*** § 21-1501. Mid-Atlantic states air pollution control compact.**

The mid-Atlantic states air pollution control compact as first entered into pursuant to chapter 475 of the laws of 1967, as amended by chapter 476 of the laws of 1967, and as amended by chapter 385 of the laws of 1968, and as subject to execution by the governor as provided in said compact, is hereby continued. The compact is as follows:

WHEREAS, the signatory parties recognize that they have certain serious problems in common with respect to pollution of the atmosphere by man-made contaminants; and

WHEREAS, the nature and sources of air pollution are such that the states' efforts can be effectively supplemented by control measures applicable to regional airsheds which cut across state boundaries; and

WHEREAS, the signatory parties recognize that the protection and improvement of the quality of their common atmosphere is vested with local, state and national interests, for which they have a joint responsibility; and

WHEREAS, the signatory parties have determined to establish a federal-interstate agency, with jurisdiction and powers adequate to cope with interstate air pollution problems;

Now therefore, the states of New Jersey and New York and the United States of America, and if any of them should join herein, the states of Delaware, Connecticut and the commonwealth of Pennsylvania, respectively, hereby solemnly convenant and agree with each other, upon the enactment of concurring legislation by the congress of the United States and by the respective state legislatures, having the same effect as this part as follows:

ARTICLE 1

SHORT TITLE, DEFINITIONS AND FINDINGS

§ 1.1. Short title. This act shall be known and may be cited as the "Mid-Atlantic States Air Pollution Control Compact".

§ 1.2. Definitions. For the purposes of this compact, and of any

supplemental or concurring legislation enacted pursuant thereto, except as may be otherwise required by the context:

(a) "Commission" shall mean the commission established by this compact;

(b) "Region" shall mean the territorial limits of the states which are or become parties to this compact;

(c) "Compact" shall mean section 21-1501 of this title;

(d) "Federal government" shall mean the government of the United States of America, and any appropriate branch, department, bureau or division thereof, as the case may be;

(e) "Signatory party" shall mean a state, commonwealth, or the federal government, which has become a party to this compact by enactment of concurring legislation;

(f) "District" shall mean any area established, identified or defined by the commission in connection with the abatement or control of air pollution;

(g) "Air contaminant" shall mean dust, fumes, mist, smoke, or other particulate matter, vapor, gas, odorous substance, or any combination thereof;

(h) "Air pollution" shall mean the presence in the outdoor atmosphere of one or more air contaminants in such quantities and duration as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or property;

(i) "Emission" shall mean a release into the outdoor atmosphere of air contaminants.

§ 1.3. Findings of fact. It is hereby found and declared that:

(a) The tremendous growth of population and industry has resulted in substantial increases in atmospheric waste and air pollution over the entire region;

(b) Air pollution does not respect political boundaries, and persons far removed from its sources and having no responsibility for or control over its creation endure health hazards, discomfort and inconvenience and experience property damage and economic loss;

(c) Air pollution is associated with such important respiratory diseases as lung cancer, emphysema, chronic bronchitis and asthma, and is a general hazard to the public health and welfare, agricultural

crops, livestock and other property;

(d) It is necessary and desirable to abate existing air pollution and prevent future air pollution so as to secure and maintain air quality which is consistent with the public health and welfare, the propagation and protection of plant and animal life, and the protection of property and other resources of the region;

(e) In the present state of the art, there are no public facilities for collection and disposal of atmospheric waste comparable to facilities to cope with liquid and solid waste, and the effects of emissions differ greatly among air resource uses and users, under the various meteorological and geographic conditions, which disregard state boundaries.

(f) Air pollution can best be controlled and abated at its sources, and, while such prevention, control and abatement is the primary obligation of the states, counties or municipalities in which it originates, the problems of interstate air pollution can be more readily and effectively solved under a coordinated regionwide agency of the state and federal governments.

§ 1.4. Existing agencies; construction. It is the purpose of the signatory parties to preserve and utilize the functions, powers and duties of existing offices and agencies of government to the extent not inconsistent with the compact and the commission is authorized and directed to utilize and employ such offices and agencies for the purpose of this compact to the fullest extent it finds feasible and advantageous.

ARTICLE 2

ORGANIZATION AND ADMINISTRATION

§ 2.1. Commission created. There is hereby created the mid-Atlantic states air pollution control commission as a body politic and corporate, with perpetual succession as an agency and instrumentality of the respective signatory parties.

