical Services, each reporting to the AMS Program Director. The composition and function of each organizational group is described below.

IV. Program Support Services

A. Administrative Services

The Administrative Services group is responsible for providing centralized administrative and organizational support related to the development, allocation and management of agency funding, personnel, and other program resources. Administrative Services provides oversight and coordination of certain decentralized administrative support functions associated with agency operating units. Areas of responsibility include implementation of administrative policies and procedures; budget and revenues management; contracts and grants management; facilities and fleet management; personnel management; organizational development and workforce planning; training coordination; and program activity and service level tracking and reporting. Administrative Services also provides administrative and executive support to the operation of the city's Air Pollution Control Board.

B. Program Services

The Program Services group is responsible for providing centralized support related to the development and implementation of the AMS program, to ensure that its functions and operations are maintained consistent with, and responsive to, needs and demands imposed by federal and state requirements, regional initiatives, and local government and community concerns. A significant part of Program Services' support role involves the establishment of appropriate operations management and information systems necessary to the effective functioning of the AMS program. Areas of responsibility include agency strategic planning; inter- and intra-agency program coordination and integration; preparation and processing of revisions to the Philadelphia-portion of the Pennsylvania State Implementation Plan (SIP) for Air Quality; management of emission inventory and facility compliance databases; mobile source emissions and related transportation project

assessments; air quality simulation modeling; and development and preparation of annual air quality reports and other agency public outreach materials. The Program Services group is also responsible for maintaining and upgrading the hardware and software components of the AMS local area network (LAN) computer system; identifying and prioritizing agency information system needs and related database program development; and for assuring adequate end-user training and support in the use of hardware and software. Program Services serves as a technical and informational resource to the city's Air Pollution Control Board.

V. Program Operations

A. Regulatory Services

The AMS Regulatory Services group is responsible for implementation and enforcement of all applicable local, state and federal regulatory requirements pertaining to the prevention and control of air pollution, asbestos contamination, and noise and vibration nuisances within the City of Philadelphia. The Regulatory Services group is comprised of three sections: Source Registration (Permitting), Facility Compliance and Enforcement, and Asbestos Control.

1. Source Registration

Source Registration is responsible for the review and approval/disapproval of applications for installation, modification and operation of sources of air contaminant emissions within the City of Philadelphia. Source Registration activities include review of applications pertaining to: installation permits and operating licenses, as required under the Philadelphia Code; plan approvals and operating permits, as required under *25 Pa. Code* Chapter 127; and Title V, Prevention of Significant Deterioration (PSD), New Source Review (NSR), New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) permits, as required under the federal Clean Air Act. State and federal permit requirements are administered and enforced locally pursuant to state and federal delegations of authority made to the City of Philadelphia. Source Registration is also responsible for issuance of source or facility permit and license approval documents, as well as for conducting appropriate public notification and public involvement activities as may pertain to applications under review, including the holding of public and administrative hearings, and the preparation of responses to comments received from the public. To minimize redundancy and paperwork burdens, Source Registration attempts, wherever possible, to consolidate local permit requirements with any state/federal permit requirements that may apply to a source or facility within Philadelphia. Source Registration is also responsible for activities related to the stack testing of emission units and Continuous Emission Monitoring Systems (CEMS). Stack testing activities include reviewing and approving test protocols, observing stack tests, and reviewing stack test reports. CEMS activities include reviewing and approving Phase I applications for the installation of new CEMS, observing parts of the Phase II performance testing for new CEMS, and reviewing Phase III CEMS performance test reports. Stack tests and CEMS must comply with *25 Pa. Code* Chapter 139, the Pennsylvania Source Test Manual, and the Pennsylvania Continuous Monitoring Manual as well as any applicable EPA reference methods and performance specifications.

2. Facility Compliance and Enforcement

Facility Compliance and Enforcement is responsible for implementation of local, state and federal regulatory requirements applicable to sources and facilities within Philadelphia; conducting compliance assurance inspections at permitted facilities; maintaining citywide surveillance and responding to citizen complaints regarding air pollution, noise and vibration nuisances; and for pursuing appropriate enforcement actions to resolve violations, including entering into compliance agreements, filing for court-ordered consent decrees, and seeking injunctive actions in cases posing imminent endangerment to public health.

The Compliance Assurance unit, through its engineering staff, is responsible for monitoring source and facility compliance with regulatory and operating permit requirements; preparing documentation for issuance of formal notices of violation (NOV) for verified non-compliance; identifying “significant violators” for resolution in accordance with U.S. EPA's Compliance Monitoring Strategy (CMS) and guidance; performing data collection and validation activities for maintenance of the air emissions inventory for Philadelphia; and providing appropriate information for uploading to the U.S. EPA's Air Information Retrieval (AIRS) facility compliance data system. Compliance evaluation techniques utilized include conducting facility inspections, reviewing and auditing facility compliance certifications, testing of emissions and process materials, and engineering estimates and material balances. Compliance Assurance field inspectors, working in cooperation with the engineering staff, assist in performing compliance inspections for minor sources, in addition to their duties related to providing citywide emissions surveillance and complaint response. A field inspector is available on a 24-hour basis, on workdays, weekends and holidays, either on active duty, standby, or emergency response mode. In addition to investigating complaints related to air pollution, noise and vibration, field inspectors also respond to incidents involving possible leaking combustible gases and carbon monoxide from residential heating units, as well as providing appropriate assistance to first responders and incident commanders in events involving toxic or hazardous materials releases or spills.

The Enforcement unit is responsible for coordinating all enforcement activities of the AMS program. Cases that are determined appropriate for enforcement action are referred from the compliance evaluation and inspectional units for further action. Activities of the unit include: NOV preparation and issuance; case development and coordination with the city's Law Department; assessment of administrative penalties; negotiation of compliance agreements; enforcement coordination with the U.S. EPA, the Pennsylvania Department of Environmental Protection (DEP), and the city's Environmental Task Force; prosecution of summary violations; and the development of enforcement protocols and procedures.

3. Asbestos Control

The Asbestos Control unit is responsible for implementation and enforcement of local, state and federal requirements applicable to the control of emissions of asbestos and the regulation of the asbestos abatement industry. The unit, pursuant to local delegation of authority from the U.S. EPA, enforces the federal NESHAP for Asbestos at renovation and demolition

sites; and also provides, via interagency agreement, local compliance oversight for the PA Department of Labor & Industry's certification requirements for asbestos workers and supervisors. The Asbestos Control unit also administers and enforces the provisions of the Philadelphia Health Code pertaining to asbestos abatement project workplace standards; licensing of asbestos abatement contractors; certification of asbestos analytical laboratories, project inspectors, and investigators; and review and issuance of permits for major asbestos projects. The unit also develops and provides public distribution of information pertaining to asbestos control program activities and requirements, as well as asbestos-related health and safety advisory information for residents, school students, and building maintenance workers.

B. Technical Services

The AMS Technical Services group, based at the AMS Laboratory, is responsible for operation of the citywide air quality monitoring network; acquisition, quality assurance, and reporting of air quality data; and providing analytical laboratory and analytical methods development support to air quality monitoring activities, special air sampling studies, and to Regulatory Services' compliance assurance sampling and analysis programs. The Technical Services group is comprised of three sections: Air Monitoring, Computer Center, and Analytical Chemistry.

1. Air Monitoring

The Air Monitoring section is responsible for operation and maintenance of the 11 air sampling sites (a twelfth site is being planned and will be added) comprising the citywide air monitoring network including one Ncore-National Core multipollutant monitoring station measuring particles, Ozone, Sulfur Dioxide, Carbon Monoxide, Nitrogen Oxides, Lead and basic meteorology principally support research in air pollution control. The network is designed and equipped with instrumentation to provide measurements of ambient concentrations for seven federally-designated "criteria" air pollutants - air pollutants for which the U.S. EPA has established NAAQS - consisting of Ozone, Sulfur Dioxide, Nitrogen Dioxide, Carbon Monoxide, Lead, PM10 (respirable particulate matter less than 10 microns), and PM2.5 (fine particulate matter/aerosols less than 2.5 microns). The monitoring instruments employed conform with federal reference methods established nationally, and ambient measurements collected are used to determine the city's air quality status with regard to each of the federal NAAQS pollutants. Data from continuous air sampling instruments operated at 5 of the sites are digitally transmitted over telephone lines to the AMS Laboratory, providing real-time access to air quality measurements for the four gaseous pollutants and a surrogate pollutant for particulate matter. The real-time data are employed to provide daily air quality reports to the public using the federal Air Quality Index or AQI. An intensive Photochemical Assessment Monitoring System, or PAMS project, has been instituted as part of a national initiative to measure ozone and ozone precursors during the "ozone season." In Philadelphia, the PAMS project is conducted during the months of June, July, and August at one site, and includes speciation of over 56 distinct organic compounds through analysis by gas chromatography. Air Monitoring is also involved in providing support to special monitoring projects initiated both within AMS, for local air quality impact assessments, and externally by the U.S. EPA and other

organizations, for purposes of monitoring methods development or data gathering for health effects studies or environmental characterizations. AMS also participates in the EPA performance Evaluation Audit (Audit through-the-probe, or TTP) program run by EPA Office of Air Quality Planning and Standards (OAQPS). OAQPS runs the PM2.5 performance evaluation program for AMS. Air Monitoring also maintains and calibrates portable sampling equipment used by inspectional staff within AMS' Regulatory Services and also that used by the Philadelphia Fire Department in responding emergency situations.

2. Computer Center

The Computer Center is responsible for providing data processing services for Technical Services' air monitoring and laboratory operations. These services include management of ESC E-Data Acquisition System, SQL-Server, Oracle Server, File server, and twenty four workstations with PCs... Computer Center personnel are responsible for hardware systems design and construction, program development and implementation, systems maintenance, database management and reporting, and user support through information distribution and training. The majority of the activities of the Computer Center are devoted to supporting the air quality monitoring and data reporting systems required by federal regulations. A gas chromatograph, three liquid chromatographs, and an atomic absorption spectrophotometer are being interfaced with one of the scientific computer systems in order to increase productivity and to ease data analysis and reporting workloads. The Computer Center also provides personal computer (PC) workstations for AMS Laboratory staff for use in word-processing, spreadsheet, and data base applications. These PC systems are used for report writing, fiscal work, and general administrative functions performed at the AMS Laboratory.

3. Analytical Chemistry

The Analytical Chemistry section is responsible for providing a wide range of laboratory services, involving support to air monitoring activities and performance of non-routine chemical analysis projects.

The Calibration unit is responsible for performing required precision and accuracy checks on the air monitoring instruments deployed throughout the citywide network, including maintenance and flow checks on system auto-calibration equipment and performance of annual instrument audits using U.S. EPA-designated audit equipment. The Calibration unit also performs quarterly audits on particulate monitors. Responsibilities extend to general troubleshooting and maintenance of air monitoring equipment.

