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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 144 Session of  
1995

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AND LAUGHLIN, JANUARY 20, 1995

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
JANUARY 20, 1995

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AN ACT

1 Establishing environmental cleanup requirements for response  
2 actions taken to address contaminated media; further defining  
3 the cleanup liability of new industries and tenants;  
4 establishing a framework for setting environmental  
5 remediation standards; establishing the Voluntary Cleanup  
6 Loan Fund and the Industrial Land Recycling Fund to aid  
7 industrial site cleanups; providing for powers and duties of  
8 the Department of Environmental Resources and the  
9 Environmental Quality Board; imposing a penalty; and making  
10 repeals.

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2 CHAPTER 1

3 GENERAL PROVISIONS

4 Section 101. Short title.

5 This act shall be known and may be cited as the Remediation  
6 Standards and Procedures Act.

7 Section 102. Declaration of policy.

8 The General Assembly finds and declares as follows:

9 (1) The elimination of public health and environmental  
10 hazards on existing commercial and industrial land across  
11 this Commonwealth is vital to their use and reuse as sources  
12 of employment, housing, recreation and open-space areas. The  
13 reuse of industrial land is an important component of a sound  
14 land-use policy that will help prevent the needless  
15 development of prime farmland, open-space areas and natural  
16 areas and reduce public costs for installing new water, sewer  
17 and highway infrastructure.

18 (2) Incentives should be put in place to encourage  
19 responsible persons to voluntarily develop and implement  
20 cleanup plans without the use of taxpayer funds or the need  
21 for adversarial enforcement actions by the Department of  
22 Environmental Resources which frequently only serve to delay  
23 cleanups and increase their cost. Procedures should be  
24 developed to reduce transactional costs in selecting  
25 appropriate remedies and in implementing cleanup plans.

26 (3) Public health and environmental hazards cannot be  
27 eliminated without clear, predictable environmental  
28 remediation standards and a process for developing those  
29 standards. Any remediation standards adopted by this  
30 Commonwealth must provide for the protection of public health

1 and the environment.

2 (4) It is necessary for the General Assembly to adopt a  
3 statute which sets environmental remediation standards to  
4 provide a uniform framework for cleanup decisions to avoid  
5 potentially conflicting and confusing environmental standards  
6 since few environmental statutes set cleanup standards.

7 (5) The General Assembly has a duty to implement the  
8 provisions of section 27 of Article I of the Constitution of  
9 Pennsylvania with respect to environmental remediation  
10 activities. Remediation plans should be based on the actual  
11 risk that contamination on the site may pose to public health  
12 and the environment, taking into account its future use and  
13 the degree to which contamination can spread offsite and  
14 expose the public or the environment to unacceptable risk,  
15 not on cleanup policies requiring every site in this  
16 Commonwealth to be returned to a pristine condition.

17 (6) It is the goal of this Commonwealth to make all  
18 sites as safe as technologically and economically feasible in  
19 order to provide our citizens with the health and  
20 environmental protection they are guaranteed. Cleanup  
21 standards should draw a distinction between existing  
22 development and undeveloped property to help encourage the  
23 reuse of existing sites.

24 (7) The Department of Environmental Resources now  
25 routinely through its permitting policies determines when  
26 contamination will and will not pose a significant risk to  
27 public health or the environment. Similar concepts should be  
28 used in establishing cleanup policies.

29 (8) The public is entitled to understand how remediation  
30 standards are applied to a site through a plain language

description of contamination present on a site, the risk it poses to public health and the environment and any proposed cleanup measure.

#### Section 103. Definitions.

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

"ASTM." The American Society for Testing and Materials.

"Aquifer." A geologic formation, group of formations or part of a formation capable of a sustainable yield of a significant amount of water to a well or spring.

"Background." The concentration of a regulated substance determined by appropriate statistical methods that is present at a site but is not related to the release of regulated substances at the site.

"Baseline environmental report." A report prepared pursuant to section 505, by or on behalf of a prospective purchaser intending to reuse an industrial area, in order to establish the extent of existing contamination, if any, prior to purchase, which report describes the existing or potential public impact of the reuse of the property.

"Baseline risk assessment." An analysis of the potential adverse health effects, current or future, caused by the release or presence of a regulated substance on a site in the absence of any actions to control or mitigate the release.

"Board." The Cleanup Standards Scientific Advisory Board established in section 105.

"Carcinogen." A chemical, biological or physical agent, defined by the Environmental Protection Agency as a human carcinogen.

1 "Control." To apply engineering measures, such as capping or  
2 treatment, or institutional measures, such as deed restrictions,  
3 to sites with contaminated media.

4 "Department." The Department of Environmental Resources of  
5 the Commonwealth.

6 "Engineering controls." Remedial actions directed  
7 exclusively toward containing or controlling the migration of  
8 regulated substances through the environment. These include, but  
9 are not limited to, slurry walls, liner systems, caps, leachate  
10 collection systems and groundwater recovery trenches.

11 "EPA." The Environmental Protection Agency or its successor  
12 agency.

13 "Fate and transport." A term used to describe the  
14 degradation of a chemical over time, and where chemicals are  
15 likely to move given their physical and other properties and the  
16 environmental medium they are moving through.

17 "Groundwater." Water below the land surface in a zone of  
18 saturation.

19 "Hazard index." The sum of more than one hazard quotient for  
20 multiple substances and multiple-exposure pathways. The hazard  
21 index is calculated separately for chronic, subchronic and  
22 shorter duration exposures.

23 "Hazard quotient." The ratio of a single-substance exposure  
24 level over a specified period, for example, subchronic, to a  
25 reference dose for that substance derived from a similar  
26 exposure period.

