

No. 245

AN ACT

HB 1333

Amending the act of January 8, 1960 (P.L.2119), entitled "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; creating within the Department of Health an Air Pollution Commission and defining its powers; authorizing the Department of Health to enforce rules and regulations of the Commission as provided in this act; establishing Regional Air Pollution Control Associations and defining their powers; 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; and providing an appropriation therefor," further providing for definitions, rules, regulations, permits, records and approvals, powers and duties of the Department of Environmental Resources and certain of its agencies, and enforcement procedures; providing for use and installation of equipment, testing and emergency conditions; changing and adding penalties and remedies; establishing the Clean Air Fund; and eliminating certain appropriation provisions.

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

Section 1. The title of the act of January 8, 1960 (P.L.2119), known as the "Air Pollution Control Act," is amended to read:

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; **[creating within the Department of Health an Air Pollution Commission and defining its powers; authorizing the Department of Health to enforce rules and regulations of the Commission as provided in this act; establishing Regional Air Pollution Control Associations and defining their powers;]** *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 [; and providing an appropriation therefor].

Section 2. Section 3 of the act, amended June 12, 1968 (P.L.163), is amended to read:

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

(1) “Department.” Department of [Health] *Environmental Resources* of the Commonwealth of Pennsylvania.

(2) [“Commission.” The Air Pollution Commission.] “Board.” *The Environmental Quality Board established in the department by the act of December 3, 1970 (P.L.834).*

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

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

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

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

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

(7) “Air contamination source.” Any [source] *place, facility or equipment, stationary or mobile*, at, from or by reason of which there is emitted into the outdoor atmosphere any air contaminant [regardless of who the person may be who owns or operates the building, premises or other property in or on which such source is located or the facility, equipment or other property by which the emission is caused or from which the emission comes. Without limiting the generality of the foregoing, this term includes all types of business, commercial and industrial plants, works, shops and stores, and heating and power plants and stations, buildings and other structures of all types, including single and multiple family residences, apartments, houses, office buildings, public buildings, hotels, restaurants, schools, hospitals, churches and other institutional buildings, automobiles, trucks, tractors, buses and other motor

vehicles, garages and vending and service locations and stations, railroad locomotives, ships, boats and other water-borne craft, portable fuel-burning equipment, incinerators of all types, indoor and outdoor, refuse dumps and piles, and all stack and other chimney outlets from any of the foregoing].

(8) ["Association." Any Regional Air Pollution Control Association provided for in this act.] "*Stationary air contamination source.*" *Any air contamination source other than that which, when operated, moves in a given direction under its own power.*

(9) "Region." Any geographical subdivision of the Commonwealth whose boundaries shall be determined by the [commission.] *board.*

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

Section 3. Section 4 of the act, amended June 12, 1968 (P.L.163), and July 23, 1970 (P.L.606), is amended to read:

Section 4. Powers and Duties of the Department of [Health] *Environmental Resources.*—The department shall have power and its duty shall be to—

(1) 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 any rule or regulation which may have been adopted and promulgated by the [Commission] *board* hereunder. [Any information relating to secret processes or methods of manufacture or production obtained in the course of such inspection, investigation or determination shall be kept confidential and shall not be subject to subpoena by any court of the Commonwealth in any civil action or any other proceeding, except before the Commission as herein defined. If, in] *In* connection with such inspection or investigation, samples of air, [or] air contaminants, [are] *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.

(2) Have access to, and require the production of, books and papers pertinent to any matter under investigation.

(2.1) *Require the owner or operator of any air contamination source to establish and maintain such records and make such reports and furnish such information as the department may reasonably prescribe.*

(2.2) *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.*

(2.3) *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.

(3) [Receive and initiate complaints of air pollution and submit such complaints to the Association of the air pollution control region in which the air contamination source is located.] *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 board rule or regulation or otherwise causing air pollution. Whenever the department determines that a source test is necessary, it shall give reasonable written notice to the person owning, operating, or otherwise in control of such source, that it 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 holes, facilities, electrical power and water as the department shall specify in its notice.*

(4) [Investigate] *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.