The General Chemistry unit is responsible for weighing and analysis of filter samples obtained from the particulate monitoring instruments within the citywide network, and for maintaining all required measurement records. In addition to performing gravimetric analysis of filters from PM10 and PM2.5 samplers, filters from high volume air samplers (HVAS), collecting total suspended particulates (TSP), are analyzed for lead plus seven other trace metals (chromium, cadmium, iron, manganese, nickel, zinc, copper). The unit also performs qualitative and quantitative analyses on soils, as well as on samples obtained from special purpose monitors (SPM) deployed for study purposes. The General Chemistry unit maintains

capability for monitoring gross beta-radioactivity on TSP filters, performs measurements of conductivity and pH on precipitation samples collected during significant rainfall events, and conducts analyses of sulfur content in fuel oil samples taken to monitor compliance with the city's sulfur-in-fuel regulations. The unit is also responsible for performing general microscopy work related to identification and analysis of asbestos in bulk material samples collected by inspectors in the Asbestos Control unit; identification of particulate samples taken from areas impacted by soot falls, or other excessive particle deposition incidents, for purposes of determining possible responsible sources; and for providing pollen counts during the ragweed pollen season.

The Air Toxics unit is responsible for collection (via sorbent tubes/canisters), preparation, and identification and analysis, by GC/MS, of air samples for a wide range of trace organic pollutants. Air sampling for formaldehyde (plus six other compounds) is conducted using a separate monitoring method and analysis is performed by high pressure liquid chromatography (HPLC). Air filters from 5 sites are sent to West Virginia for analysis of seven metals (Arsenic, Beryllium, Cadmium, Chromium, Lead, Manganese, and Nickel). The Air Toxics unit has also been involved in providing sample collection and analytical support to community exposure assessments and other special studies related to measuring ambient concentrations of certain toxic organic compounds in the vicinity of industrial or commercial sources.

VI. Program Resources

A. Program Service Locations

AMS Central Office:
321 University Avenue, 2nd Floor
Philadelphia, PA 19104
Telephone (215) 685-7584
Fax (215) 685-9451 or 685-7593

AMS Laboratory:
1501 E. Lycoming Street
Philadelphia, PA 19124
Telephone (215) 685-1477
Fax (215) 685-1476

B. Program Budget and Staffing

1. Program Funding: (FY2010, \$Millions)

General Fund	EPA Grants	PA Grant	Title V Fees	Biowatch	Total
2.675	2.675	0.7	0.41	0.441	6.90

2. Program Budget: (FY2010, \$Millions)

Class 100 - Personal Services	5.446
Class 200 - Purchase of Services	0.772
Class 300 - Materials and Supplies	0.196
Class 400 - Equipment	0.245
Class 800 - Payments to Others	0.241

Total					6.900
-------	--	--	--	--	-------

3. Program Personnel:

General Fund	EPA Grants	PA Grant	Title V Fees	Biowatch	Total
39	23	6	5	2	75

ATTACHMENT B

IMPLEMENTATION PLAN

IMPLEMENTATION PLAN ATTACHMENT B

ANNUAL WORKLOAD PROJECTION

Philadelphia County shall submit an annual plan to the Department for review. The plan shall describe how the County will implement their air pollution program for the following year and shall be submitted by April 30 of the preceding year. For purposes of this agreement, the annual plan will be consistent with the Commonwealth of Pennsylvania's fiscal year which begins on July 1st and ends on June 30th unless this agreement specifically states that the calendar year shall be used. The plan shall provide a workload projection for the following year including but not limited to the number of plan approvals and operating permits to be issued, the number of compliance inspections to be conducted, the number of complaints to be investigated, the number of source tests to be observed, and any other activities that would account for substantial workload for the Philadelphia County staff. The plan shall also include major objectives/goals scheduled to be completed during the following year and the expected completion dates. The plan shall be in a format mutually agreed upon by Philadelphia County and PADEP.

EMISSIONS REPORTING

Philadelphia County shall implement an emissions reporting program as follows:

Emission Inventory

Philadelphia County shall maintain a computerized emission inventory for all facilities that are classified as major facilities for Title V, Reasonably Available Control Technology (RACT), NSR, PSD or any other categories of facilities identified by DEP. A current list of categories for the Southeast Region is attached as Appendix 1. DEP will notify Philadelphia County of any changes to the list at least 90 days prior to the next reporting period and allow Philadelphia County 60 days for review and comment. Philadelphia County shall update the inventory at the frequency specified in DEP's Rules and Regulations. The inventory will have sufficient detail to determine the potential and actual emission rates from each source for CO, NO_x, SO_x, VOC, PM₁₀, PM_{2.5} and the Section 112(b) air toxic pollutants. The inventory shall detail actual throughput rates for each source on a monthly basis unless otherwise agreed upon by DEP and Philadelphia County.

Emission Statements

Philadelphia County shall require an annual emission statement from facilities which emit VOC or NO_x. If the facility category is listed on the exemption list published at 23 Pa. Bulletin 1994-1995, then only those facilities with an actual emission rate of 25 tons per year or more of VOC or NO_x need to submit a statement. The emission statement must indicate the actual emission rates of VOC and NO_x, the method used to calculate the emissions, and a certification by a company officer or plant manager that the information is accurate. The

average pounds per day must not be diluted by non-operational periods during the ozone season. The statement shall be required by March 1 for the preceding calendar year. Philadelphia County shall enter the actual emissions from each facility into the computerized emission inventory on an annual basis.

EMISSION REPORTING REQUIREMENTS

Philadelphia County shall provide the following to DEP on an annual basis using a method mutually agreed upon by both agencies:

1. The names of all facilities which provided emission inventory and/or emission statement information for the preceding calendar year.
2. An opportunity to review the complete emission inventory/emission statement for facilities identified by DEP. DEP will use AIRS to the maximum extent possible for this purpose. However, AMS is encouraged to use the DEP's Air Information Management System (AIMS) to meet this requirement.

SOURCE MONITORING

Inspections

Philadelphia County shall conduct at least one Full Compliance Evaluation (FCE) inspection at the Class A facilities and at least one general inspection at the Class B facilities selected for inspection in the annual plan. Philadelphia County will conduct Stage I/II and NESHAP asbestos removal inspections in accordance with the annual plan. Inspection reports should clearly indicate the results of the inspections. Inspectors must be adequately trained in inspection methods including bulk sampling techniques (asbestos, fuel oil, VOC, etc.) and certified to read visible emissions in accordance with EPA Method 9 or other PADEP approved methods.

Complaint Handling

Philadelphia County shall have a system in place to record complaints and ensure that they are responded to appropriately within a reasonable time frame. Inspection reports should clearly indicate the results of an investigation. Philadelphia County shall notify complainants regarding the outcome of their complaints as appropriate.

SOURCE MONITORING REPORTING REQUIREMENTS

Philadelphia County shall provide the following to DEP calendar quarterly, within 30 days after the end of each calendar quarter, using a method mutually agreed upon by both agencies. For purposes of this agreement, the first calendar quarter will end on September 30th unless specifically stated otherwise.

1. A list of the A and B facilities inspected during the calendar quarter. The

list shall include the company name, plant name, plant address and the date of the inspection.

2. The number of Stage I/II inspections conducted during the calendar quarter.
3. The number of NESHAP asbestos removal notifications received and the number of NESHAP asbestos inspections conducted during the calendar quarter.
4. The number of complaints received and investigated during the calendar quarter.
5. An opportunity to audit inspection reports identified by DEP.

ENFORCEMENT

When non-compliance with any regulation contained in the Pennsylvania SIP is documented, Philadelphia County shall take reasonable and necessary action to achieve compliance including the issuance of notices of violation and enforcement action. DEP recognizes the discretionary nature of enforcement and will rely on Philadelphia County's judgment in determining what level of enforcement is appropriate to the maximum extent possible. If DEP determines that Philadelphia County is unwilling or unable to resolve a violation, DEP may pursue resolution of the violation in accordance with Section 12 of the Pennsylvania Air Pollution Control Act.

Philadelphia County will provide enforcement information to EPA consistent with its grant agreement with EPA for the year. DEP will make its computerized compliance system available to Philadelphia County for this purpose.

ENFORCEMENT REPORTING REQUIREMENTS

Philadelphia County shall provide the following to DEP quarterly, within 30 days after the end of each calendar quarter, using a method mutually agreed upon by both agencies:

1. A summary of the enforcement actions taken in the calendar quarter.
2. A copy of any enforcement or penalty policy revised or created during the preceding calendar quarter.
3. An opportunity to conduct a detailed audit of enforcement actions identified by DEP.

AMBIENT AIR MONITORING

Philadelphia County shall conduct an ambient air monitoring program which meets the requirements of 40 CFR Part 58 (Ambient Air Quality Surveillance).

Philadelphia County will provide and maintain real-time access to Philadelphia County air monitoring database as required by DEP for access to air monitoring data and standard reports.

AMBIENT AIR MONITORING REPORTING REQUIREMENTS

Philadelphia County shall provide the following to DEP using a method mutually agreed upon by both agencies:

1. A calendar quarterly report (Quicklook Criteria Parameters AMP 450 & Data Completeness report AMP 430), prepared on a calendar year quarterly basis, verifying ambient air monitoring data submission to the EPA AIRS/AQS database within 90 days after the end of the report calendar quarter. This report shall include a summary of the reporting sites and devices, the percent data capture for each device, and the associated quality assurance statistical reports (precision checks and audits). Data submitted for the PAMS (enhanced ozone precursor monitoring) network will not be included until notification is provided by DEP to Philadelphia County. At least 90 days notice will be provided by DEP when PAMS data is to be added to this requirement.
2. An opportunity for DEP to comment on the annual SLAMS network review (40 CFR 58.20d). Comments will be included in the annual review report submitted to EPA along with any air monitoring network modifications required and agreed upon by Philadelphia County and DEP.
3. Provide a copy of the ambient monitoring 5-year network assessment document that is submitted to EPA under the requirements of 40 CFR Part 58, Subpart B, Section 58.10(d) starting with the first assessment due on July 1, 2010.

STACK TESTING REQUIREMENTS

Each stack test required by Philadelphia County shall meet the applicable requirements specified in *25 Pa. Code Chapter 139* and the latest version of DEP's Source Testing Manual.

STACK TESTING REPORTING REQUIREMENTS

Philadelphia County shall provide the following to the DEP quarterly, within 30 days after the end of each calendar quarter, using a method mutually agreed upon by both agencies:

1. A copy of the calendar quarterly report submitted to the EPA indicating the tests performed during the calendar quarter, or some other equivalent report.
2. An opportunity to review stack test information for tests identified by DEP which can include the test report summary, Philadelphia County's decision regarding the acceptability of the test results, and Philadelphia County's observation report.