27 "Hazardous Sites Cleanup Fund." The fund established under  
28 the act of October 18, 1988 (P.L.756, No.108), known as the  
29 Hazardous Sites Cleanup Act.

30 "Health advisory levels" or "HALs." The Health Advisory

1 Levels published by the United States Environmental Protection  
2 Agency for particular substances.

3 "Industrial activity." Business activities related to the  
4 manufacture, processing, fabrication, assembly, treatment,  
5 distribution or sale of manufactured goods, materials, services  
6 or products, including, but not limited to, administration of  
7 business activities, related services, research and development  
8 activities, warehousing, shipping, transport, remanufacturing,  
9 reuse, stockpiling, storage, solid waste management, repair and  
10 maintenance of intermediate and final products, commercial  
11 machinery and equipment, mining, marine terminal,  
12 transportation, including railroad rights-of-way and public  
13 utility facilities. Within 120 days of the effective date of  
14 this act, the Department of Environmental Resources shall  
15 publish a notice in the Pennsylvania Bulletin which identifies  
16 other additional activities eligible to be considered an  
17 industrial activity based on the definition of nonresidential  
18 property. Additional activities may be added to this notice as  
19 appropriate by the Department of Environmental Resources at  
20 anytime thereafter.

21 "Institutional controls." A measure undertaken to limit or  
22 prohibit certain activities that may interfere with the  
23 integrity of a remedial action or result in exposure to  
24 regulated substances at a site. These include, but are not  
25 limited to, fencing or restrictions on the future use of the  
26 site.

27 "Medium-specific concentration." The concentration  
28 associated with a specified environmental medium for potential  
29 risk exposures.

30 "Mitigation measures." Any remediation action performed by a

1 person prior to or during implementation of a remediation plan  
2 with the intent to protect human health and the environment.

3 "Monte Carlo simulation." A repeated random sampling from  
4 the distribution of values for each of the parameters in a  
5 generic, exposure or dose, equation to derive an estimate of the  
6 distribution of the population, exposures or doses.

7 "Nonresidential property." Any real property on which  
8 commercial, industrial, manufacturing or any other activity is  
9 done to further either the development, manufacturing or  
10 distribution of goods and services, including, but not limited  
11 to, administration of business activities, research and  
12 development, warehousing, shipping, transport, remanufacturing,  
13 stockpiling of raw materials, storage, repair and maintenance of  
14 commercial machinery and equipment or intermediate and final  
15 products and solid waste management. The term shall not include  
16 schools, nursing homes or other residential-style facilities.

17 "Person." An individual, firm, corporation, association,  
18 partnership, consortium, joint venture, commercial entity,  
19 authority, nonprofit corporation, interstate body or other legal  
20 entity which is recognized by law as the subject of rights and  
21 duties. The term includes the Federal Government, State  
22 government, political subdivisions and Commonwealth  
23 instrumentalities.

24 "Point of compliance." For the purposes of determining  
25 compliance with groundwater standards, the property boundary at  
26 the time the area of contamination is defined or such point  
27 beyond the property boundary as the Department of Environmental  
28 Resources may determine to be appropriate.

29 "Practical quantification limit." The lowest limit that can  
30 be reliably achieved within specified limits of precision and



1 accuracy under routine laboratory conditions for a specified  
2 matrix and based on quantitation, precision and accuracy, normal  
3 operation of a laboratory and the practical need in a compliance  
4 monitoring program to have a sufficient number of laboratories  
5 available to conduct the analysis.

6 "Prospective innocent purchaser." Any person who has a bona  
7 fide intention to purchase a property used for industrial  
8 activity and who has expressed such intention through a formal  
9 agreement, option agreement or other appropriate documentation  
10 and who did not by act or omission cause or contribute to any  
11 contamination or release of a regulated substance on such  
12 property, and who will reuse or redevelop the property for  
13 industrial activities or other compatible uses, such as open  
14 space or greenways.

15 "Public utility." The term shall have the same meaning as  
16 given to it in 66 Pa.C.S. (relating to public utilities).

17 "Regulated substance." The term shall include hazardous  
18 substances regulated under the act of October 18, 1988 (P.L.756,  
19 No.108), known as the Hazardous Sites Cleanup Act, and  
20 substances covered by the act of June 22, 1937 (P.L.1987,  
21 No.394), known as The Clean Streams Law, the act of January 8,  
22 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control  
23 Act, the act of July 7, 1980 (P.L.380, No.97), known as the  
24 Solid Waste Management Act, the act of July 13, 1988 (P.L.525,  
25 No.93), referred to as the Infectious and Chemotherapeutic Waste  
26 Law, and the act of July 6, 1989 (P.L.169, No.32), known as the  
27 Storage Tank and Spill Prevention Act.

28 "Release." Spilling, leaking, pumping, pouring, emitting,  
29 emptying, discharging, injecting, escaping, leaching, dumping or  
30 disposing of a regulated substance into the environment in a

1 manner not authorized by law. The term includes the abandonment  
2 or discarding of barrels, containers, vessels and other  
3 receptacles containing a regulated substance.

4 "Remedial investigation report." A report prepared in  
5 accordance with section 504 by the party undertaking site  
6 remediation, which defines the nature and extent of regulated  
7 substances present at the site, if any, for the purpose of  
8 determining appropriate site remediation.

9 "Remediation." To clean up, mitigate, correct, abate,  
10 minimize, eliminate, control or prevent a release of a regulated  
11 substance into the environment in order to protect the public  
12 health, safety, welfare or the environment, including  
13 preliminary actions to study or assess the release.

14 "Residential property." Any property or portion of the  
15 property which does not meet the definition of "nonresidential  
16 property."