(4.1) [Issue orders to any person causing air pollution. The department may stipulate, in such orders, a time within which compliance shall be effected: Provided, however, That within thirty (30) days of the issuance of such order the person to whom it is issued may appeal to the Commission, in writing, with a copy thereof to the Secretary of Health. After such appeal, the order shall be held in abeyance until the Commission shall have granted the person appealing the order reasonable notice and an opportunity to be heard, in accordance with the provisions of the act of June 4, 1945 (P.L.1388), as amended, known as the "Administrative Agency Law." Thereafter, the adjudication of the Commission shall be the order of the department, unless such adjudication is disturbed on appeal. If the person against whom an order of the department is issued fails to appeal to the Commission within thirty (30) days of the issuance of said order, he shall have waived his right to appeal to the Commission, under this act, or to the courts under the provisions of the "Administrative Agency Law."] *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 board rule or regulation, or any permit requirement 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 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.

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 of the Commonwealth Court may issue such a supersedeas. Any person aggrieved by an adjudication of the hearing board may appeal to the Commonwealth Court.

(5) Institute, in a court of competent jurisdiction proceedings to compel compliance with any order of the department from which there has been no appeal or which has been sustained on appeal.

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

(7) Institute prosecutions under this act.

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

(9) 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.

(10) 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.

(10.1) Evaluate motor vehicle emission control programs with respect to their effect upon air pollution and determine the need for modifications of such programs.

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

(12) 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 [Commission] *board* for its consideration and approval.

(13) 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.

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

(15) 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.

(16) 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.

(17) Provide advisory technical consultative services to local communities [and to the Regional Air Pollution Control Associations] for the control, prevention, abatement and reduction of air pollution and air contamination.

(18) 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.

(19) 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.

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

Section 4. Section 5 of the act, amended June 12, 1968 (P.L.163) and July 23, 1970 (P.L.606) and repealed in part July 31, 1968 (P.L.769), is amended to read:

Section 5. [The Air Pollution Commission.—(a) There is hereby created in the department an Air Pollution Commission which shall consist of the Secretaries of the Department of Health, Department of Commerce, Department of Community Affairs, Department of Mines and Mineral Industries, Department of Agriculture or, in lieu thereof, individuals employed in their

respective departments designated by them, and six other persons appointed by the Governor, by and with the advice and consent of two-thirds of all the members of the Senate. Of the persons appointed by the Governor, one shall be a duly licensed professional engineer, two shall be members of groups or organizations concerned with the conservation of the natural resources of the Commonwealth, two shall be engineers from industry active and experienced in air pollution control and one shall be a member of the general public. All members appointed by the Governor shall be residents of the Commonwealth.

(b) The term of each member appointed by the Governor shall be four (4) years or until a successor is duly appointed and qualified. The members of the Commission, other than the governmental members, shall receive fifty dollars (\$50.00) per diem while actually engaged in the work of the Commission and each of them shall be allowed the necessary and actual expense which he shall incur in the performance of his duties under this act.

(c) The Commission shall elect a chairman and vice chairman every two years: Provided, however, That the first chairman of the Commission shall be the Secretary of Health.

(d) *Environmental Quality Board.*—The [Commission] *board* shall have the power and its duty shall be to—

(1) [Certify to the Governor as soon as is practicable the number and boundaries of regions as defined herein, and in the event that the number of regions or the boundaries thereof are subsequently changed, to certify such changes to the Governor, by resolution, at a subsequent meeting.

(2) Adopt rules and regulations for the control of air pollution in regions or parts thereof, after reviewing studies made by the department in those regions or parts thereof, and after such suggested rules and regulations have been reviewed by the Association, or Associations, of the region, or regions affected.] *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 [Commission] *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 [Commission] *board* and to serve at the pleasure of the [Commission] *board*, to consist of such number of advisers as the [Commission] *board* may appoint, but such technical advisers shall receive no compensation, other than their actual and necessary expenses, for their services to the [Commission] *board*.