CONTINUOUS EMISSION MONITORING

Philadelphia County shall conduct a continuous emission monitoring program in accordance with 25 *Pa. Code* Chapter 139 unless modifications of the requirements are approved by DEP in writing.

CONTINUOUS EMISSION MONITORING REPORTING REQUIREMENTS

Philadelphia County shall provide a list of all monitors approved at the time the Philadelphia County/DEP Implementation Agreement is signed. Philadelphia County shall provide the following to DEP quarterly, within 30 days after the end of each calendar quarter, in a method mutually agreed upon by both agencies:

1. A list of continuous monitors approved during the calendar quarter.
2. A list of continuous monitors pending approval.
3. An opportunity to audit the complete approval for continuous monitors identified by DEP.

AIR QUALITY PERMITTING

Philadelphia County shall continue to implement an air contamination source permitting program, as approved by DEP, that is at least as stringent as the requirements of 25 *Pa. Code* Chapter 127. Philadelphia County's permitting program shall conform to or be more stringent than that of DEP, and be implemented in accordance with DEP policies and procedures, unless modifications are approved by DEP in writing.

Philadelphia County's permitting program shall include, without limitation, the following program elements necessary to conduct reviews and approve/deny plans to construct, modify and operate air contamination sources:

1. Title V permits;
2. Synthetic Minor source permits;
3. NSPS source permits in conformance with EPA specifications;
4. PSD source permits in conformance with EPA specifications;
5. NSR review and permitting as specified by DEP;
6. Operating permits to facilities that do not otherwise meet federal permitting requirements but have received previous source operating permits from Philadelphia County or that meet the following actual emissions criteria:

Pollutant	PTE< (TPY)	Actual Emission Rate> (TPY)
CO	100	20
NO _x	25	10
SO _x	100	8
PM ₁₀	100	3
PM _{2.5}	100	3
VOC	25	8
Single HAP	10	1
Multiple HAPs	25	2.5

- 7. MACT operating permits;
- 8. Section 111(d) operating permits;
- 9. RACT operating permits;
- 10. Best Available Technology permitting requirements in accordance with DEP policies and procedures for new and newly modified sources that are not otherwise required to meet BACT or LAER as defined by EPA; and
- 11. Permits for construction of new sources and modification of existing sources.

Philadelphia County shall participate in the regularly scheduled Title V and Engineering Services staff meetings.

Philadelphia County may use application forms of their own design, adapt or utilize the Department's forms to their use.

Philadelphia County may continue to require permits for sources historically covered by the agency, even when those sources go beyond the criteria described in the Department's published list of Plan Approval and Operating Permit Exemptions.

With respect to the processing of major source new source review for non-attainment pollutants, the review shall be conducted in accordance with Chapter 127, Subchapter E requirements. Philadelphia County shall verify that emission reduction credits (ERC) from sources in Philadelphia County are permanent, enforceable, quantifiable and surplus. Onsite inspections shall be conducted to verify shutdowns. If equipment has not been dismantled or removed, Philadelphia County shall annually receive certification of the continuance of the shutdown. Documentation sufficient for the registry and transfer of ERCs shall be provided to the Division of Permits for entry in the ERC registry system.

With regard to Title V, Philadelphia County shall collect the emission fees prescribed in Section 127.705 and shall provide information needed by DEP to evaluate the adequacy of the fee revenues and the proper use of said revenues.

Title V operating permits shall be issued by Philadelphia County in accordance with the Implementation Agreement between the DEP and EPA, Region III. Title V operating permits shall follow the format DEP has developed in consultation with EPA. These permits need not be produced through DEP's Air Information Management System but consideration should be given to its eventual use.

AIR QUALITY PERMITTING REPORTING REQUIREMENTS

Philadelphia County shall provide the following to DEP using a method mutually agreed upon by both agencies:

1. A copy of all draft Title V permits sent to the EPA.
2. A copy of all final Title V permits.
3. Copies of other permits and plan approvals as requested.
4. A list of emission fees collected from Title V facilities.
5. An accounting of how Title V emission fees were used on a calendar quarterly basis. This information shall be submitted within 30 days after the end of the calendar quarter and submitted no later than 100 days after the end of each agreement year.

APPENDIX 1

Guidance for Determining Which Facilities Belong in AIMS for Inventory Purposes

These guidelines are a synthesis of the inventory requirements of Title V, the Annual Inventory, Emission Statements and other regulations that are part of the SIP. The Title V regulations are found in the Pennsylvania Code, Title 25, Chapter 127. The Annual Inventory regulation is found in the Pennsylvania Code, Title 25, Chapter 135.1- 135.5. The Emission Statement regulation is found in the Pennsylvania Code, Title 25, Chapter 135.21. Title V major source definitions can be found in the Pennsylvania Code, Title 25, Chapter 121.1. Exemptions from state operating permits can be found on page 4559 of the September 21, 1996 Pennsylvania Bulletin.

Facilities that wish to generate or trade Emission Reduction Credits (ERC) will need to document emissions. The annual inventory report is one way to document emissions. All facilities have the option of submitting annual inventory reports for ERC purposes. If the facility does not submit annual inventory data, the facility should at least maintain sufficient production records to be able to reconstruct emissions for ERC purposes.

The emissions from any facility that is not required to submit annual inventory forms are captured in the area source inventory, which is calculated using demographics and emission factors. For information on area source inventory, contact the Bureau of Air Quality's Air Information Management Section at (717) 783-9241.

Any emissions that are below the source reporting thresholds for facilities that are subject to the annual inventory will be calculated by the Bureau of Air Quality using emission factors. Facilities have the option of submitting emission estimates for emissions below the source thresholds if the owner/operator of the company's estimate is better than the factor-generated numbers.

A. Title V Facilities

The owners/operators of all Title V facilities must complete the annual inventory reporting forms. Title V facilities are subject because by definition they exceed the reporting thresholds in the Emission Statement and SIP regulations. Inventory information from Title V facilities is used for emission fee purposes and to demonstrate compliance.

Title V facilities report emissions from all sources, as the sources are defined in the Title V permit. In some cases, the Title V permit treats multiple pieces of related equipment as one source. This treatment is negotiated between the facility and DEP inventory and permit staff. Actual emissions of 1.0 tons per year or more per source must be reported for all criteria pollutants and 0.5 tons per year of HAPs, except for the HAPs of special concern listed below. Reports should round to the nearest one-hundredth of a ton. All emissions must be reported source by source, not as site totals. HAPs must be reported individually (speciated). Source by source speciated reporting of HAPs is required for Maximum Achievable Control Technology

(MACT) purposes. In cases where HAPs are also VOCs or particulates, do not subtract the HAP emission estimates from the VOC or particulate emission estimates. The subtraction will be dealt with by the AIMS database.

Based upon the Federal Clean Air Act, Section 112(c)(6), certain pollutants and sources are of special concern. The following thresholds apply for boilers greater than 2.5 MMBtu, incinerators, lead handling operations, and utilities:

Polychlorobiphenols (PCB)	0.01 TPY per source
Lead (Pb)	0.01 TPY per source
Polycyclic Organic Matter (POM)	0.01 TPY per source
Dioxins	0.00001 TPY per source
Furans	0.00001 TPY per source
Mercury (Hg) non-coal fired electric generating units (EGU)	0.0005 TPY per source
Mercury (Hg) coal fired EGUs	0.0001 TPY per source
Mercury (Hg) all other types of sources	0.01 TPY per source

B. Synthetic Minor Facilities

NOx and VOC data may be required for Emission Statements and ozone calculations. Synthetic minor facilities may be required to complete annual inventory reporting forms when NOx and /or VOC emissions are generated. Facilities are subject if actual VOC emissions are greater than or equal to 10 TPY for the site and /or if actual NOx emissions are greater than or equal to 25 TPY for the site. Actual emissions of 1.0 TPY or more per source must be reported for NOx and/or VOC, whichever made the facility subject to reporting. Reports should round to the nearest one-hundredth of a ton. All emissions must be reported source by source, not as site totals.

For example, if a facility has 12 TPY of actual VOC emissions and 20 TPY of actual NOx emissions, the facility must report VOCs from any source that emitted 1 TPY or more. Any sources that emit NOx are not required to be reported, as the facility's NO_x emissions are below the threshold. If the facility has 12 TPY of actual VOC emissions and 26 TPY of actual NOx emissions, the facility must report VOCs and NOx.

Emission estimates for other pollutants will be calculated by DEP's AIMS database using emission factors associated with source classification codes (SCC). The facility owner/operator has the option of reporting emission estimates for other pollutants if the facility's estimates are better than the SCC-based calculations.

Synthetic minor facilities must certify and/or demonstrate that the permit caps have not been exceeded. The certification/demonstration does not require source by source reporting of operating data and emission estimates using the annual inventory forms. The facility has the option of completing the annual inventory forms to demonstrate compliance with the caps for any pollutants. If the facility does not submit annual inventory forms, the facility owner/operator must arrange with Philadelphia County or DEP regional staff for an alternate

demonstration of synthetic minor status. The regional staff will use the demonstration data to calculate site total emission estimates and enter these estimates into AIMS. If an existing permit caps a specific source, emissions from the capped source would have to be reported separately from any site totals. Electronic submission of alternate demonstration data may not be possible.

C. Natural Minor with a State Operating Permit

NOx and VOC data may be required for Emission Statements and ozone calculations. The owners/operators of natural minor facilities with operating permits may be required to complete annual inventory reporting forms when NOx and/or VOC emissions are generated. Facilities are subject if actual VOC emissions are greater than or equal to 10 TPY for the site. Facilities are also subject if actual NOx emissions are greater than or equal to 25 TPY for the site. The facility owner/operator must report only NOx and/or VOCs, whichever made the facility subject to reporting. Actual emissions of 1.0 ton per year or more per source must be reported for all criteria pollutants and 0.5 tons per year of HAPs. Reports should round to the nearest one-hundredth of a ton. All emissions must be reported source by source, not as site totals. See the example for Synthetic Minors. Emission estimates for other pollutants will be calculated by the AIMS database using SCCs. The facility has the option of reporting emission estimates for other pollutants if the facility's estimates are better than the SCC-based calculations.

If the facility only generates SOx, PM, CO and/or HAPs, or if the facility generates NOx and VOC and both are below the thresholds, the facility is not subject to the inventory.

D. Natural Minors Exempted from State Operating Permit

These facilities are not required to submit annual inventory forms. The emissions from these facilities are captured in the area source inventory.

[This page intentionally left blank.]



APPENDIX A-3:

Air Pollution Control Act of 1959

**Bureau of Air Quality
Department of Environmental Protection**

[This page intentionally left blank.]