17 "Responsible person." The term shall have the same meaning  
18 as given to it in the act of October 18, 1988 (P.L.756, No.108),  
19 known as the Hazardous Sites Cleanup Act, and shall include a  
20 person subject to enforcement actions for substances covered by  
21 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean  
22 Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787),  
23 known as the Air Pollution Control Act, the act of July 7, 1980  
24 (P.L.380, No.97), known as the Solid Waste Management Act, the  
25 act of July 13, 1988 (P.L.525, No.93), referred to as the  
26 Infectious and Chemotherapeutic Waste Law, and the act of July  
27 16, 1989 (P.L.169, No.32), known as the Storage Tank and Spill  
28 Prevention Act.

29 "Secretary." The Secretary of Environmental Resources of the  
30 Commonwealth.

1 "Site." The extent of contamination and all areas in close  
2 proximity to the contamination necessary for the implementation  
3 of remediation activities.

4 "Systemic toxicant." A material that manifests its toxic  
5 effect in humans in a form other than cancer.

6 "Treatment." The term shall have the same meaning as given  
7 to it in the act of October 18, 1988 (P.L.756, No.108), known as  
8 the Hazardous Sites Cleanup Act.

9 Section 104. Scope.

10 The environmental remediation standards established under  
11 this act shall be used whenever site remediation and cleanup is  
12 conducted under the act of June 22, 1937 (P.L.1987, No.394),  
13 known as The Clean Streams Law, the act of January 8, 1960 (1959  
14 P.L.2119, No.787), known as the Air Pollution Control Act, the  
15 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste  
16 Management Act, the act of July 13, 1988 (P.L.525, No.93),  
17 referred to as the Infectious and Chemotherapeutic Waste Law,  
18 the act of October 18, 1988 (P.L.756, No.108), known as the  
19 Hazardous Sites Cleanup Act, and the act of July 6, 1989  
20 (P.L.169, No.32), known as the Storage Tank and Spill Prevention  
21 Act, to be eligible for cleanup liability protection under  
22 Chapter 7. In addition, the remediation standards established  
23 under this act shall be considered as applicable, relevant and  
24 appropriate requirements for this Commonwealth under the  
25 Comprehensive Environmental Response Compensation and Liability  
26 Act of 1980 (Public Law 96-510, 94 Stat. 2767), as amended by  
27 the Superfund Amendments and Reauthorization Act of 1986,  
28 (Public Law 99-499, 100 Stat. 1613).

29 Section 105. Cleanup Standards Scientific Advisory Board.

30 (a) Establishment.--There is hereby created a 13-member

1 Cleanup Standards Scientific Advisory Board for the purpose of  
2 assisting the department and the Environmental Quality Board in  
3 developing Statewide health standards, determining the  
4 appropriate statistically and scientifically valid procedures to  
5 be used, determining the appropriate risk factors and providing  
6 other technical and scientific advice as needed to implement the  
7 provisions of this act.

8 (b) Membership.--Five members shall be appointed by the  
9 secretary and two members each by the President pro tempore of  
10 the Senate, the Minority Leader of the Senate, the Speaker of  
11 the House of Representatives and the Minority Leader of the  
12 House of Representatives. Members shall have a background in and  
13 be practicing in the following fields: engineering, biology,  
14 hydrogeology, statistics, epidemiology, chemistry, toxicology or  
15 other related scientific education or experience that relates to  
16 problems and issues likely to be encountered in developing  
17 health-based cleanup standards and other procedures needed to  
18 implement the provisions of this act. The board membership shall  
19 include representatives of local government, the public and the  
20 regulated community. The members shall serve for a period of  
21 four years. The initial terms of the members shall be staggered  
22 so that at least one-half of the terms expire in two years.

23 (c) Organization.--The board shall elect a chairperson by  
24 majority vote and may adopt any bylaws or procedures it deems  
25 necessary to accomplish its purpose. Recommendations, positions  
26 or other actions of the board shall be by a majority of its  
27 members.

28 (d) Expenses.--Members of the board shall be reimbursed for  
29 their travel expenses to attend meetings as authorized by the  
30 executive board.

1 (e) Support.--The department shall provide the appropriate  
2 administrative and technical support needed by the board in  
3 order to accomplish its purpose, including support for surveys  
4 and technical studies the board may wish to undertake. The  
5 department shall publish a notice of meeting dates, times and  
6 locations and a list of topics to be discussed at any meeting no  
7 less than 14 days prior to the meeting, published in the same  
8 manner as required by the act of July 3, 1986 (P.L.388, No.84),  
9 known as the Sunshine Act.

10 (f) Interested persons list.--The department shall maintain  
11 a mailing list of persons interested in receiving notice of  
12 meetings and the activities of the board. The department shall  
13 name a contact person to be responsible for board meetings and  
14 to serve as a contact for the public to ask questions and get  
15 information about the board.

16 (g) Access to documents.--The board shall have access to all  
17 department policies and procedures, draft proposed or final  
18 regulations or issue papers which the board determines are  
19 necessary to achieving its purpose.

20 Section 106. Existing standards.

21 (a) General rule.--All regulations, policies, guidance  
22 documents and procedures which were not adopted under the  
23 provisions of this act shall expire three years after the  
24 effective date of this act. The standards established in  
25 sections 502, 503(b)(3) and 504 shall be effective immediately  
26 and shall supersede existing regulations, policies, guidance  
27 documents and procedures.