§ 2.2. Commission membership. The commission shall consist of the governors of the signatory states, ex-officio, and one commissioner to be appointed by the president of the United States, to serve during the term of office of the president appointing him and until the appointment and qualification of his successor.

§ 2.3. Alternates. Each member of the commission shall appoint an

alternate to act in his place and stead, with authority to attend all meetings of the commission, and with power to vote in the absence of the member. Unless otherwise provided by law of the signatory party for which he is appointed, each alternate shall serve during the term of the member appointing him, subject to removal at the pleasure of the member. In the event of a vacancy in the office of alternate, it shall be filled in the same manner as an original appointment for the unexpired term only. In the event of the temporary absence or disability of an alternate, the member of the commission may appoint another qualified person to act as his alternate for the duration of such temporary absence or disability.

§ 2.4. Compensation. Members of the commission and alternates shall serve without compensation from the commission but may be reimbursed for necessary expenses incurred in and incident to the performance of their duties.

§ 2.5. Voting power. Each member shall be entitled to one vote on all matters which may come before the commission. No action of the commission shall be taken at any meeting unless a majority of the membership shall vote in favor thereof.

§ 2.6. Organization; procedure. The commission shall provide for its own organization and procedure and shall adopt rules and regulations governing its meetings and transactions. It shall organize annually by the election of a chairman and vice-chairman from among its members. It shall provide by its rules for the appointment by each member in his discretion of an advisor to serve without compensation, who may attend all meetings of the commission and its committees.

§ 2.7. Jurisdiction. The commission shall have, exercise and discharge its functions, powers and duties within the region. It may by contract or otherwise act jointly, concurrently, or in cooperation with any other agency or instrumentality of government within or without the region for the purpose of effectuating the purposes of this compact.

§ 2.8. Retained jurisdiction of signatory parties. (a) Unless authorized by laws of the signatory states other than this compact, the commission shall not have power to require licenses or permits for the construction, establishment, installation, maintenance or operation of any air pollution source or other equipment, device or facility; to require commission approval of any of the foregoing; or to confer upon

the commission any other power of licensure.

(b) Nothing in this compact shall be construed to abrogate, impair or in any way prevent the enactment or application of any state or local law, code, ordinance, rule or regulation not inconsistent with this compact, or with any standard, rule or regulation of the commission; and any such state or local law, code, ordinance, rule or regulation may be more restrictive than any requirement in effect pursuant to this compact.

(c) Nothing in this compact shall be construed to affect any aspect of employer-employee relations, including without limitation, statutes, rules or regulations governing industrial health and safety.

ARTICLE 3

POWERS AND DUTIES OF THE COMMISSION

§ 3.1. General powers.

The commission shall:

(a) Investigate the causes and sources of air pollution, identify air contaminants, and provide for research and the compilation and analysis of information relating thereto;

(b) Establish, after consultation with the appropriate agency of the signatory parties, standards for air quality and requirements for the control of emissions of air contaminants to abate existing air pollution and to prevent future air pollution, subject to the provisions of article four of this compact;

(c) Provide and administer plans and programs to effectuate such air quality standards and emission control requirements;

(d) Promote, sponsor and conduct technical, educational and research programs and projects to identify and evaluate air contaminants and to develop and apply methods, systems and procedures for the abatement and prevention of air pollution; and

(e) Enforce or provide for the enforcement of the compact and rules and regulations lawfully promulgated thereunder;

(f) Furnish technical services, advice and consultation to agencies of the signatory parties, provided that the costs of such services may be reimbursable whenever the parties deem appropriate.

§ 3.2. Auxiliary powers. In furtherance of the powers and duties elsewhere prescribed in this compact, the commission may:

(a) Sue and be sued in a court of competent jurisdiction;

(b) Have a seal and alter the same at pleasure;

(c) Acquire, hold and dispose of real and personal property by gift, purchase, lease, license or other similar manner for its corporate purposes and accept grants and comply with the conditions thereof;

(d) Provide for the organization and administration of a commission staff and retain and employ counsel and private consultants on a contract basis or otherwise;

(e) Administer and enforce the provisions of this compact;

(f) Make and enforce such rules and regulations as the commission may deem necessary to effectuate the purposes of this compact or to prevent the circumvention or evasion thereof;

(g) By its members and its properly designated officers, agents and employees, administer oaths and issue subpoenas throughout the region to compel the attendance of witnesses and the giving of testimony and the production of other evidence;