AIR POLLUTION CONTROL ACT

Act of Jan. 8, (1960) 1959, P.L. 2119, No. 787 **C1. 35**
AN ACT

To provide for the better protection of the health, general welfare and property of the people of the Commonwealth by the control, abatement, reduction and prevention of the pollution of the air by smokes, dusts, fumes, gases, odors, mists, vapors, pollens and similar matter, or any combination thereof; imposing certain powers and duties on the Department of Environmental Resources, the Environmental Quality Board and the Environmental Hearing Board; establishing procedures for the protection of health and public safety during emergency conditions; creating a stationary air contamination source permit system; providing additional remedies for abating air pollution; reserving powers to local political subdivisions, and defining the relationship between this act and the ordinances, resolutions and regulations of counties, cities, boroughs, towns and townships; imposing penalties for violation of this act; and providing for the power to enjoin violations of this act; and conferring upon persons aggrieved certain rights and remedies. (Title amended Oct. 26, 1972, P.L.989, No.245).

Compiler's Note: Section 502(c) of Act 18 of 1995, which created the Department of Conservation and Natural Resources and renamed the Department of Environmental Resources as the Department of Environmental Protection, provided that the Environmental Quality Board shall have the powers and duties currently vested in it, except as vested in the Department of Conservation and Natural Resources by Act 18 of 1995, which powers and duties include those set forth in Act 787 of 1959.

TABLE OF CONTENTS

- Section 1. Short Title.
- Section 2. Declaration of Policy.
- Section 3. Definitions.
- Section 4. Powers and Duties of the Department of Environmental Protection.
 - Section 4.1. Agricultural Regulations Prohibited.
 - Section 4.2. Permissible Actions.
 - Section 4.3. Evaluation.
- Section 5. Environmental Quality Board.
- Section 6. Environmental Hearing Board.
 - Section 6.1. Plan Approvals and Permits.
 - Section 6.2. Emergency Procedure.
 - Section 6.3. Fees.
 - Section 6.4. Fee for Certain Ozone Areas.
 - Section 6.5. Acid Deposition Control.
 - Section 6.6. Hazardous Air Pollutants.
 - Section 6.7. Control of Volatile Organic Compounds from Gasoline-Dispensing Facilities (Repealed).
- Section 7. Public Hearings.
 - Section 7.1. Compliance Review.
 - Section 7.2. Permit Compliance Schedules.
 - Section 7.3. Responsibilities of Owners and Operations.
 - Section 7.4. Interstate Transport Commission.
 - Section 7.5. Public Review of State Implementation Plans.
 - Section 7.6. Advice to Department.
 - Section 7.7. Small Business Compliance Assistance Program.

Section 7.8. Compliance Advisory Committee.
Section 7.9. Small Business Ombudsman.
Section 7.10. Transportation Management Associations.
Section 7.11. Notice of Sanctions.
Section 7.12. Missed Federal Deadlines.
Section 7.13. Air Quality Improvement Fund (Repealed).
Section 8. Unlawful Conduct.
Section 9. Penalties.
Section 9.1. Civil Penalties.
Section 9.2. Disposition of Fees, Fines and Civil Penalties.
Section 9.3. Continuing Violations.
Section 10. Civil Remedies (Repealed).
Section 10.1. Enforcement Orders.
Section 10.2. Appealable Actions.
Section 10.3. Limitation on Action.
Section 11. Powers Reserved to the Department Under Existing Laws.
Section 12. Powers Reserved to Political Subdivisions.
Section 12.1. Construction.
Section 13. Public Nuisances.
Section 13.1. Search Warrants.
Section 13.2. Confidential Information.
Section 13.3. Existing Rules, Regulations, Permits and Approvals (Repealed).
Section 13.4. Public Nuisances (Repealed).
Section 13.5. Variances (Repealed).
Section 13.6. Suits to Abate Nuisances and Restrain Violations.
Section 14. Severability.
Section 15. Effective Date.

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

Section 1. Short Title.--This act shall be known and may be cited as the "Air Pollution Control Act."

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; (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 pollution control strategies through review of State implementation plans required to be submitted by the Clean Air Act.

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

(2 amended July 9, 1992, P.L.460, No.95)

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:

"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.

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

"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.

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

"Hearing board." The Environmental Hearing Board.

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

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

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

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

- (1) is owned or operated by a person that employs one hundred (100) or fewer individuals;
- (2) is a small business as defined in the Small Business Act (Public Law 85-536, 15 U.S.C. § 78a et seq.);
- (3) is not a major stationary source;
- (4) does not emit fifty (50) tons per year of any regulated pollutant; and
- (5) emits less than seventy-five (75) tons per year of all regulated pollutants.

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

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

(3 amended July 9, 1992, P.L.460, No.95)

Compiler's Note: The Department of Environmental Resources, referred to in the def. of "department," was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 4. Powers and Duties of the Department of Environmental Protection.--The department shall have power and its duty shall be to--(Hdg. amended July 5, 2012, P.L.1109, No.135)

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

(2) Enter any building, property, premises or place and inspect any air contamination source for the purpose of investigating an actual or a suspected source of air pollution or for the purpose of ascertaining the compliance or non-compliance with this act, any rule or regulation promulgated under this act or any plan approval, permit or order of the department. In connection with such inspection or investigation, samples of air, air contaminants, fuel, process material or other matter may be taken for analysis, a duplicate of the analytical report shall be furnished promptly to the person who is suspected of causing such air pollution or air contamination.

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

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

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

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

(7) Enter upon any property on which an air contamination source may be located and make such tests upon the source as are necessary to determine whether the air contaminants being emitted from such air contamination source are being emitted at a rate in excess of a rate provided for by this act, any rule or regulations promulgated under this act or any plan approval, permit or order of the department or otherwise causing air pollution. Whenever the department determines that a source test is necessary, it shall give reasonable written or oral notice to the person owning, operating, or otherwise in control of such source, that the department will conduct a test on such source. Thereafter, the person to whom such notice is given shall provide such reasonably safe access to the testing area, and such sampling ports, facilities, electrical power and water as the department shall specify in its notice.

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

(9) (i) Issue orders to any person owning or operating an air contamination source, or owning or possessing land on which such source is located, if such source is introducing or is likely to introduce air contaminants into the outdoor atmosphere in excess of any rate provided for by this act, any rule or regulation promulgated under this act or any plan approval or permit applicable to such source, or at such a level so as to cause air pollution. Any such order may require the cessation of any operation or activity which is introducing air contaminants into the outdoor atmosphere so as to cause air pollution, the reduction of emissions from such air contamination source, modification or repair of such source or air pollution control device or equipment or certain operating and maintenance procedures with respect to such source or air pollution control device or equipment, institution of a reasonable process change, installation of air pollution control devices or equipment, or any or all of said requirements as the department deems necessary. Such orders may specify a time for compliance, require submission of a proposed plan for compliance, and require submission of periodic reports concerning compliance. If a time for compliance is given, the department may, in its discretion, require the posting of a bond in the amount of twice the money to be expended in reaching compliance.

(ii) All department orders shall be in writing, contain therein a statement of the reasons for their issuance, and be served either personally or by certified mail. Within thirty (30) days after service of any such order the person to whom the order is issued or any other person aggrieved by such order may file with the hearing board an appeal setting forth with particularity the grounds relied upon. 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.

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

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

(12) Institute prosecutions under this act.

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

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

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

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

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

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

(18.1) Within sixty (60) days of the effective date of this clause, initiate a review and reevaluation of the State implementation plan. The review shall include alternative mechanisms to 25 Pa. Code Ch. 126 Subch. C (relating to gasoline volatility requirements) which will ensure compliance with this act. The following shall apply to the review:

(i) The department shall conduct meetings to consult with impacted organizations or entities, including gasoline refining and distribution companies, gasoline retailers, pipeline owners, impacted businesses, public utilities, local governments and other interested entities.

(ii) Within three (3) months of the effective date of this clause, the department shall provide updates to the chair and minority chair of the Environmental Resources and Energy Committee of the Senate and the chair and minority chair of the Environmental Resources and Energy Committee of the House of Representatives. The department shall, on a regular basis, provide updates to the committees.

((18.1) added July 5, 2012, P.L.1109, No.135)

(18.2) If a supply disruption occurs, the Governor shall submit a request to the Environmental Protection Agency to waive the requirements. As used in this clause, a "supply disruption occurs" when either of the following subclauses apply:

(i) The department learns of a supply disruption of gasoline which would comply with 25 Pa. Code Ch. 126 Subch. C in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington or Westmoreland County; and the supply disruption under this subclause would reasonably qualify for a waiver of the low Reid Vapor Pressure requirements of 25 Pa. Code Ch. 126 Subch. C in accordance with section 211(c)(4)(C)(ii) and (iii) of the Clean Air Act (42 U.S.C. § 7545(c)(4)(C)(ii) and (iii)).

(ii) Five per centum (5%) of all existing gasoline retailers in Allegheny, Armstrong, Beaver, Butler, Fayette, Washington

and Westmoreland Counties are unable to obtain an adequate supply of low Reid Vapor Pressure gasoline which complies with the low Reid Vapor Pressure requirements of 25 Pa. Code Ch. 126 Subch. C.

((18.2) added July 5, 2012, P.L.1109, No.135)

(19) Encourage the formulation and execution of plans in conjunction with air pollution control agencies or civil associations of counties, cities, boroughs, towns and townships of the Commonwealth wherein any sources of air pollution or air contamination may be located, and enlist the cooperation of those who may be in control of such sources for the control, prevention and abatement of such air pollution and air contamination.

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

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

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

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

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

(25) Serve as the agency of the Commonwealth for the 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 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.

(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 promulgated under this act.

(4 amended July 9, 1992, P.L.460, No.95)

Compiler's Note: The Department of Environmental Resources, referred to in this section, was abolished by Act 18 of 1995. Its functions were transferred to the Department of Conservation and Natural Resources and the Department of Environmental Protection.

Section 4.1. Agricultural Regulations

Prohibited.--(a) Except as may be required by the Clean Air Act or the regulations promulgated under the Clean Air Act,

this act shall not apply to the production of agricultural commodities and 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.

(b) As used in this section, the term "production of agricultural commodities" shall include, but is not limited to:

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

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

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

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

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

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

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

(vii) Aquatic plants and animals and their by-products.

(2) The processing of agricultural commodities propagated, produced, harvested or dried under clause (1) or the disposal of residual materials resulting from such processing.

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

(4) The use of any material whose production, processing or storage is exempt from this act under clause (3) in the commercial propagation or production of any agricultural commodity identified under clause (1), or any odor or malodor or fugitive air emission resulting from the production, processing or storage of any material so exempted.