28 (b) Agreements and orders.--The standards established under  
29 this act shall not be intended to impose more stringent cleanup  
30 standards than those which are contained in any prior

1 administrative consent order, consent adjudication, judicially  
2 approved consent decree or other settlement agreement entered  
3 into with the department under the authority of any of the  
4 statutes referred to in section 104 and which were entered into  
5 with the department on or before the effective date of this act,  
6 unless all parties thereto agree to such change.

### 7 CHAPTER 3

#### 8 POWERS AND DUTIES

9 Section 301. Powers and duties of department.

10 (a) General rule.--The department shall have the power and  
11 its duty shall be to:

12 (1) Implement the provisions of this act.

13 (2) Cooperate with appropriate Federal, State,  
14 interstate and local government agencies in carrying out its  
15 duties under this act.

16 (3) Waive any otherwise applicable requirements.

17 (4) Solicit and use the expert advice of the Cleanup  
18 Standards Scientific Advisory Board created under section 105  
19 and provide to the Cleanup Standards Scientific Advisory  
20 Board access to all pertinent records and documents as  
21 requested.

22 (b) Report.--The department shall on October 1 of each year  
23 report to the General Assembly on the department's efforts to  
24 reduce the transactional costs incurred by responsible persons  
25 and other persons performing cleanups pursuant to the  
26 requirements of this act.

27 (c) Preliminary regulations.--Prior to proposing  
28 regulations, the department shall release draft preliminary  
29 regulations and shall seek and consider comments from the public  
30 for a period of six months.

1 Section 302. Powers and duties of Environmental Quality Board.

2 The Environmental Quality Board shall have the power and its  
3 duty shall be to adopt by regulation Statewide health standards,  
4 to adopt appropriate mathematically valid statistical tests to  
5 define compliance with this act and to adopt other regulations  
6 that may be needed to implement the provisions of this act. Any  
7 regulations needed to implement this act shall be proposed by  
8 the Environmental Quality Board no later than 18 months after  
9 the effective date of this act and shall be finalized no later  
10 than 30 months after the effective date of this act, unless  
11 otherwise specified in this act.

12 CHAPTER 5

13 REMEDIATION PROCEDURES AND STANDARDS

14 Section 501. Remediation standards.

15 (a) Standards.--Any person who proposes to respond to the  
16 release of a regulated substance at a site and to be eligible  
17 for the cleanup liability protection under Chapter 7 shall  
18 select and attain compliance with one or more of the following  
19 environmental standards when conducting remediation activities:

20 (1) a background standard;

21 (2) a Statewide health standard adopted by the  
22 Environmental Quality Board which achieves a uniform  
23 Statewide health-based level so that any substantial present  
24 or probable future risk to human health and the environment  
25 from released regulated substances is eliminated as specified  
26 in section 503; or

27 (3) a site-specific standard which achieves remediation  
28 levels based on a site-specific risk assessment so that any  
29 substantial present or probable future risk to human health  
30 and the environment from released regulated substances is

1 eliminated or reduced to protective levels based upon the  
2 present or currently planned future use of the property  
3 comprising the site as specified in section 504.

4 (b) Combination of standards.--A person may use a  
5 combination of the remediation standards to implement a site  
6 remediation plan and may propose to use the site-specific  
7 standard whether or not efforts have been made to attain the  
8 background or Statewide health standard.

9 (c) Determining compliance.--For the purpose of determining  
10 compliance with any one or a combination of remediation  
11 standards, the concentration of a regulated substance shall not  
12 be required to be numerically less than the practical  
13 quantification limit for a regulated substance as developed by  
14 the United States Environmental Protection Agency.

15 Section 502. Background standard.

16 (a) Standard.--Persons selecting the background standard  
17 shall meet background as represented by the results of analyses  
18 of representative samples for each regulated substance in each  
19 environmental medium.

20 (b) Attainment.--Final certification that a site or portion  
21 of a site meets the background standard shall be documented in  
22 the following manner:

23 (1) Attainment of the background standard shall be  
24 demonstrated by collection and analysis of representative  
25 samples from environmental media of concern, including soil  
26 and groundwater in aquifers in the area where the  
27 contamination occurs through the application of statistical  
28 tests set forth in regulation or, if no regulations have been  
29 adopted, in a demonstration of a mathematically valid  
30 application of statistical tests. The department shall also



1 recognize those methods of attainment demonstration generally  
2 recognized as appropriate for that particular remediation.

3 (2) A final report that documents attainment of the  
4 background standard shall be submitted to the department  
5 which includes, as appropriate:

6 (i) The descriptions of procedures and conclusions  
7 of the site investigation to characterize the nature,  
8 extent, direction, volume and composition.

9 (ii) The basis for selecting environmental media of  
10 concern, descriptions of removal or decontamination  
11 procedures performed in remediation, summaries of  
12 sampling methodology and analytical results which  
13 demonstrate that remediation has attained the background  
14 standard.

15 (3) Where remediation measures do not involve removal or  
16 treatment of a contaminant to the background standard the  
17 final report shall demonstrate that any remaining  
18 contaminants on the site will meet Statewide health standards  
19 and show compliance with any postremediation care  
20 requirements that may be needed to maintain compliance with  
21 the Statewide health standards.

22 (4) Institutional controls such as fencing and future  
23 land use restrictions on a site may not be used to attain the  
24 background standard. Institutional controls may be used to  
25 maintain the background standard after remediation occurs.

26 (c) Authority reserved.--If a person fails to demonstrate  
27 attainment of the background standard and fails to meet the  
28 requirements of sections 503 or 504, the department may require  
29 that additional remediation measures be taken in order to meet  
30 any one or a combination of environmental standards selected by

1 such person.