(3) Adopt rules and regulations for the orderly conduct of business before it and adopt policies and regulations for the enforcement of regulations promulgated under clause (d) (2) of this section.

(4) Hold meetings or hearings at the call of the chairman, but in no event shall meetings be held less than six times per year.

(5) Hear and determine all appeals from orders issued by the department in accordance with the provisions of this act. Any and all action by the Commission taken 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 the Administrative Agency Law, the act of June 4, 1945 (P.L.1388), as amended, insofar as the rights of any person aggrieved are concerned. Any party aggrieved, as defined in the act of June 4, 1945 (P.L.1388), as amended, known as the "Administrative Agency Law," by any adjudication of the Commission shall have the right to appeal such adjudication in the manner provided by, and subject to the "Administrative Agency Law."

(6) (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.

(7) (3) By the rule or regulation, classify air contaminant sources, according to levels and types of emissions and other characteristics which relate to air pollution. Classifications made pursuant to this subsection shall apply to the entire Commonwealth or any part thereof. Any person who owns or operates an air contaminant source of any class to which the rules and regulations of the [Commission] *board* under this subsection apply, shall make reports containing information as may be required by the [Commission] *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.

(8) (4) Recommend to the Secretary of [Revenue] *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 rescision and suspension of approval of local air pollution control agencies.

Section 5. Section 6 of the act, amended June 12, 1968 (P.L.163), is amended to read:

Section 6. [Regional Air Pollution Control Associations.—(a) In each of the regions designated by the Commission there shall be established an Association consisting of a representative of industry, and of labor, and a county commissioner of one of the counties comprising the region. In addition thereto, each Association shall be comprised of a resident of each of the counties of the region concerned. All members of such Association, including the chairman, shall be appointed by the Governor and shall serve at his pleasure.

(b) Each Association shall have the power and its duty shall be to—

(1) Review and comment upon all proposed regulations of the Commission peculiar to the region within a period of ninety (90) days. If the Commission shall not have received comments from the Association within ninety (90) days of their submission to the Association, such suggested rules and regulations shall be adopted by the Commission.

(2) Suggest to the Commission such regulations as may seem suitable to the conditions of that region.

(3) Consider complaints regarding any air contamination source within its region which is alleged to cause air pollution. In the consideration of such complaints, an Association shall attempt to resolve the complaint through the use of a maximum of conference, conciliation and persuasion. Within three months of the receipt of any complaint, an Association shall refer the matter, in writing, to the department for appropriate action in accordance with the rules and regulations of the Commission. Thereafter, all complaints received by an Association with respect to the same problem shall be referred directly to the department.

(4) Cooperate with persons within the region to develop a program for the prevention, abatement, control and reduction of air pollution within the region.

(5) Avail itself of the services of the Department of Health for technical service or advice whenever it is necessary for a proper understanding of the problems within the region.

(6) Meet at the call of the chairman of the Association but in no event shall the Association meet less than four times a year.

(7) Utilize such stenographic and clerical assistance of the department as is necessary for the conduct of the business of the Association.

(8) Enter into an agreement with the Department of Health for the reimbursement of all necessary expenses of the Association.

(9) Provide for convenient headquarters for the Association. In the absence of any cogent reason the headquarters of the Association shall be situated in the regional office of the Department of Health, and such office shall be supplied by the department to the Association at no charge.

(c) Each Association shall be considered an autonomous body insofar as the

conduct of its business is concerned, notwithstanding the fact that it may utilize such services of the department as are herein provided, and notwithstanding the fact that it must comply with subsection (b) (3) of this section.] *Environmental Hearing Board.*—*The hearing board shall have the power and its duty shall be to hear and determine all appeals from orders issued by the department 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 the act of June 4, 1945 (P.L.1388), known as the "Administrative Agency Law."*

Section 6. The act is amended by adding sections to read:

