

No. 1996-174

AN ACT

HB 873

Amending the act of January 8, 1960 (1959 P.L.2119, No.787), entitled, as amended, "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," further providing for the prohibition against adoption of agricultural rules and regulations and for the small business ombudsman.

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

Section 1. Sections 4.1, 7.7(b) and 7.9 of the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, amended or added July 9, 1992 (P.L.460, No.95), are amended to read:

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 [~~in their unmanufactured state but this prohibition shall not include the use of materials produced or manufactured off the premises of the farm operation~~].

(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.*

Section 7.7. Small Business Compliance Assistance Program.—* * *

(b) The department shall evaluate the feasibility of contracting with consultants to administer all or part of the Small Business Stationary Source Technical and Environmental Compliance Assistance Program. [The department shall submit a report to the Governor, the General Assembly, the Compliance Advisory Committee and the Office of Small Business Ombudsman summarizing the results of this evaluation and the department's recommendations.] *A third-party consultant will act as a source of confidential support for small business if one is selected by the department.*

* * *

Section 7.9. Small Business Ombudsman.—(a) There is hereby established an Office of Small Business Ombudsman within the Department of [Commerce] *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.

Section 2. This act 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 this amendatory act, is not subject to the provisions of the act.

Section 3. This act shall take effect immediately.

APPROVED—The 18th day of December, A.D. 1996.

THOMAS J. RIDGE