2 (d) Deed notice.--Persons attaining and demonstrating  
3 compliance with the background standard for all regulated  
4 substances throughout a site shall not be subject to the deed  
5 acknowledgment requirements of the act of July 7, 1980 (P.L.380,  
6 No.97), known as the Solid Waste Management Act, or the act of  
7 October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites  
8 Cleanup Act. An existing acknowledgment contained in a deed  
9 prior to demonstrating compliance with the background standard  
10 may be removed.

11 (e) Notice and review provisions.--Persons utilizing the  
12 background standard shall comply with the following requirements  
13 notifying the public and the department of planned remediation  
14 activities:

15 (1) Notice of intent to initiate remediation activities  
16 shall be made in the following manner:

17 (i) A notice of intent to remediate a site shall be  
18 submitted to the department which, to the extent known,  
19 provides a brief description of the location of the site,  
20 a listing of the contaminant or contaminants involved,  
21 and the proposed remediation measures. The department  
22 shall publish an acknowledgment noting receipt of the  
23 notice of intent in the Pennsylvania Bulletin.

24 (ii) At the same time a notice of intent to  
25 remediate a site is submitted to the department, a copy  
26 of the notice shall be provided to the municipality in  
27 which the site is located and a summary of the notice of  
28 intent shall be published in a newspaper of general  
29 circulation serving the area in which the site is  
30 located.

1           (2) Notice of the submission of the final report  
2       demonstrating attainment of the background standard shall be  
3       given to the municipality in which the remediation site is  
4       located, published in a newspaper of general circulation  
5       serving the area and published in the Pennsylvania Bulletin  
6       by the department.

7           (3) The department shall review the final report  
8       demonstrating attainment of the background standard within 90  
9       days of its receipt or notify the person submitting the  
10      report of substantive deficiencies. If the department does  
11      not provide a written response with the deficiencies within  
12      90 days, the final report shall be deemed approved.

13 Section 503. Statewide health standards.

14      (a) Standards.--The Environmental Quality Board shall  
15      promulgate Statewide health standards for regulated substances  
16      for each environmental medium. The standards shall include any  
17      existing numerical residential and nonresidential health-based  
18      standards adopted by the Federal Government by regulation or  
19      statute, or United States Environmental Protection Agency Health  
20      Advisory Levels (HALs) and standards adopted by the department  
21      which are no more stringent than Federal standards. For those  
22      health-based standards not already established by regulation,  
23      the department shall, by regulation, propose residential and  
24      nonresidential medium-specific concentrations within 18 months  
25      of the effective date of this act. The Environmental Quality  
26      Board shall also promulgate, along with the standards, the  
27      methods used to calculate the standards.

28      (b) Medium-specific requirements.--The following  
29      requirements shall be used in defining a medium-specific  
30      concentration limit:

1           (1) Any discharge or release into surface water  
2           occurring during or after attainment of the Statewide health  
3           standard shall comply with applicable laws and regulations  
4           relating to surface-water discharges.

5           (2) Any emissions to the outdoor air occurring during or  
6           after attainment of the Statewide health standard shall  
7           comply with applicable laws and regulations relating to  
8           emissions into the outdoor air.

9           (3) The concentration of regulated substance in ground  
10          water in aquifers used or currently planned to be used for  
11          drinking water or for agricultural purposes shall comply with  
12          the maximum contaminant level or HAL established for drinking  
13          water. Where no maximum contaminant level or HAL has been  
14          established, the ingestion medium-specific concentration  
15          level for residential exposure shall be used. If the  
16          groundwater at the site has naturally occurring background  
17          total dissolved solids concentrations greater than 2,500  
18          milligrams per liter, the remediation standard for a  
19          regulated substance dissolved in the groundwater may be  
20          adjusted by multiplying the medium-specific concentration for  
21          groundwater in aquifers by 100. The resulting value becomes  
22          the medium-specific concentration level for groundwater.

23          (4) For the residential standard, the concentration of a  
24          regulated substance in soil shall not exceed either the  
25          direct contact soil medium-specific concentration based on  
26          residential exposure factors within a depth of 15 feet from  
27          the existing ground surface, or, the soil-to-groundwater  
28          pathway numeric value throughout the soil column, the latter  
29          to be determined by any one of following methods:

30               (i) A value which is 100 times the medium-specific

1 concentration for groundwater.

2 (ii) A concentration in soil at the site that does  
3 not produce a leachate in excess of the medium-specific  
4 concentrations for groundwater in the aquifer when  
5 subjected to the Synthetic Precipitation Leaching  
6 Procedures, Method 1312 of SW 846, Test Methods for  
7 Evaluating Solid Waste, promulgated by the EPA.

8 (iii) A generic value determined not to produce a  
9 concentration in groundwater in the aquifer in excess of  
10 the medium-specific concentration for groundwater based  
11 on a valid, peer-reviewed scientific method which  
12 properly accounts for factors affecting the fate,  
13 transport and attenuation of the regulated substance  
14 throughout the soil column.

15 (5) For the nonresidential standard, the concentration  
16 of a regulated substance throughout the soil column shall be  
17 based on exposure scenarios using valid scientific methods  
18 reflecting worker exposure, or, to assure that soil will not  
19 cause the medium-specific concentration for groundwater in  
20 the aquifer to be exceeded, the soil-to-groundwater pathway  
21 numeric value determined in accordance in paragraph (4).