Section 6.1. Permits.—(a) On or after July 1, 1972, no person shall construct, assemble, install or modify any stationary air contamination source, or install thereon any air pollution control equipment or device or reactivate any air contamination source after said source has been out of operation or production for a period of one year or more unless such person has applied to and received from the department written approval so to do: 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, or with respect to any other class of units as the board, by rule or regulation, may exempt from the requirements of this section. 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) No person shall operate any stationary air contamination source which is subject to the provisions of subsection (a) of this section unless the department shall have issued to such person a permit to operate such source in response to a written application for a permit submitted on forms and containing such information as the department may prescribe. No permit shall be issued to any applicant unless it appears that, with respect to the source, the requirements of subsection (a) of this section have been met and that there has been performed upon such source a test operation or evaluation which shall satisfy the department that the air contamination source will not discharge into the outdoor atmosphere any air contaminants at a rate in excess of that permitted by applicable regulation of the board, and which will not cause air pollution. Permits issued hereunder may contain such conditions as the department deems necessary to assure the proper operation of the source. Each permittee, on or before the anniversary date set forth in his permit, shall submit to the department an annual report containing such information as the department shall prescribe

relative to the operation and maintenance of the installation under permit.

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

(d) The department may refuse to grant approval for any stationary air contamination source subject to the provisions of subsection (a) of this section or to issue a permit to operate such source if it appears, from the data available to the department, that the proposed source, or proposed changes in such source, are likely either to cause air pollution or to violate any board rule or regulation applicable to such source, or if, in the design of such source, no provision is made for adequate facilities to conduct source testing. The department may also refuse to issue a permit to any person who has constructed, installed or modified 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 a permit hereunder or suspend or revoke a 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. Thereafter, any aggrieved party to the proceeding, including the department, may appeal the action of the hearing board to the Commonwealth Court.

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

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 persons causing or contributing to the air pollution to immediately reduce or discontinue the emission of air contaminants.

(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.

Section 7. Section 7 of the act, amended January 24, 1966 (P.L.1520), is amended to read:

Section 7. Public Hearings.—(a) Public hearings shall be held by the [Commission] board or by the department, acting on behalf and at the direction or request of the [Commission] 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 [Commission] 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

[**Commission**] *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 [**Commission**] *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 [**Commission**] *board* with its report.

[(f) No information relating to secret processes or methods of manufacture or production shall be disclosed at any public hearing or otherwise and all such information shall be kept confidential.]

Section 8. Sections 8 and 9 of the act, amended June 12, 1968 (P.L.163), are amended to read:

Section 8. Unlawful Conduct.—It shall be unlawful to fail to comply with any rule or regulation *of the board* or to fail to comply with any order of the department, to violate or to assist in the violation of any of the provisions of this act or rules and regulations adopted hereunder, *to cause air pollution*, or to in any manner hinder, obstruct, delay, resist, prevent or in any way interfere or attempt to interfere with the department or its personnel in the performance of any duty hereunder [, *or refuse to permit such personnel to perform their duty by refusing them, after proper identification or presentation of a written order of the department, entrance at reasonable hours to any premises*].

Section 9. Penalties.—(a) Summary offense. Any person as herein defined, except a department, board, bureau or agency of the Commonwealth, [**political subdivision, municipality, district or authority,**] engaging in unlawful conduct as set forth in section 8 of this act, shall, for each offense, upon conviction thereof in a summary proceeding before a *district justice*, magistrate, alderman or justice of the peace, be sentenced to pay the costs of prosecution and a fine of not less than one hundred dollars (\$100.00) nor more than [**five hundred dollars (\$500.00)] one thousand dollars (\$1,000.00)**, and, in default thereof, to undergo imprisonment of not less than ten (10) days nor more than thirty (30) days.

(b) Misdemeanors. Any person as herein defined, except a department, board, bureau or agency of the Commonwealth, [**political subdivision, municipality, district or authority, convicted of a third or subsequent offense,** shall be guilty of a misdemeanor and shall, upon conviction thereof, be sentenced to pay a fine of not less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1,000.00), or to undergo imprisonment not exceeding

one year, or both, in the discretion of the court.] *who, within two years after being convicted of a summary offense pursuant to subsection (a) of this section, engages in similar unlawful conduct, shall be guilty of a misdemeanor and, upon conviction thereof, shall, for each separate offense, be subject to a fine of not less than five hundred dollars (\$500.00) nor more than five thousand dollars (\$5,000.00), or to imprisonment for a period of not more than one year for each separate offense hereunder, or both. For the purposes of this subsection, similar unlawful conduct shall mean a violation of the same order of the department, or a violation of the same provision of any rule or regulation of the department by the same organizational unit of the defendant.*