(c) The exemptions applied under subsection (b)(2) shall only apply to agricultural commodities propagated, produced, harvested or dried on the premises of the farm operation.

(4.1 amended Dec. 18, 1996, P.L.1150, No.174)

Compiler's Note: Section 2 of Act 174 of 1996, which amended section 4.1, provided that Act 174 shall be retroactively applied to January 1, 1991, in dismissing any pending legal or administrative action by the Department of Environmental Protection arising from any activity which, by enactment of Act 174, is not subject to the provisions of Act 787.

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

required by this act or specifically required by the Clean Air Act.

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

(1) To achieve or maintain ambient air quality standards; (2) To satisfy related Clean Air Act requirements as they specifically relate to the Commonwealth;

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

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

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

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

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

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

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

(4.2 added July 9, 1992, P.L.460, No.95)

Section 4.3. Evaluation.--Beginning five (5) years after the effective date of this section and every five (5) years thereafter, the 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 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 stationary air contamination sources to implement the

requirements of the Clean Air Act, including on individuals and companies. The analysis of costs shall also consider the benefits of compliance with the Clean Air Act requirements and the public health, environmental and economic costs to the Commonwealth for failing to meet the requirements, including the impact of sanctions.

(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 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 missing Federal deadlines identified under section 7.12 has had or will have on the State implementation of the Clean Air Act programs.

(4.3 added July 9, 1992, P.L.460, No.95)

Compiler's Note: The Department of Commerce, referred to in clause (5), was renamed the Department of Community and Economic Development by Act 58 of 1996.

Section 5. Environmental Quality Board.--(a) 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 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 safety during such periods.

(6) Adopt rules and regulations for the approval and the revision and suspension of approval of local air pollution control agencies.

(7) Adopt rules and regulations designed to reduce emissions from motor vehicles, including centrally clean-fueled fleets, clean alternative fuels, oxygenated fuels, reformulated fuels, vehicle miles of travel, transportation control measures and other transportation control strategies. Such rules and regulations shall be developed in consultation with the Department of Transportation. The board shall not adopt regulations mandating the sale or use of any set of specifications for motor fuel prescribed by the State of California under 42 U.S.C. § 7545(c)(4)(B) unless the set of specifications is required under the Clean Air Act or the regulations promulgated thereunder.

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

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

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

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

(12) In its discretion, by regulation adopt rules containing reasonable procedures consistent with the need for expeditious

action by the department on plan approvals and operating permit applications to make available to the public any plan approval or operating permit application, compliance plan, plan approval, operating permit and monitoring or compliance report as required by section 502(b)(8) of the Clean Air Act.

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

(b) In adopting regulations containing transportation control measures, the board shall not have the authority to adopt any regulation limiting or expanding any municipalities' authority under the Municipal Planning Code to regulate land development, subdivision approval, zoning revision, building permit or any other development activity unless specifically required by the Clean Air Act.

(5 amended July 9, 1992, P.L.460, No.95)

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

(6 amended July 9, 1992, P.L.460, No.95)

Section 6.1. Plan Approvals and Permits.--(a) No person shall construct, assemble, install or modify any stationary air contamination source, or install thereon any air pollution control equipment or device unless such person has applied to and received written plan approval from the department to do so: Provided, however, That no such written approval shall be necessary with respect to normal routine maintenance operations, nor to any such source, equipment or device used solely for the supplying of heat or hot water to one structure intended as a one-family or two-family dwelling, nor where construction, assembly, installation or modification is specifically authorized by the rules or regulations of the department to be conducted without written approval. All applications for approval shall be made in writing and shall be on such forms and contain such information as the department shall prescribe and shall have appended thereto detailed plans and specifications related to the proposed installation.

(b) (1) No person shall operate any stationary air contamination source unless the 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 or where construction, assembly, installation modification is specifically authorized by the rules or regulations of the department to be conducted without written approval. 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.

(2) A permit may be issued after the effective date of this amendment to any applicant for a stationary air contamination

source requiring construction, assembly, installation or modification where the requirements of subsection (a) of this section have been met and 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 any 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, 1996, 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 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 the regulations promulgated under both this act and the Clean Air Act. For any 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 act 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 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. For purposes of this subsection, a source is operating lawfully without a permit where it is a source for which no permit was previously required and the source is operating in compliance with applicable regulatory requirements.

(4) For repermitting of any stationary air contamination source which is operating under a valid permit on the effective date of this act 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) 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. The board shall by regulation establish a permit shield for permits issued under the authority delegated to the Commonwealth by the EPA under Title V of the Clean Air Act. The program shall be consistent with the requirements of section 504(f) of the Clean Air Act and the regulations promulgated thereunder. 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 issued for a five (5) year term unless a shorter term is required to comply with the Clean Air Act and regulations promulgated thereunder or the permittee requests a shorter term, except that a permit for acid deposition control shall be issued for a five (5) year term. 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 or the regulations promulgated under this act and the department is unable, through no fault of the permittee, to issue or deny a new permit before the expiration date of the previous permit. Failure of the department to issue or deny a new permit prior to the expiration date of the previous permit shall be an appealable action as described in section 10.2. The hearing board may require that the department take action on an application without additional delay.

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

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

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

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

(c) A plan approval or permit issued hereunder 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, if the permittee has failed to submit a report required by a plan approval or operating permit under this section or 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.

(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 verification of compliance, including source testing or alternative means to verify compliance. 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 the person affected thereby informing him of the action taken by the department and setting forth, in such notice, a full and complete statement of the reasons for such action. Such notice shall be served upon the person affected, either personally or by certified mail, and the action set forth in the notice shall be final and not subject to review unless, within thirty (30) days of the service of such notice, any person affected thereby shall appeal to the hearing board, setting forth with particularity the grounds relied upon. The hearing board shall hear the appeal pursuant to the provisions of the rules and regulations relating to practice and procedure before the hearing board, and thereafter, shall issue an adjudication affirming, modifying or overruling the action of the department.

(f) The department may by regulation establish a general plan approval and a general permit program. After the program is established, the department may grant general plan approval or a general permit for any category of stationary air contamination source if the department determines that the sources in such category are similar in nature and can be adequately regulated using standardized specifications and conditions. Any applicant proposing to use a general plan approval or general permit shall notify the department and receive written approval prior to the proposed use. The

department shall take action on a notification within thirty (30) days.

(g) 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 any 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 in advance of each change in location and may require a separate application and permit or approval fee for operations at each location. Any applicant proposing to use the plan approval or permit authorized by this subsection shall notify the department and receive written approval prior to the proposed use. The department shall take action on a request within thirty (30) days.

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

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

(j) The department shall make available to the public any permit application, compliance plan, permit and monitoring or compliance report required by this act.

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

(6.1 amended July 9, 1992, P.L.460, No.95)

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. ((a) amended July 9, 1992, P.L.460, No.95)

(b) In the absence of a generalized condition of air pollution, if the department finds that emissions from the operation of one or more air contamination sources are creating

an imminent danger to human health or safety, the department may, without regard to the provisions of section 4 of this act, order the persons responsible for the operation of the air contamination sources in question to immediately reduce or discontinue the emission of air contaminants.

(c) An order issued under subsection (a) or (b) of this section shall fix a place and time, not later than twenty-four hours thereafter, for a hearing to be held before the hearing board. Within twenty-four hours after the commencement of such hearing, and without adjournment thereof, the hearing board shall affirm, modify or set aside the order of the department.

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

(6.2 added Oct. 26, 1972, P.L.989, No.245)

Section 6.3. Fees.--(a) This section authorizes the establishment of fees sufficient to cover the indirect and direct costs of administering the air pollution control plan approval process, operating permit program required by Title V of the Clean Air Act, other requirements of the Clean Air Act and the indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and Office of Small Business Ombudsman. This section also authorizes the board by regulation to establish fees to support the air pollution control program authorized by this act and not covered by fees required by section 502(b) of the Clean Air Act.

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

(c) The board shall establish by regulation a permanent annual air emission fee as required for regulated pollutants by section 502(b) of the Clean Air Act to cover the reasonable direct and indirect costs of administering the operating permit program required by Title V of the Clean Air Act, other related requirements of the Clean Air Act and the reasonable indirect and direct costs of administering the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, Compliance Advisory Committee and the Office of Small Business Ombudsman to be collected starting in fiscal year 1995-1996 covering air emissions occurring during calendar year 1994. In no case shall the amount of the permanent fee be more

than that which is necessary to comply with section 502(b) of the Clean Air Act. The permanent fee shall not apply to emissions of more than four thousand (4,000) tons for any regulated pollutant. In the event a final regulation containing the permanent annual air emission fee is not effective by July 1, 1995, the permanent annual air emission fee for sources subject to the Title V operating permit program shall be the adjusted minimum dollar amount set under section 502(b) of the Clean Air Act until such time as the final regulation is effective.

(d) Unless precluded by the Clean Air Act, the board shall establish a permanent air emission fee which considers 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 (c) of this section, stationary air contamination sources shall pay the following interim fees:

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

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

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

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

(2) An air contamination source that fails to pay the fees within the time frame established by this act or by regulation shall pay a penalty of fifty per centum (50%) 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.

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

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

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

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

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

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

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

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

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

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

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

(6.3 added July 9, 1992, P.L.460, No.95)

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 (VOC's), as defined in the Clean Air Act and the regulations promulgated under the Clean Air Act, located in the area shall, except with respect to emissions during any year treated as an extension year under section 181(a)(5) of the Clean Air Act, pay a fee to the department as a penalty for such failure for each calendar year beginning after the attainment date until the area is redesignated as an attainment area for ozone. This fee shall be assessed and collected following the process for collection and assessment of a civil penalty contained in section 9.1.

(b) (1) The fee shall equal five thousand dollars (\$5,000.00), adjusted in accordance with clause (3) of this subsection, per ton of VOC emitted by the source during the calendar year in excess of eighty per centum (80%) of the baseline amount, computed under clause (2) of this subsection. The fee shall be in addition to all other fees required to be paid by the source.

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

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

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

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

(6.4 added July 9, 1992, P.L.460, No.95)

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 herein 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 thereto, 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. Any 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 any 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.

(6.5 added July 9, 1992, P.L.460, No.95)

Section 6.6. Hazardous Air Pollutants.--(a) 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. The Environmental Quality Board may not establish a more stringent performance or emission standard for hazardous air pollutant emissions from existing sources, except as provided in subsection (d). This section shall not apply to rules and regulations adopted as final prior to the effective date of this act and shall not be construed to weaken standards for individual sources or facilities in effect prior to the effective date of this act. The board may establish performance or emission standards for sources or categories of sources which are not included on the list of source categories established under section 112(c) of the Clean Air Act. For purposes of this section, the term "performance standard" includes design, equipment, work practice or operational standards or any combination thereof.