(h) Have for its members and its properly designated officers, agents and employees, full and free access, ingress and egress to and from all property, premises and places in the region, for the purpose of making inspection or enforcing the provisions of this compact, where there is reasonable cause to believe there is a violation of this compact or of any rule or regulation lawfully made thereunder; and no person shall obstruct or in any way interfere with any such member, officer, employee or agent in the making of such inspection, or in the enforcement of the provisions of this compact or in the performance of any other power or duty under this compact; and

(i) Cooperate with and receive from any department, division, bureau, board, commission, or agency of any or all of the signatory parties, or of any county or municipality thereof, such assistance and data as will enable it properly to carry out its powers and duties hereunder, and may authorize and request any such department, division, bureau, board, commission or agency, with the consent thereof, to execute such of its functions and powers as the public interest may require.

ARTICLE 4

AIR QUALITY STANDARDS AND EMISSION CONTROL REQUIREMENTS

§ 4.1. Generally. The commission shall have jurisdiction to abate existing air pollution and to prevent and control future air pollution

in the region, and to this and it shall:

(a) Prepare and develop standards of air quality and emission control requirements for the region as required to protect the public health and welfare and prevent air pollution which would unreasonably impair the beneficial use of the air of the region. To this end, it shall encourage and conduct studies, investigations and research relating to air pollution and its causes, prevention, control and abatement.

(b) For the purpose of such standards, the commission may establish and delineate districts and airsheds, seasonal requirements, and classifications of air contaminants by type and source, for general or selective application of such standards and emission controls.

(c) Prior to the adoption of standards or emission control requirements, the commission shall hold public hearings upon due notice of the proposed standards, and all interested persons shall be given an opportunity to be heard at such hearing. After such notice and hearing, the commission may adopt and from time to time amend and repeal standards in the form of rules and regulations to prevent or control future air pollution and to abate existing air pollution, and to require the installation of such measures, systems and procedures for the abatement or prevention of air pollution as may be required to protect the public health, safety, property rights, and general welfare. Any such rule or regulation, amendment or repeal thereof shall take effect not less than sixty (60) days after its adoption by the commission and filing as required by law.

§ 4.2. Monitoring; warnings; emergencies. The commission shall: (a) Provide for a uniform, comprehensive and integrated system for monitoring atmospheric waste in the region, the measurement and forecasting of air pollution, and the identification of significant meteorological, geographical, and ecological factors within the region, its districts or airsheds;

(b) Establish and administer warning and alert procedures and systems with respect to impending and existing conditions of sewer and immediately dangerous air pollution;

(c) Upon authorization by any one of the signatory states, exercise emergency powers within those portions of the region lying within the authorizing state to require the reduction or cessation of emissions of air contaminants, and to require the taking or refining from any other

measure as may be necessary in the public interest to alleviate or abate the immediate danger.

§ 4.3. Enforcement. (a) The commission may, after such notice and hearing as may be required by due process of law, issue an order or orders to any person or public or private corporation, or other entity, to cease and desist from any emissions which it determines to be in violation of such rules and regulations as it shall have adopted for the prevention and abatement of air pollution. Any such order or orders may prescribe a schedule, including a reasonable time for the construction and installation of any necessary systems, methods and procedures, on or before which the emission of air contaminants shall be wholly or partially discontinued, modified or treated, or otherwise required to conform to the standards established by the commission. Any court of competent jurisdiction shall have jurisdiction to enforce by injunction in a summary manner against any person, public or private corporation, or other entity, any and all provisions of this article or of any such order. The commission may bring an action in its own name in any such court of competent jurisdiction to compel compliance with any provisions of this compact, or of any rule, regulation or order issued pursuant thereto, according to the practice and procedure of the court.

(b) In the case of air pollution not within an interstate district or airshed as established by the commission, the commission shall give priority to enforcement proceedings by other agencies of the signatory parties; provided, however, that the provisions of this subdivision may not be asserted as a defense in any action or proceeding brought by the commission.

§ 4.4. Hearings; subpoenas. (a) The commission shall establish by appropriate regulation the procedure to be followed in the conduct of its hearings. Neither the commission nor any person designated by it to conduct a hearing shall be bound by common law or statutory rules of evidence or by technical or formal rules of procedure in the conduct of such hearings.

(b) The commission, or such member or officer of the commission as may be designated by the commission for that purpose shall have the power to issue subpoenas effective throughout the region to compel the attendance of witnesses and the giving of testimony or production of other evidence, and to administer oaths in connection with any such hearing.