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

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

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

Section 9.1. Civil Penalties.—*In addition to proceeding under any other remedy available at law, or in equity, for a violation of a provision of this act, or a rule or regulation of the board, or an order of the department, the hearing board, after hearing, may assess a civil penalty upon a person for such violation. Such a 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), plus up to two thousand five hundred dollars (\$2,500.00) for each day of continued violation. In determining the amount of the civil penalty, the hearing board shall consider the wilfulness of the violation, damage or injury to the outdoor atmosphere of the Commonwealth or its uses, and other relevant factors. It shall be payable to the Commonwealth of Pennsylvania and shall be collectible in any manner provided at law for the collection of debt. 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 be a lien in favor of the Commonwealth upon the property, both real and personal, of such person, but only after same has been entered and docketed of record by the prothonotary of the county where such is situated. The hearing board may, at any time, transmit to the prothonotaries of the respective counties certified copies of all such liens, and it shall be the duty of each prothonotary to enter and docket the same of record in his office, and*

to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.

Section 9.2. Disposition of Fines and Civil Penalties.—*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 shall be administered by the department for use in the elimination of air pollution. The board shall adopt rules and regulations for the management and use of the money in the fund.*

Section 10. Section 10 of the act, amended June 12, 1968 (P.L.163), is amended to read:

Section 10. [Application for Injunctive Relief.]—*(a) In addition to any other remedies provided for in this act, the department may request the Attorney General to petition the court of common pleas in the county in which the defendant resides or has his place of business for an injunction to restrain all violations of this act.] Civil Remedies.*—*(a) The Attorney General, at the request of the department, may initiate, by petition, in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has its place of business, an action for the enforcement of any order issued pursuant to this act by the department from which no timely appeal has been taken or which has been sustained on appeal. The court, in such proceeding, shall have the power to grant such temporary relief as it deems just and proper and if, after hearing, the court finds that such order has not been fully complied with, the court shall enforce such order by requiring immediate and full compliance therewith. The Commonwealth shall not be required to furnish bond or other security in any proceeding instituted under this subsection.*

(b) In addition to any other remedies provided for in this act, the Attorney General, at the request of the department, may initiate, in the Commonwealth Court or the court of common pleas of the county in which the defendant resides or has his place of business, an action in equity for an injunction to restrain any and all violations of this act or the rules and regulations promulgated hereunder, or to restrain any public nuisance or detriment to health caused by air pollution. In any such proceeding, the court shall, upon motion of the Commonwealth, issue a preliminary injunction if it finds that the defendant is engaging in unlawful conduct, as defined in section 8 of this act, or is engaging in conduct which is causing immediate and irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with such proceedings. In addition to an injunction, the court, in such equity proceedings, may levy civil penalties as specified in section 9.2 of this act.

(c) Whenever an order of the department, issued hereunder, has been directed to a political subdivision, municipality, district,

authority or agency of the Commonwealth, and such order has become final or has been sustained on appeal, the Attorney General, at the instance of the department, may enforce such order by an action in mandamus.

(d) In addition to any other remedies provided for in this act, upon relation of any district attorney of any county affected, or upon relation of the solicitor of any municipality affected, an action in equity may be brought in a court of competent jurisdiction for an injunction to restrain any and all violations of this act or the rules and regulations promulgated hereunder, or to restrain any public nuisance or detriment to health caused by air pollution.

[(b) (e)] The penalties and remedies prescribed by this act shall be deemed concurrent and the existence of or exercise of any remedy shall not prevent the department from exercising any other remedy hereunder, at law or in equity.