22 (c) Additional limits.--For those regulated substances where  
23 medium-specific concentration limits cannot be established using  
24 the procedures in subsection (b), the medium-specific  
25 concentration limits for the ingestion of groundwater,  
26 inhalation of soils, ingestion and inhalation of volatiles and  
27 particulate from the soils shall be calculated by the department  
28 using valid scientific methods, reasonable exposure pathway  
29 assumptions and exposure factors for residential and  
30 nonresidential land use as promulgated by the Environmental

1 Quality Board which are no more stringent than the standard  
2 default exposure factors established by the United States  
3 Environmental Protection Agency based on the following levels of  
4 risk:

5 (1) Except as provided in paragraph (2), for a regulated  
6 substance which is a carcinogen, the medium-specific  
7 concentration is the concentration which represents an excess  
8 upper bound lifetime cancer target risk goal of one in  
9 1,000,000 due to continuous lifetime exposure for residential  
10 scenarios and a noncontinuous exposure for nonresidential  
11 exposure scenarios.

12 (2) For a regulated substance which is a carcinogen on  
13 properties in use or used in the past for industrial  
14 activities on or before the effective date of this act, or  
15 for residential, institutional, school or other properties  
16 with residential-like exposures in use on the effective date  
17 of this act and later proposed to be converted to industrial  
18 activities, or where remediation is required to clean up  
19 contamination associated with normal farming operations, or  
20 where a responsible party voluntarily notifies the department  
21 that remediation is needed where contamination is not  
22 willfully or deliberately committed, the medium-specific  
23 concentration is the concentration which represents an excess  
24 upper bond lifetime cancer target risk of between one in  
25 10,000 and one in 1,000,000 due to noncontinuous exposure for  
26 nonresidential exposure scenarios.

27 (3) In setting the medium-specific concentrations for  
28 carcinogens, the following factors shall be considered:

29 (i) Natural and anthropogenic occurrence and  
30 concentration of a regulated substance in the

environment.

(ii) Potential human exposure in specific and general populations.

(iii) Adverse health effects, including the weight of evidence for their human carcinogenicity as reflected in the Environmental Protection Agency carcinogenic classifications scheme.

(iv) Persistence and mobility of the regulated substance.

(v) Potential risks to the population.

(vi) Availability and cost of analytical methods to measure the concentration of a regulated substance in each environmental medium and the associated practical quantitation limit.

(vii) Availability, reliability and past performance of technologies used to treat or remove each regulated substance.

(viii) Cost of implementing these technologies to achieve various concentrations.

(ix) Overall economic impact associated with achieving various concentrations.

(x) Overall regulatory impact of achieving various concentrations.

(xi) In no case shall the medium-specific concentration represent an excess cancer risk of greater than one in 10,000.

(4) For a regulated substance which is a systemic toxicant, the medium-specific concentration is the concentration to which human populations could be exposed by direct ingestion or inhalation on a daily basis without

1 appreciable risk of deleterious effects for the exposed  
2 population.

3 (d) Attainment.--Final certification that a site or portion  
4 of a site meets the Statewide health standard shall be  
5 documented in the following manner:

6 (1) Attainment of cleanup levels shall be demonstrated  
7 by collection and analysis of representative samples from the  
8 environmental medium of concern, including soils, and  
9 groundwater in aquifers at the point of compliance through  
10 the application of statistical tests set forth in regulation  
11 or, if no regulations have been adopted, in a demonstration  
12 of a mathematically valid application of statistical tests.  
13 The department shall also recognize those methods of  
14 attainment demonstration generally recognized as appropriate  
15 for that particular remediation.

16 (2) A final report that documents attainment of the  
17 Statewide health standard shall be submitted to the  
18 department which includes the descriptions of procedures and  
19 conclusions of the site investigation to characterize the  
20 nature, extent, direction, rate of movement off the site and  
21 cumulative effects, if any, volume, composition,  
22 concentration of contaminants in environmental media, the  
23 basis for selecting environmental media of concern,  
24 documentation supporting the selection of residential or  
25 nonresidential exposure factors, descriptions of removal or  
26 decontamination procedures performed in remediation,  
27 summaries of sampling methodology and analytical results  
28 which demonstrate that contaminants have been removed or  
29 decontaminated to applicable levels and documentation of  
30 compliance with postremediation care requirements if they are



1 needed to maintain the Statewide health standard.

2 (3) Institutional controls such as fencing and future  
3 land use restrictions on a site may not be used to attain the  
4 Statewide health standard. Institutional controls may be used  
5 to maintain the Statewide health standard after remediation  
6 occurs.

7 (e) Authority reserved.--If a person fails to demonstrate  
8 attainment of the Statewide health standard and fails to meet  
9 the requirements of section 504, the department may require that  
10 additional remediation measures be taken in order to meet any  
11 one or a combination of environmental standards selected by such  
12 person.

13 (f) Deed notice.--Persons attaining and demonstrating  
14 compliance with the Statewide health standard considering  
15 residential exposure factors for a regulated substance on the  
16 entire site shall not be subject to the deed acknowledgment  
17 requirements of the act of July 7, 1980 (P.L.380, No.97), known  
18 as the Solid Waste Management Act, or the act of October 18,  
19 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup  
20 Act. An existing acknowledgment contained in a deed prior to  
21 demonstrating compliance with the residential Statewide health  
22 standard may be removed. The deed acknowledgment requirements  
23 shall apply where nonresidential exposure factors were used to  
24 comply with the Statewide health standard.

25 (g) Notice and review provisions.--Persons utilizing the  
26 Statewide health standard shall comply with the following  
27 requirements for notifying the public and the department of  
28 planned remediation activities:

29 (1) Notice of intent to initiate remediation activities  
30 shall be made in the following manner:

1 (i) A notice of intent to remediate a site shall be  
2 submitted to the department which provides, to the extent  
3 known, a brief description of the location of the site, a  
4 listing of the contaminant or contaminants involved, a  
5 description of the intended future use of the property  
6 for employment opportunities, housing, open space,  
7 recreation or other uses and the proposed remediation  
8 measures. The department shall publish an acknowledgment  
9 nothing receipt of the notice of intent in the  
10 Pennsylvania Bulletin.