It shall be the duty of the commission or of such member or officer of the commission as it may designate to issue subpoenas at the request of and on behalf of any part to a hearing before the commission. Subpoenas issued by the commission shall be enforced by any court of competent jurisdiction of the signatory parties, according to the practice and procedure of the court applicable to subpoenas issued in proceedings pending before it.

§ 4.5. Penal sanction. Any person, association, or corporation who violates or attempts or conspires to violate any provision of this compact or any rule, regulation or order of the commission duly made, promulgated or issued pursuant to the compact, in addition to any other remedy, penalty or consequence provided by law, shall be punishable as may be provided by statute of any of the signatory parties within which the offense is committed; provided that in the absence of such provision any such person, association or corporation, shall be liable to a penalty of not less than fifty dollars and not more than one thousand dollars, for each such offense to be fixed by the court, which the commission may recover in its own name in any court of competent jurisdiction, and in a summary proceeding where available under the practice and procedure of such court. For the purposes of this section in the event of a continuing offense, each day of such violation, attempt or conspiracy shall constitute a separate offense.

§ 4.6. Judiciary review. Any order or determination of the commission under this article shall be subject to judicial review in any court of competent jurisdiction as provided by the law of a signatory party.

ARTICLE 5

PERSONNEL AND PROCEDURES GENERALLY

§ 5.1. Powers of the commissioners. The commissioners, subject to the provisions of this compact, shall:

(a) Serve as the governing body of the commission, and exercise and discharge its powers and duties except as otherwise provided by or pursuant to this compact;

(b) Determine the character of and the necessity for its obligations and expenditures and the manner in which they shall be incurred, allowed and paid subject to any provisions of law specifically applicable to agencies or instrumentalities created by compact;

(c) Provide for the internal organization and administration of the

commission;

(d) Appoint or provide for the appointment of the principal officers of the commission and delegate to and allocate among them administrative functions, powers and duties;

(e) Create and abolish such offices, employments and positions as it deems necessary for the purposes of the compact, and subject to the provisions of this article, fix and provide for the qualification, appointment, removal, term, tenure, compensation, pension and retirement rights of its officers and employees;

(f) Let and execute contracts to carry out the powers of the commission.

§ 5.2. Regulations; enforcement. The commission may:

(a) Make and enforce reasonable rules and regulations in the form of an air pollution code or otherwise, for the effectuation, application and enforcement of this compact; provided that any rule or regulation, other than one which deals solely with the internal management of the commission, shall be adopted only after public hearing and shall not be effective unless and until filed in accordance with the law of the respective signatory parties applicable to administrative rules and regulations generally; provided further, that a certified copy of any such rule or regulation, attested as true and correct by the commission, shall be presumptive evidence of the regular making, adoption, filing and publication thereof; and

(b) Designate any officer, agent or employee of the commission to be an investigator, and such person shall be vested with the powers of a peace officer of the state in which he is duly assigned to perform his duties.

§ 5.3. Confidential information. Any records or other information furnished to or obtained by the commission in the exercise of its powers, functions and duties from any private person, corporation or other entity which records or information, as certified by the owner or operator, relate to production or sales figures, or to secret processes or production, or which if made known to others would tend to affect adversely the competitive position of such owner or operator, shall be retained solely for the use of the commission and its employees, in the administration and enforcement of this compact, and for the use of air pollution control agencies of the signatory parties in the

administration and enforcement of state or federal law, and shall not be published or disclosed for any other purpose by any officer or employee of the commission or any other person without the written consent of such owner or operator.

§ 5.4. Officers generally. (a) The officers of the commission shall consist of an executive director and such additional officers, deputies and assistants as the commission may determine. The executive director shall be appointed and may be removed by the affirmative vote of a majority of the full membership of the commission. All other officers and employees shall be appointed in such manner and under such rules of procedure as the commission may determine.

(b) In the appointment and promotion of officers and employees for the commission, no political, racial, religious or residency test or qualification shall be permitted or given consideration, but all such appointments and promotions shall be solely on the basis of merit and fitness. Any officer or employee of the commission who is found by the commission to be guilty of a violation of this section shall be removed from office by the commission.

§ 5.5. Meetings; records. (a) All meetings of the commission shall be open to the public.

(b) The minutes of the commission shall be a public record open to inspection and copying at its offices during regular business hours, subject to the law relating to public records of the signatory states in which such minutes are located.