(f) Suits to abate such nuisances or suits to restrain or prevent any violation of this act may be instituted at law or in equity by any resident of the Commonwealth after thirty (30) days notice has first been served upon the Attorney General of the intention to so proceed. Such proceedings may be prosecuted 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 said nuisances, the court may, in its decree, fix a reasonable time during which the person responsible for the nuisances may make provision for the abatement of the same. The court may provide for the payment of civil penalty as specified in section 9.1 of this act during the time when air pollution will continue under its decree. It shall not be necessary to the maintenance of such a suit by any resident of the Commonwealth that he shall prove that he has suffered or will suffer any personal loss or damage.

Section 11. Sections 11 and 12 of the act, amended January 24, 1966 (P.L.1520), are amended to read:

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. **[except where such exercise is in clear and direct conflict with a rule, regulation or order of the commission. Subject to such exception, the]** *The* department shall have the right upon approval of the Attorney General, to petition a court of competent jurisdiction to order the abatement of any nuisance or condition detrimental to health. For that purpose no court exercising general equitable jurisdiction shall be deprived of such jurisdiction even though such nuisance or condition

detrimental to health is subject to regulation or other action by the [commission] *board* under this act.

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 [conflict with] *be less stringent than* the provisions of this act or the rules and regulations promulgated pursuant to its provisions. 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 [conflict with] *be less stringent than* the provisions of this act.

(b) The *administrative* procedures for the abatement, reduction, prevention and control of air pollution set forth in this act shall not apply to any political subdivision of the Commonwealth which has an approved air pollution control agency. [except in the case in which a source or suspected source of air pollution exists in such political subdivision the effects of which extend beyond the boundaries of the political subdivision concerned. In order to insure effective coordination and cooperation, such air pollution control agencies and programs shall be subjected to the approval of the commission.]

(c) *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 political subdivision involved.*

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 the air pollution control standards, or rules and regulations promulgated pursuant to the grant of authority under subsection (b) are so widespread that such violations appear to result from a failure of the local control agency involved to enforce those standards, or rules and regulations, the department may assume the authority to enforce those standards, and rules and regulations.*

(e) *The department shall have the power to refuse approval, or to suspend or rescind approval, once given, to any air pollution control agency if the department finds that such agency is unable or unwilling so to conduct an air pollution control program as to abate or reduce air pollution problems within its jurisdiction in an effective manner.*

(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 political subdivision involved and such notification shall be subject to the appeal provisions of clause (4.1) of section 4 of this act.*

(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 except insofar as they are inconsistent with the jurisdictional limitations of the minor judiciary and the Philadelphia Municipal Court, throughout the Commonwealth, the penalties and remedies set forth in this act in sections 9, 9.1, 10 and 11, 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 of subsection ¹(h) of this section shall apply.

²(h) Any person, as herein defined, except a department, board, bureau, or agency of the Commonwealth, engaging in conduct in violation of a municipal air pollution control ordinance, shall, for each offense, upon conviction thereof in a civil proceeding before a judge of the Municipal Court of Philadelphia, district justice, magistrate, alderman or justice of the peace be sentenced to pay the cost of prosecution and a civil penalty of not less than twenty-five dollars (\$25.00), nor more than five hundred dollars (\$500.00), for each day of continued violation. Such a penalty may be assessed whether or not the violation was wilful. Failure to pay any such penalty within the time prescribed by law shall be punishable as a civil contempt. Notwithstanding anything contained in section 9.2 of this act, all civil penalties and fees collected under this subsection shall be paid to the appropriate political subdivision, as provided by law, and shall be collectible in any manner provided by law for the collection of debt. 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 be a lien in favor of the appropriate political subdivision upon the property, both real and personal, of such person, but only after the same has been entered and docketed of record by the

¹“(f)” in original.

²“(f)” in original.

prothonotary of the county where such is situated: Provided, That nothing contained in this subsection shall preclude any public official from seeking, at law or at equity or before any appropriate administrative body, the assessment of civil penalties in the amount provided by section 9.1 of this act.

Section 11.1. Section 12.1 of the act is repealed.

Section 11.2. The act is amended by adding a section to read:

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 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.