(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, pursuant to a schedule established pursuant to section 112(c) of the Clean Air Act, the department shall have the authority to establish a performance or emission standard on a case-by-case basis for individual sources or a category of sources. The department shall have the authority to make the determinations required by section 112(g)(2) of the Clean Air Act regarding the construction, reconstruction and modification of sources. Any person challenging the performance or emission standards established by the department shall have the burden to demonstrate 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 plan approval or operating permit of any source within the category or subcategory. The performance or emission standard established on a case-by-case basis by the department shall be equivalent to the limitation that would apply to the source if a performance or emission standard had been promulgated by the administrator under section 112 of the Clean Air Act.

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

(d) (1) When needed to protect public health, welfare and the environment from emissions of hazardous air pollutants from new and existing sources, the department may impose health

risk-based emission standards or operating practice requirements. In developing such health risk-based emission standards or operating practice requirements, the department shall provide an explanation and rationale for such standards or requirements and provide for public review and comments on plan approvals, operating permits, guidelines and regulations which contain health risk-based emission standards or operating practice requirements. Standards or requirements adopted pursuant to this subsection shall be developed using an analysis which, among other factors, considers, where appropriate for a source or source category, the criteria set forth in section 112(f)(1) of the Clean Air Act in assessing the proposed risk to the public health, welfare and the environment from the source.

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

(3) Notwithstanding the limitation in clause (2), where the operation of a coke oven battery would result in serious, substantial and demonstrable harm to public health, welfare and the environment, the department may impose health risk-based emission standards by regulation which utilize proven, commercially available and economically available methods of technology.

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

(ii) After January 1, 1998, the department shall only impose health risk-based emission standards adopted pursuant to section 112(f) of the Clean Air Act, and, if no such emission standards are adopted pursuant to section 112(f) of the Clean Air Act, the department may adopt such emission standards, provided that such standards are consistent with the criteria and the factors set forth in clause (1) and section 112(f) of the Clean Air Act and until such time as health risk-based standards are enacted by the Federal Government pursuant to section 112(f) of the Clean Air Act.

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

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

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

(6.6 added July 9, 1992, P.L.460, No.95)
Section 6.7. Control of Volatile Organic Compounds from Gasoline-Dispensing Facilities.--(6.7 repealed July 5, 2012, P.L.1109, No.135)

Section 7. Public Hearings.--(a) Public hearings shall be held by the board or by the department, acting on behalf and at the direction or request of the board, in any region of the Commonwealth affected before any rules or regulations with

regard to the control, abatement, prevention or reduction of air pollution are adopted for that region or subregion. When it becomes necessary to adopt rules and regulations for the control, abatement, prevention or reduction of air pollution for more than one region of the Commonwealth, the board may hold one hearing for any two contiguous regions to be affected by such rules and regulations. Such hearing may be held in either of the two contiguous regions. In the case where it becomes necessary to adopt rules and regulations for the control, abatement, prevention or reduction of air pollution for any area of the Commonwealth which encompasses more than one region or parts of more than one region, public hearings shall be held in the area concerned. Full stenographic transcripts shall be taken of all public hearings and shall be made available by the department to any party concerned with the subject matter of the hearing upon the payment of prevailing rates for such transcripts.

(b) In addition to the matters discussed at the public hearings, the board may, in its discretion, solicit the views, in writing, of persons who may be affected by, or interested in, proposed rules and regulations.

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

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

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

(7 amended Oct. 26, 1972, P.L.989, No.245)

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 arising under this act which the department places on the compliance docket.

(7.1 added July 9, 1992, P.L.460, No.95)

Section 7.2. Permit Compliance Schedules.--In addition to the other enforcement provisions of this act, the department may issue a permit under clauses (3) and (4) of subsection (b) of section 6.1 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. Any such 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, and may contain stipulated penalties for failure to meet the compliance schedule. 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 may 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.

(7.2 added July 9, 1992, P.L.460, No.95)

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 or operator to take corrective action in a manner satisfactory to the department, or it may order the owner or operator to allow access to the land by the department or a third party to take such action.

(b) For purposes of collecting or recovering the costs involved in taking corrective action or pursuing a cost recovery action pursuant to an order or recovering the cost of litigation, oversight, monitoring, sampling, testing and investigation related to a corrective action, 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 section 9.1.

(7.3 added July 9, 1992, P.L.460, No.95)

Section 7.4. Interstate Transport Commission.--(a) The Commonwealth, through its representatives on an interstate transport commission formed under the Clean Air Act, shall provide public review of recommendations for additional control measures prior to final commission action consistent with the commission's public review requirements under section 184(c)(1) of the Clean Air Act. The opportunity for public review established under this section shall run concurrently with the commission's public comment period established under section 184(c)(1) of the Clean Air Act.

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

(c) The Commonwealth strongly recommends that an interstate transport commission adopt formal procedures which allow for an open public review and comment period prior to the adoption

of resolutions or consideration of memoranda of understanding or other actions which recommend that states adopt control strategies. The Commonwealth's representatives shall take actions consistent with this recommendation.

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

(7.4 added July 9, 1992, P.L.460, No.95)

Section 7.5. Public Review of State Implementation Plans.--(a) A State implementation plan required by the Clean Air Act which commits the Commonwealth to adopt air pollution control measures or procedures shall be the subject of a public comment period. The public comment period shall be no less than sixty (60) days, and the department may, at its discretion, hold public informational meetings or public hearings as part of the comment period.

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

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

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

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

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

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

(d) After the public comment period and prior to the submission to EPA of any State implementation plan required by the Clean Air Act which commits the Commonwealth to adopt air pollution control measures or procedures, the department shall submit a final State implementation plan to the board for its review together with a document which responds to all comments made during the public comment period.

(d.1) The following shall apply to a State implementation plan and any revision to such plan proposed or finalized after the effective date of this subsection:

(1) The plan or revision developed by the department, other State agency or local air pollution control agency shall be published and maintained on the publicly accessible Internet website of the department, other State agency or local air pollution control agency that developed the plan or revision.

(2) The plan or revision developed by the department or other State agency shall be submitted to the chairman and minority chairman of the Environmental Resources and Energy Committee of the Senate and the chairman and minority chairman

of the Environmental Resources and Energy Committee of the House of Representatives at the same time as the plan or revision is published for public comment or submitted to the board, whichever is applicable.

((d.1) added Apr. 12, 2012, P.L.230, No.27)

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

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

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

(7.5 added July 9, 1992, P.L.460, No.95)

Section 7.6. Advice to Department.--(a) The department shall consult with the Citizens Advisory Council established under section 448 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," as appropriate, in the consideration of State implementation plans and regulations developed by the department and 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 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 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.

(7.6 added July 9, 1992, P.L.460, No.95)

Compiler's Note: The Secretary of Environmental Resources, referred to in subsec. (b), was abolished by Act 18 of 1995. The functions of the secretary were transferred to the Secretary of Conservation and Natural Resources and the Secretary of Environmental Protection.

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 stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes and 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) Developing of small business stationary sources guidance manuals indicating the categories of small businesses subject to the requirements of this act and the Clean Air Act, specific compliance requirements and options, a schedule of compliance deadlines and other pertinent information.

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

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

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

(b) The department shall evaluate the feasibility of contracting with consultants to administer all or part of the Small Business Stationary Source Technical and Environmental

Compliance Assistance Program. A third-party consultant will act as a source of confidential support for small business if one is selected by the department. ((b) amended Dec. 18, 1996, P.L.1150, No.174)

(c) The department shall consult with the Compliance Advisory Committee established in section 7.8 and the Office of Small Business Ombudsman established in section 7.9 in developing the Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

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

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

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

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

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

(7.7 added July 9, 1992, P.L.460, No.95)

Compiler's Note: Section 2 of Act 174 of 1996, which amended subsec. (b), provided that Act 174 shall be retroactively applied to January 1, 1991, in dismissing any pending legal or administrative action by the Department of Environmental Protection arising from any activity which, by enactment of Act 174, is not subject to the provisions of Act 787.

Section 7.8. 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, State implementation plans 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 members as follows:

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

(2) Four members, each of whom shall be an owner or the representative of an owner of a small business stationary source. Of these four 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 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 clause (1) of subsection (b) of this section:

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

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

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

(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.

(7.8 added July 9, 1992, P.L.460, No.95)

Compiler's Note: The Secretary of Commerce, referred to in subsec. (b), was renamed the Secretary of Community and Economic Development by Act 58 of 1996.

Compiler's Note: The Secretary of Environmental Resources, referred to in subsec. (b), was abolished by Act 18 of 1995. The functions of the secretary were transferred to the Secretary of Conservation and Natural Resources and the Secretary of Environmental Protection.

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

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

(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) Serve on the Compliance Advisory Committee established by section 7.8.

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

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

(9) 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 layperson.

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

(c) The Office of Small Business Ombudsman shall 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 the Commonwealth.

(d) For each proposed rulemaking significantly affecting small businesses, the Office of Small Business Ombudsman shall prepare a report which contains a detailed analysis of the economic impact of such proposed rulemaking on small businesses. The economic impact report shall be completed no later than ninety (90) days from the date that the board approves the proposed rulemaking and shall be submitted to the board for consideration prior to approval of the final rulemaking package, provided the report is available within the time period prescribed by this section. The department shall provide the ombudsman with a reasonable opportunity to revise the report to reflect any proposed substantial change in the rulemaking which affects the initial report.

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

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

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

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

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

(f) All equipment, files, records, contracts, agreements and all other materials and supplies which are used, employed or expended by the Office of Small Business Ombudsman shall be transferred to the Department of Environmental Protection.

(7.9 amended Dec. 18, 1996, P.L.1150, No.174)

Compiler's Note: Section 2 of Act 174 of 1996, which amended section 7.9, provided that Act 174 shall be retroactively applied to January 1, 1991, in dismissing any pending legal or administrative action by the Department of Environmental Protection arising from any activity which, by enactment of Act 174, is not subject to the provisions of Act 787.

Section 7.10. Transportation Management Associations.--(a) The department, in consultation with the Department of Transportation, may, after public notice and comment, designate one or more transportation management associations to serve specific regions of this Commonwealth to provide 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 for corporations, employees, developers, individuals and other groups.

(7.10 added July 9, 1992, P.L.460, No.95)

Section 7.11. Notice of Sanctions.--(a) Whenever the Commonwealth is notified that the Environmental Protection Agency has made a final or proposed finding on a State implementation plan submitted by the Commonwealth or a local air pollution control agency, the department shall notify, within ten (10) working days of receipt of the notice, the Environmental Resources and Energy Committee of the Senate and the Conservation Committee of the House of Representatives of the agency's findings.

(b) Whenever the Commonwealth is formally notified that it is subject to discretionary or mandatory sanctions under section 179 of the Clean Air Act, the department shall, within ten (10) 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.