§ 5.6. Prohibited activities. (a) No commissioner, officer or employee shall:

1) be financially interested, either directly or indirectly, in any contract, sale, purchase, lease or transfer of real or personal property to which the commission is a party;

2) solicit or accept money or any other thing of value in addition to the compensation or expenses paid him by the commission for services performed within the scope of his official duties;

3) offer money or any thing of value for or in consideration of obtaining an appointment, promotion or privilege in his employment with

the commission.

(b) Any officer or employee who shall wilfully violate any of the provisions of this section shall forfeit his office or employment.

(c) Any contract or agreement knowingly made in contravention of this section shall be void.

(d) Officers and employees of the commission shall be subject in addition to the provisions of this section to such criminal and civil sanctions for misconduct in office as may be imposed by federal law and the law of the signatory state in which such misconduct occurs.

§ 5.7. Audit. The commission shall provide for an annual independent audit of its accounts and financial transactions by a certified public accountant, and for the publication of the report of such audit.

§ 5.8. Tort liability. The commission shall be responsible for claims arising out of the negligent acts or omissions of its officers, agents and employees only to the extent and subject to the procedures prescribed by law generally with respect to officers, agents and employees of the government of the United States.

ARTICLE 6

GENERAL PROVISIONS

§ 6.1. Commission budget. The commission shall annually adopt a current expense budget for each fiscal year, and shall apportion the amount required to balance the expenditures therein, less estimated revenues from all sources, to the signatory parties in accordance with such equitable cost-sharing formulae as the members of the commission may adopt by unanimous vote. Following the adoption of its annual budget, the commission shall transmit certified copies of the budget to the budget officer of the respective signatory parties at such time and in such manner as may be required under their respective budgetary procedures. The signatory parties covenant and agree to include the amount so apportioned for the support of the commission's current expense budget in their respective budgets next to be adopted, subject to such review and approval as may be required by their respective budgetary processes. Such amounts shall be due and payable to the commission in equal quarterly installments during the commission's fiscal year.

§ 6.2. Cooperation. Each signatory party pledges faithful cooperation in the control of air pollution in the region and consistent with such

object to enact (or if enacted, to keep in force and where necessary to amend) laws which will:

(a) Enable it to secure and maintain standards of air quality at least equal to those prescribed by the commission;

(b) Accomplish effectively the objectives of this compact, and enable its officers, departments, boards and agents satisfactorily to accomplish the obligations and duties assumed by the party under the terms hereof; and

(c) Enable it to provide technical and administrative services to the commission upon request, within the limits of available appropriations, and to cooperate generally with the commission for the purposes of this compact, provided that the cost of such services may be reimbursable whenever the parties deem appropriate.

§ 6.3. Withdrawal from compact. (a) A signatory party may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until two (2) years after the chief executive of the withdrawing party has given notice of the withdrawal to the commission and to each commissioner.

(b) No withdrawal shall affect any obligation of a signatory party or any person therein accruing prior to the effective date of the withdrawal, nor any abatement order of the commission issued prior to such effective date nor shall any proceeding initiated for the enforcement thereof be invalidated or otherwise affected thereby. The jurisdiction of all appropriate courts and agencies for the enforcement of any such order shall continue, notwithstanding the fact that the effective date of the withdrawal may have passed.

§ 6.5. Amendments and supplements. Amendments and supplements to this compact to implement the purposes thereof may be adopted by legislative action of any of the signatory parties concurred in by all of the others.

§ 6.6. Construction and severability. The provisions of this compact and of agreements thereunder shall be severable and if any phrase, clause, sentence or provision of this compact of such agreement is declared to be unconstitutional or the applicability thereof to any signatory party, agency or person is held invalid, the constitutionality of the remainder of such compact or such agreement and the applicability thereof to any other signatory party, agency, person or circumstance

shall not be affected thereby. It is the legislative intent that the provisions of such compact be reasonably and liberally construed.

§ 6.7. Effective date; execution. (a) This compact shall become binding and effective thirty days after the enactment of concurring legislation by the federal government and the state of New Jersey. The compact shall be signed and sealed in six duplicate original copies by the respective chief executives of the signatory parties. One such copy shall be filed with each of the signatory parties in accordance with the laws of the party in which the filing is made, and the remaining copies shall be filed and retained in the archives of the commission upon its organization.

(b) Thereafter, the compact shall become binding and effective separately as to each of the states of Connecticut and Delaware and the commonwealth of Pennsylvania thirty (30) days after enactment of concurring legislation by such states or commonwealth.

* NB Denied Congressional consent; preempted by enactment of federal Air Quality Act of 1967 (81 stat. 485)