Section 12. Section 13 of the act is amended to read:

Section 13. [Appropriation.—There is hereby appropriated to the Department of Health the sum of fifty thousand dollars (\$50,000.00), or as much thereof as is necessary, to carry out the provisions of this act. All moneys expended pursuant to the provisions of this act shall be expended consistent with the policies of the Commission.] *Public Nuisances.—A violation of any order or of any provision of any rule or regulation promulgated pursuant to a local air pollution code or to a State air pollution act, which limits or controls the emission of any air contaminant shall constitute a public nuisance and shall be abatable in the manner provided by law.*

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

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 and examine 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.

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, the department shall consider such record, report or information, or particular portion thereof confidential in the administration of this 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.

Section 13.3. Existing Rules, Regulations, Permits and Approvals.—Any board or department rules and regulations which require approvals or permits with regard to any air contamination source or air pollution equipment or device in effect at the passage of this act shall continue in effect with respect to such sources until June 30, 1972. Any permit or approval granted pursuant to the provisions of such rules and regulations shall be deemed to have been issued pursuant to the provisions of this act.

Section 13.4. Public Nuisances.—A violation of any order, or of any provision of any rule or regulation, issued or promulgated pursuant to this act, or pursuant to any municipal air pollution control ordinance or code, which limits the emission of any air contaminant shall constitute a public nuisance and shall be abatable in the manner provided by law.

Section 13.5. Variances.—(a) The department shall have the power to grant temporary variances from the effect of any provision of this act, or of any rule or regulation adopted hereunder, which limits the emission of any air¹ contaminant, and the Environmental Quality Board, subject to the provisions of this section, shall adopt rules and regulations setting forth the terms and conditions subject to which such variances shall be granted. Such rules and regulations shall not

¹"contaminate" in original.

authorize the grant of a variance which will prevent or interfere with the attainment or maintenance of any ambient air quality standard imposed by Federal law within the time prescribed by such law for the attainment of such standard.

(b) Subject to the foregoing provisions, for the sole purpose of protecting recent substantial investments in air pollution control devices or equipment, the department shall have the power and its duty shall be to grant a temporary variance to the owner or operator of any source where it appears that:

(1) Installation of air pollution control devices or equipment on such source was commenced or completed after January 28, 1969 and before January 27, 1972;

(2) Such installation was required in order to comply with all standards and regulations in effect at the time installation was commenced and when completed did in fact comply with said standards and regulations;

(3) The standard from which a variance is sought is more stringent than the applicable standard in effect at the time installation of the control equipment was commenced or completed; and

(4) Compliance with the standard from which a variance is sought cannot feasibly be accomplished by the installation of additional or supplemental air pollution control devices and equipment which, used together with existing air pollution control devices and equipment, would enable the source to comply with the upgraded standard.

(c) The rules and regulations with respect to variances adopted by the Environmental Quality Board prior to the effective date of this act shall continue in full force and effect, except that notwithstanding any provision thereof establishing a different time limitation for variances, a temporary variance granted pursuant to the provisions of subsection (b) of this section may be granted for a period not to exceed ten (10) years from the date of completion of installation of the air pollution control equipment or devices, or for the period of depreciation or amortization of said equipment or devices for the purposes of section 167 or section 169, or both, of the Internal Revenue Code of 1954, whichever period ends first: Provided, further, That any variance granted under said subsection shall not be subject to renewal.

Section 14. The provisions of this act shall be severable. If any provision of this act is found by a court of record to be unconstitutional and void, the remaining provisions of the act shall, nevertheless, remain valid unless the court finds the valid provisions of the act are so essentially and inseparably connected with, and so depend upon, the void provision that it cannot be presumed the Legislature would have enacted the remaining valid provisions without the void ones; or unless the court finds the remaining valid provisions, standing alone, are incomplete and are incapable of being executed in accordance with the legislative intent.

Section 15. This act shall take effect immediately.

APPROVED—The 26th day of October, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 245.

A handwritten signature in black ink, reading "C. McLaughlin Tucker". The signature is written in a cursive style with a large initial "C" and a prominent "T" at the end.

Secretary of the Commonwealth.