(7.11 added July 9, 1992, P.L.460, No.95)

Section 7.12. Missed Federal Deadlines.--Whenever the Environmental Protection Agency has missed a deadline for developing regulations or guidance on which states must rely to comply with deadlines in the Clean Air Act 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 may 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.

(7.12 added July 9, 1992, P.L.460, No.95)

Section 7.13. Air Quality Improvement Fund.--(7.13 repealed Nov. 17, 1998, P.L.788, No.100)

Section 8. Unlawful Conduct.--It shall be unlawful to fail to comply with or to cause or assist in the violation of any of the provisions of this act or the rules and regulations adopted under this act or to fail to comply with any order, plan approval, permit or other requirement of the department; or to cause a public nuisance; or to cause air pollution, soil or water pollution resulting from an air pollution incident; or to hinder, obstruct, prevent or interfere with the department or its personnel in their performance of any duty hereunder, 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 shall not allow pollution of the air, water or other natural resources of the Commonwealth resulting from the source. For any air pollutant for which the board has set an emissions standard or for any source for which a permit has been issued by the department, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this act.

(8 amended July 9, 1992, P.L.460, No.95)

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

(b) (1) Any person who wilfully or negligently violates any provision of this act, any rule or regulation adopted under this act or any order of the department or any condition or term of 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 commits

a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than two thousand five hundred dollars (\$2,500.00) nor more than fifty thousand dollars (\$50,000.00) for each separate offense or to imprisonment for a period of not more than two (2) years for each separate offense, or both.

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

(c) (1) Any person who knowingly releases into the ambient air any hazardous air pollutant listed under section 112 of the Clean Air Act or any extremely hazardous substance listed under section 302(a)(2) of the Superfund Amendments and Reauthorization Act of 1986 that is not listed in section 112 of the Clean Air Act and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury commits a felony of the first degree and shall, upon conviction, be sentenced to pay a fine of not less than 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 any 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. For any air pollutant for which the board has set an emissions standard or for any source for which a permit has been issued by the department, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this section.

(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 and the person had been made aware of the risks involved prior to giving consent.

(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, and the term 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) of this section, 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.

(e) For purposes of this section, the term "person" includes, in addition to the entities referred to in section 3, any responsible corporate officer.

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

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

(9 amended July 9, 1992, P.L.460, No.95)

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 or any rule or

regulation promulgated under this act or any order, plan approval or permit issued pursuant to 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 ten thousand dollars (\$10,000.00) per day for each violation which occurs in the first three (3) years following enactment of this section, fifteen thousand dollars (\$15,000.00) per day for each violation which occurs in the fourth year following enactment of this section and twenty-five thousand dollars (\$25,000.00) per day for each violation which occurs in the fifth year and all subsequent years following enactment of this section. In determining the amount of the penalty, the department shall consider the 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; the size of the source or facility; the compliance history of the source; the severity and duration of the violation; degree of cooperation in resolving the violation; the speed with which compliance is ultimately achieved; whether the violation was voluntarily reported; other factors unique to the owners or operator of the source or facility; and other relevant factors.

(b) 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 hearing board finds that the appellant is financially unable to pay. The hearing board shall issue an order within thirty (30) days of the date of the hearing to consider the appellant's alleged inability to pay. The amount assessed after administrative hearing or after waiver of administrative hearing shall be payable to the Commonwealth and shall be collectible in any manner provided by law for the collection of debts, including the collection of interest at the rate established in subsection (c) of section 6.3, which shall run from the date of assessment of the penalty. If any person liable to pay any such penalty neglects or refuses

to pay the same after demand, the amount, together with interest and any costs that may accrue, shall constitute a debt of such person, as may be appropriate, to the Clean Air Fund. The debt shall constitute a lien on all property owned by said person when a notice of lien incorporating a description of the property of the person subject to the action is duly filed with the prothonotary of the court of common pleas where the property is located. The prothonotary shall promptly enter upon the civil judgment or order docket, at no cost to the department, the name and address of the person, as may be appropriate, and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenues and all real and personal property of the person, whether or not the person is solvent. The notice of lien, filed pursuant to this subsection, which affects the property of the person shall create a lien with priority over all subsequent claims or liens which are filed against the person, but it shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this subsection.

(9.1 amended July 9, 1992, P.L.460, No.95)

Section 9.2. Disposition of Fees, Fines and Civil Penalties.--(a) Except as provided under subsection (a.1), 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. 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.

(a.1) The following shall apply:

(1) If an incident results in the imposition of a fine or civil penalty of at least fifty thousand dollars (\$50,000), twenty-five per centum (25%) of the fine or civil penalty collected shall be returned by the department to the municipality in which the violation occurred to be used for projects that eliminate or reduce air pollution or for parks, recreation projects, trails or open spaces.

(2) The department shall notify the municipality in which the violation occurred of the imposition of the fine or civil penalty under subsection (a) within five (5) business days after the expiration of the right to file an appeal of the fine or civil penalty or after all appeals of the fine or civil penalty have been exhausted.

(3) Within one hundred and eighty (180) days of the department's notification of the municipality under clause (2), the municipality shall submit a project proposal to the department for review and approval.

(4) Upon approval of the project, the department shall release twenty-five per centum (25%) of the fine or civil penalty collected to the municipality. If the cost of the project exceeds twenty-five per centum (25%) of the fine or civil penalty, the department may award additional money from the fine or civil penalty to the municipality.

(5) If all fines and civil penalties deposited into the Clean Air Fund are less than one million eight hundred fifty thousand dollars (\$1,850,000) for the previous fiscal year, clause (1) shall not apply for the current fiscal year.

(6) If the United States Environmental Protection Agency and the department jointly prosecute a violation of the Clean

Air Act, this act or a regulation adopted under this act, the fines and penalties collected shall not be subject to this subsection and subsection (a.2).

(7) A municipality may assign its claim to funding under clause (1) to the county in which the violation occurred within the one hundred eighty (180) day period specified in clause (3). The county shall submit a project proposal in compliance with clause (1) to the department for review and approval within forty-five (45) days of the expiration of the one hundred eighty (180) day period.

(8) If a municipality does not submit a project proposal within the one hundred eighty (180) day period specified in clause (3) or provides notification of its intent not to file a project proposal during the one hundred eighty (180) day period, the county in which the violation occurred may submit a project proposal in compliance with clause (1) to the department for review and approval within forty-five (45) days of the expiration of the one hundred eighty (180) day period.

(a.2) Within five (5) business days of imposition of a fine or civil penalty under this act, the department shall notify the municipality in which the violation occurred of the violation.

(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).

(9.2 amended July 7, 2011, P.L.271, No.57)

Section 9.3. Continuing Violations.--Each day of continued violation and each violation of any provision of this act, any rule or regulation adopted under this act or 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.

(9.3 added July 9, 1992, P.L.460, No.95)

Section 10. Civil Remedies.--(10 repealed July 9, 1992, P.L.460, No.95)

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 shall 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, any rule or regulation promulgated under this act or 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. Such an 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 pursuant to this act. The failure to comply with any such order is hereby declared to be a public nuisance.

(10.1 added July 9, 1992, P.L.460, No.95)

Section 10.2. Appealable Actions.--Any person aggrieved by an order or other administrative action of the department issued pursuant to 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).

(10.2 added July 9, 1992, P.L.460, No.95)

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 seven (7) years from the date the offense is discovered.

(10.3 added July 9, 1992, P.L.460, No.95)

Section 11. Powers Reserved to the Department Under Existing Laws.--Nothing in this act shall limit in any way whatever the powers conferred upon the department under laws other than this act, it being expressly provided that all such powers are preserved to the department and may be freely exercised by it. No court exercising general equitable jurisdiction shall be deprived of such jurisdiction even though a nuisance or condition detrimental to health is subject to regulation or other action by the board under this act.

(11 amended July 9, 1992, P.L.460, No.95)

Section 12. Powers Reserved to Political Subdivisions.--(a) Nothing in this act shall prevent counties, cities, towns, townships or boroughs from enacting ordinances with respect to air pollution which will not be less stringent than the provisions of this act, the Clean Air Act or the rules and regulations promulgated 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 county of the first or second class of the Commonwealth which has and implements an air pollution control program that, at a minimum, meets the requirements of this act, the Clean Air Act and the rules and regulations promulgated under both this act and the Clean Air Act and has been approved by the department.

(b.1) Provisions of this act pertaining to dust control measures shall not apply to portions of highways in townships of the second class where no businesses or residences are located. ((b.1) added Nov. 28, 1995, P.L.645, No.68)

(c) (1) Whenever, either upon complaint made to or initiated by the department, the department finds that any person is in violation of air pollution control standards, or

rules and regulations promulgated pursuant to the grant of authority made in subsection (b), the department shall give notification of that fact to that person and to the air pollution control agency of the county involved.

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

(d) Whenever the department finds that violations of this act or the rules and regulations promulgated under this act are so widespread that such violations appear to result from a failure of the local county control agency involved to enforce those requirements, the department may assume the authority to enforce this act in that county.

(e) The department shall have the power to refuse approval, or to suspend or rescind approval, once given, to any county air pollution control agency if the department finds that such county agency is unable or unwilling to conduct an air pollution control program to abate or reduce air pollution problems within its jurisdiction in accordance with the requirements of this act, the Clean Air Act or the rules and regulations promulgated under both this act and the Clean Air Act.

(f) Whenever the department takes action under the provisions of subsections (d) or (e) of this section, it shall give written notification to the air pollution control agency of the county involved and such notification shall be an appealable action.

(g) Irrespective of subsection (b) above, and in order that the civil and criminal penalties and equitable remedies for air pollution violations shall be uniform throughout the Commonwealth, the penalties and remedies set forth in this act shall be the penalties and remedies available for enforcement of any municipal air pollution ordinances or regulations, and shall be available to any municipality, public official, or other person having standing to initiate proceedings for the enforcement of such municipal ordinances or regulations, and the amounts of the fines or civil penalties set forth herein shall be the amounts of the fines or civil penalties assessable and to be levied for violations of any municipal ordinances or regulations. It is hereby declared to be the purpose of this section to enunciate further that the purpose of this act is to provide additional and cumulative remedies to abate the pollution of the air of this Commonwealth. Any action for the assessment of civil penalties brought for the enforcement of a municipal air pollution ordinance or regulation shall be brought in accordance with the procedures set forth in such ordinance. Where any municipal ordinance or regulation does not provide a procedure for the assessment of civil penalties, the provisions related to assessment and collection of civil penalties of section 9.1 shall apply.

(h) Nothing in this act shall affect the Municipal Planning Code unless required by the Clean Air Act.