11 (ii) At the same time a notice of intent to  
12 remediate a site is submitted to the department, a copy  
13 of the notice shall be provided to the municipality in  
14 which the site is located and a summary of the notice of  
15 intent shall be published in a newspaper of general  
16 circulation serving the area in which the site is  
17 located.

18 (2) Notice of the submission of the final report  
19 demonstrating attainment of the Statewide health standard  
20 shall be given to the municipality in which the remediation  
21 site is located, published in a newspaper of general  
22 circulation serving the area and published in the  
23 Pennsylvania Bulletin by the department.

24 (3) The department shall review the final report  
25 demonstrating attainment of the Statewide health standard  
26 within 90 days of its receipt or notify the person submitting  
27 the report of substantive deficiencies. If the department  
28 does not provide a written response with the deficiencies  
29 within 90 days, the final report shall be deemed approved.

30 Section 504. Site-specific standard.

1 (a) General rule.--Where a site-specific standard is  
2 selected as the environmental remediation standard or where the  
3 background or Statewide health standard is selected but not  
4 achieved, site investigation, risk assessment, cleanup plans and  
5 final reports shall be developed using the procedures and  
6 factors established by this section.

7 (b) Carcinogens.--

8 (1) Except as provided in paragraph (2), for known or  
9 suspected carcinogens, soil and groundwater remediation  
10 standards shall be established at exposures which represent  
11 an excess upper bound lifetime cancer target risk goal of one  
12 in 1,000,000 due to continuous lifetime exposure for  
13 residential scenarios and a noncontinuous exposure for  
14 nonresidential exposure scenarios. The cumulative excess risk  
15 to exposed populations, including sensitive subgroups, shall  
16 not be greater than one in 10,000.

17 (2) For known or suspected carcinogens, soil and  
18 groundwater cleanup standards for industrial properties in  
19 use or used in the past for industrial activities on or  
20 before the effective date of this act, or for residential,  
21 institutional, school or other properties with residential-  
22 like exposures in use on the effective date of this act and  
23 later proposed to be converted to industrial activities, or  
24 where remediation is required to clean up contamination  
25 associated with normal farming operations, or where a  
26 responsible party voluntarily notifies the department that  
27 remediation is needed where contamination is not willfully or  
28 deliberately committed, the standard shall be established at  
29 exposures which represent an excess upperbound lifetime risk  
30 of between one in 10,000 and one in 1,000,000. The cumulative

1 excess risk to exposed populations, including sensitive  
2 subgroups, shall not be greater than one in 10,000.

3 (c) Systemic toxicants.--For systemic toxicants, soil and  
4 groundwater cleanup standards shall represent levels to which  
5 the human population could be exposed on a daily basis without  
6 appreciable risk of deleterious effect to the exposed  
7 population. Where several systemic toxicants affect the same  
8 target organ or act by the same method of toxicity, the hazard  
9 index shall not exceed one. The hazard index is the sum of the  
10 hazard quotients for multiple systemic toxicants acting through  
11 a single-medium exposure pathway or through multiple-media  
12 exposure pathways.

13 (d) Groundwater.--Cleanup standards for groundwater shall be  
14 established using the following considerations:

15 (1) For groundwater in aquifers, site-specific standards  
16 shall be established using the following procedures:

17 (i) The current and probable future use of  
18 groundwater shall be identified and protected.

19 Groundwater that has a background total dissolved solids  
20 content greater than 2,500 milligrams per liter or is not  
21 capable of transmitting water to a pumping well in usable  
22 and sustainable quantities shall not be considered a  
23 current or potential source of drinking water.

24 (ii) Site-specific sources of contaminants and  
25 potential receptors shall be identified.

26 (iii) Natural environmental conditions affecting the  
27 fate and transport of contaminants, such as natural  
28 attenuation, shall be determined by appropriate  
29 scientific methods.

30 (2) Groundwater not in aquifers shall be evaluated using

1 current or probable future exposure scenarios. Appropriate  
2 management actions shall be instituted at the point of  
3 exposure where a person is exposed to groundwater by  
4 ingestion or other avenues to protect human health and the  
5 environment. This shall not preclude taking appropriate  
6 source management actions by the responsible party to achieve  
7 the equivalent level of protection.

8 (e) Soil.--Concentrations of released regulated substances  
9 in soil shall not exceed: values calculated in accordance with  
10 subsections (c) and (h) based on human ingestion of soil where  
11 direct-contact exposure to the soil may reasonably occur; values  
12 calculated to protect groundwater in aquifers at levels  
13 determined in accordance with subsections (b), (c) and (d); and  
14 values calculated to satisfy the requirements of subsection (g)  
15 with respect to discharges or releases to surface water or  
16 emissions to the outdoor air. Such determinations shall take  
17 into account the effects of institutional and engineering  
18 controls, if any, and shall be based on sound scientific  
19 principles, including fate and transport analysis of the  
20 migration of a regulated substance in relation to receptor  
21 exposures.

22 (f) Factors.--In determining soil and groundwater cleanup  
23 standards under subsections (d) and (e), the department shall  
24 use the following factors:

25 (1) Appropriate exposure factors for the land use of the  
26 site with reference to current and currently planned future  
27 land use and the effectiveness of institutional or legal  
28 controls placed on the future use of the land.

29 (2) Appropriate statistical techniques, including, but  
30 not limited to, Monte Carlo simulations, to establish

1 statistically valid cleanup standards.