(12 amended July 9, 1992, P.L.460, No.95)

Section 12.1. Construction.--Nothing in this act shall be construed as estopping the Commonwealth, or any district attorney or solicitor of a municipality, from proceeding in courts of law or equity to abate pollutions forbidden under this act, or abate nuisances under existing law. It is hereby declared to be the purpose of this act to provide additional and cumulative remedies to abate the pollution of the air of this Commonwealth, and nothing contained in this act shall in any way abridge or alter rights of action or remedies now or hereafter existing in equity, or under the common law or

statutory law, criminal or civil, nor shall any provision of this act, or the granting of any plan approval or permit under this act, or any act done by virtue of this act, be construed as estopping the Commonwealth, persons or municipalities, in the exercise of their rights under the common law or decisional law or in equity, from proceeding in courts of law or equity to suppress nuisances, or to abate any pollution now or hereafter existing, or enforce common law or statutory rights. No courts of this Commonwealth having jurisdiction to abate public or private nuisance shall be deprived of such jurisdiction to abate any private or public nuisance instituted by any person for the reason that such nuisance constitutes air pollution.

(12.1 amended July 9, 1992, P.L.460, No.95)

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

(13 amended July 9, 1992, P.L.460, No.95)

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

(13.1 amended July 9, 1992, P.L.460, No.95)

Section 13.2. Confidential Information.--All records, reports or information obtained by the department or referred to at public hearings under the provisions of this act shall be available to the public, except that upon cause shown by any person that the records, reports or information, or a particular portion thereof, but not emission data, to which the department has access under the provisions of this act, if made public, would divulge production or sales figures or methods, processes or production unique to such person or would otherwise tend to affect adversely the competitive position of such person by revealing trade secrets, including intellectual property rights, the department shall consider such record, report or information, or particular portion thereof confidential in the administration of this act. The department shall implement this section consistent with sections 112(d) and 114(c) of the Clean Air Act. Nothing herein shall be construed to prevent disclosure

of such report, record or information to Federal, State or local representatives as necessary for purposes of administration of any Federal, State or local air pollution control laws, or when relevant in any proceeding under this act.

(13.2 amended July 9, 1992, P.L.460, No.95)

Section 13.3. Existing Rules, Regulations, Permits and Approvals.-- (13.3 repealed July 9, 1992, P.L.460, No.95)

Section 13.4. Public Nuisances.--(13.4 repealed July 9, 1992, P.L.460, No.95)

Section 13.5. Variances.--(13.5 repealed July 9, 1992, P.L.460, No.95)

Section 13.6. Suits to Abate Nuisances and Restrain Violations.--(a) Any activity or condition declared by this act to be a nuisance or which is otherwise in violation of this act shall be abatable in the manner provided by law or equity for the abatement of public nuisance. In addition, in order to restrain or prevent any violation of this act or the rules and regulations promulgated under this act or any plan approval or permit or orders issued by the department or to restrain the maintenance and threat of public nuisance, suits may be instituted in equity or at law in the name of the Commonwealth upon relation of the Attorney General, the General Counsel, the district attorney of any county or the solicitor of any municipality affected after notice has first been served upon the Attorney General of the intention of the General Counsel, district attorney or solicitor to so proceed. Such proceedings may be prosecuted in the Commonwealth Court or in the court of common pleas of the county where the activity has taken place, the condition exists or the public is affected, and, to that end, jurisdiction is hereby conferred in law and equity upon such courts. Except in cases of emergency 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 it 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 therefor having been given to the defendant in accordance with the rules of equity practice, and, in any such case, the Attorney General, the General Counsel, the district attorney or the solicitor of any 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.

(c) Except as provided in subsection (d) of this section, any person may commence a civil action to compel compliance with this act or any rule, regulation, order or plan approval or permit issued pursuant to this act by any owner or operator alleged to be causing or contributing to a violation of any provision of this act or any rule or regulation promulgated under this 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 in awarding civil penalties under this subsection. Such

penalties shall be paid into the Clean Air Fund established by section 9.2 or be used to prevent air pollution in the county where the violation occurred. Except where 42 Pa.C.S. (relating to judiciary and judicial procedure) requires otherwise, the courts of common pleas shall have jurisdiction of such actions. Such an action may not be commenced 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 to require the alleged violator to comply with this act, any rule or regulation promulgated under this act or any order, plan approval or permit issued pursuant to 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 pursuant to 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 pursuant to 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 any action brought pursuant to 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.

(13.6 added July 9, 1992, P.L.460, No.95)

Section 14. Severability.--The provisions of this act are severable and if any provision, sentence, clause, section or part thereof shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the ordinance or their application to him or to other persons and circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the ordinance or any part thereof is inapplicable had not specifically been exempted therefrom.

Section 15. Effective Date.--This act shall take effect immediately: Provided, however, That the rules and regulations promulgated pursuant to the provisions of this act shall be of no effect until one (1) year after the passage of this act.



APPENDIX A-4:

DEP Statewide 2013 Annual Network Review EPA Approval Letter

**Bureau of Air Quality
Department of Environmental Protection**

[This page intentionally left blank.]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

The Honorable E. Christopher Abruzzo, Acting Secretary
Pennsylvania Department of Environmental Protection
Rachel Carson State Office Building
P.O. Box 2063
Harrisburg, Pennsylvania 17105-2063

DEC 10 2013

Dear Secretary *Abruzzo*:

By letter and enclosures dated July 23, 2013, the Pennsylvania Department of Environmental Protection (PADEP) submitted to the U.S. Environmental Protection Agency (EPA) an annual ambient air monitoring network plan in accordance with the regulatory requirements of 40 CFR Section 58 - Ambient Air Quality Surveillance. Based on our review, EPA hereby approves PADEP's July 23, 2013 annual ambient air monitoring network plan on the basis that the plan meets the requirements of 40 CFR Part 58.10.

Additionally, 40 CFR Section 58.11(c) requires any changes to the air monitoring network or design of the following air monitoring systems be approved by the EPA Administrator:

- a) Photochemical Assessment Monitoring Systems (PAMS)
- b) Particulate Matter Speciation Trends Network (STN)
- c) The National Core Monitoring Network (NCore)

EPA determined that PADEP's July 23, 2013 annual ambient air monitoring network plan does not require approval from the EPA Administrator because there were no changes to any of the air monitoring systems listed above.

If you have any questions please do not hesitate to contact me or have your staff contact Mrs. Laura Mohollen, EPA's Pennsylvania Liaison, at (215) 814-3295. For questions regarding this approval action, your staff may contact Ms. Diana Esher, Director, Air Protection Division, at (215) 814-2706.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn M. Garvin".

Shawn M. Garvin
Regional Administrator

cc: Ms. Joyce Epps, PADEP



Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474

[This page intentionally left blank.]



APPENDIX A-5:

Allegheny County 2013 Annual Network Review EPA Approval Letter

**Bureau of Air Quality
Department of Environmental Protection**

[This page intentionally left blank.]



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

DEC 10 2013

Mr. James Thompson
Air Quality Program Manager
Allegheny County Health Department
301 39th Street, Building #7
Pittsburgh, Pennsylvania 15213

Dear Mr. Thompson:

By letter and enclosures dated July 1, 2013, the Allegheny County Health Department (ACHD) submitted to the U.S. Environmental Protection Agency (EPA) an annual ambient air monitoring network plan in accordance with the regulatory requirements of 40 CFR Part 58 - Ambient Air Quality Surveillance. Based on our review, EPA approves ACHD's July 1, 2013 annual ambient air monitoring network plan on the basis that the plan meets the requirements of 40 CFR Part 58.10.

Additionally, 40 CFR Section 58.11(c) requires any changes to the air monitoring network or design of the following air monitoring systems be approved by the EPA Administrator:

- a) Photochemical Assessment Monitoring Systems (PAMS)
- b) Particulate Matter Speciation Trends Network (STN)
- c) The National Core Monitoring Network (NCore)

EPA determined that ACHD's July 1, 2013 annual ambient air monitoring network plan does not require approval from the EPA Administrator because there were no changes to any of the air monitoring systems listed above.

If you have any questions please do not hesitate to contact me or have your staff contact Mrs. Laura Mohollen, EPA's Pennsylvania Liaison, at (215) 814-3295. For questions regarding this approval action, your staff may contact Ms. Diana Esher, Director, Air Protection Division, at (215) 814-2706.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn M. Garvin".

Shawn M. Garvin
Regional Administrator

cc: Mr. Darrell Stern, ACHD



Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474

[This page intentionally left blank.]



APPENDIX A-6:

Philadelphia County 2013 Annual Network Review EPA Approval Letter

**Bureau of Air Quality
Department of Environmental Protection**

[This page intentionally left blank.]



UNIT STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

DEC 10 2013

Dr. Donald F. Schwarz, MD, MPH, Health Commissioner
City of Philadelphia
Department of Public Health
1401 JFK Boulevard, Room 600
Philadelphia, Pennsylvania 19102

Dear Dr. Schwarz:

By letter and enclosures dated July 1, 2013, the City of Philadelphia Air Management Services (AMS) submitted to the U.S. Environmental Protection Agency (EPA) an annual ambient air monitoring network plan in accordance with the regulatory requirements of 40 CFR Part 58 - Ambient Air Quality Surveillance. Based on our review, EPA partially approves AMS's July 1, 2013 annual ambient air monitoring network plan on the basis that the plan meets the requirements of 40 CFR Part 58.10. EPA also approves your request for exclusion of the PM2.5 continuous FEM data from site 42-101-0004 as per 40 CFR Part 58.11(e).

Additionally, 40 CFR Section 58.11(c) requires any changes to the air monitoring network or design of the following air monitoring systems be approved by the EPA Administrator:

- a) Photochemical Assessment Monitoring Systems (PAMS)
- b) Particulate Matter Speciation Trends Network (STN)
- c) The National Core Monitoring Network (NCore)

EPA determined that AMS's July 1, 2013 annual ambient air monitoring network plan requires a separate approval from the EPA Administrator because of the relocation of the NCORE monitoring site. As such, AMS's 2013 monitoring network plan has been forwarded to EPA's Office of Air Quality Planning and Standards to complete the approval process.

If you have any questions please do not hesitate to contact me or have your staff contact Mrs. Laura Mohollen, EPA's Pennsylvania Liaison, at (215) 814-3295. For questions regarding this approval action, your staff may contact Ms. Diana Esher, Director, Air Protection Division, at (215) 814-2706.

Sincerely,

A handwritten signature in black ink, appearing to read "Shawn M. Garvin".

Shawn M. Garvin
Regional Administrator

cc: Thomas Huynh, AMS



Printed on 100% recycled/recyclable paper with 100% post-consumer fiber and process chlorine free.
Customer Service Hotline: 1-800-438-2474

[This page intentionally left blank.]