2 (3) The potential of human ingestion of regulated  
3 substances in surface water or other site-specific surface-  
4 water exposure pathways, if applicable.

5 (4) The potential of human inhalation of regulated  
6 substances from the outdoor air and other site-specific air  
7 exposure pathways, if applicable.

8 (g) Air and surface water.--Any discharge into surface water  
9 or any emissions to the outdoor air which occur during or after  
10 attainment of the site-specific standard shall comply with  
11 applicable laws and regulations relating to surface-water  
12 discharges or emissions into the outdoor air.

13 (h) Combination of measures.--The standards may be attained  
14 through a combination of remediation activities that can include  
15 treatment, removal, engineering or institutional controls and  
16 can include innovative or other demonstrated measures.

17 (i) Remedy evaluation.--The final remediation plan for a  
18 site shall be submitted to the department and shall include  
19 remediation alternatives and a final remedy which consider each  
20 of the following factors:

21 (1) Long-term risks and effectiveness of the proposed  
22 remedy that includes an evaluation of:

23 (i) The magnitude of risks remaining after  
24 completion of the remedial action.

25 (ii) The type, degree and duration of  
26 postremediation care required, including, but not limited  
27 to, operation and maintenance, monitoring, inspections  
28 and reports and their frequencies or other activities  
29 which will be necessary to protect human health and the  
30 environment.

(iii) Potential for exposure of human and environmental receptors to regulated substances remaining at the site.

(iv) Long-term reliability of any engineering and voluntary institutional controls.

(v) Potential need for repair, maintenance or replacement of components of the remedy.

(vi) Time to achieve cleanup standards.

(2) Reduction of the toxicity, mobility or volume of regulated substances, including the amount of regulated substances that will be removed, contained, treated or destroyed, the degree of expected reduction in toxicity, mobility or volume and the type, quantity, toxicity and mobility of regulated substances remaining after implementation of the remedy.

(3) Short-term risks and effectiveness of the remedy, including the short-term risks that may be posed to the community, workers or the environment during implementation of the remedy and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the proposed remedy by using commercially available technology which has been demonstrated on a consistent basis to effectively achieve the applicable standard under similar applications, degree of difficulty associated with constructing the remedy, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remedial efforts and approvals necessary to implement the remedial efforts.

(5) The cost of the remediation measures, including

capital costs, operation and maintenance costs, net present value of capital and operation and maintenance costs and the initial costs and effectiveness of the system.

(6) The incremental health and economic benefits shall be evaluated by comparing those benefits to the incremental health and economic costs associated with implementation of remedial measures.

(j) Attainment.--Compliance with the site-specific standard is attained for a site or portion of a site when a remedy approved by the department has been implemented in compliance with the following criteria:

(1) Soil, groundwater, surface water and air emission standards as determined under subsections (a) through (h) have been attained.

(2) Attainment of the site-specific standard shall be demonstrated by collection and analysis of samples from affected media, as applicable, such as surface water, soil, groundwater in aquifers at the point of compliance through the application of statistical tests set forth in regulation or, if no regulations have been adopted, in a demonstration of a mathematically valid application of statistical tests. The department shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.

(k) Site investigation and remedy selection.--Any person electing to comply with site-specific standards established by this section shall submit the following reports and evaluations, as required under this section, for review and approval by the department:

(1) A remedial investigation report shall be submitted



1 which includes:

2 (i) Documentation and descriptions of procedures and  
3 conclusions from the site investigation to characterize  
4 the nature, extent, direction, rate of movement, volume  
5 and composition of regulated substances.

6 (ii) The concentration of regulated substances in  
7 environmental media of concern, including summaries of  
8 sampling methodology and analytical results, and  
9 information obtained from attempts to comply with the  
10 background or Statewide health standards, if any.

11 (iii) A description of the existing or potential  
12 public benefits of the use or reuse of the property for  
13 employment opportunities, housing, open space, recreation  
14 or other uses.

15 (iv) A fate and transport analysis may be included  
16 in the report to demonstrate whether any present or  
17 future exposure pathways exist.

18 (v) If no exposure pathways exist, a risk assessment  
19 report and cleanup plan are not required and no remedy is  
20 required to be proposed or completed.

21 (2) If required, a risk assessment report shall describe  
22 the potential adverse effects under both current and planned  
23 future conditions caused by the presence of a regulated  
24 substance in the absence of any further control, remediation  
25 or mitigation measures. A baseline risk assessment report is  
26 not required where it is determined that a specific  
27 remediation measure can be implemented to attain the site-  
28 specific standard.

29 (3) A cleanup plan shall be submitted which evaluates  
30 the relative abilities and effectiveness of potential

1 remedies to achieve the requirements for remedies described  
2 in subsection (j) when considering the evaluation factors  
3 described in subsection (i). The plan shall select a remedy  
4 which achieves the requirements for remedies described in  
5 subsection (j). The department may require a further  
6 evaluation of the selected remedy or an evaluation of one or  
7 more additional remedies in response to comments received  
8 from the community surrounding the site as a result of the  
9 community involvement plan established in subsection (n)  
10 which are based on the factors described in subsection (i) or  
11 as a result of its own analyses which are based on the  
12 evaluation factors described in subsection (i).

13 (4) The department may disapprove a cleanup plan that  
14 contains a selected remedy consisting solely of fencing,  
15 warning signs or future land use restrictions to meet the  
16 requirements of subsection (j).

17 (5) A final report demonstrating that the approved  
18 remedy has been completed in accordance with the cleanup plan  
19 shall be submitted to the department.

20 (6) Nothing in this section shall preclude a person from  
21 submitting a remedial investigation report, risk assessment  
22 report and cleanup plan at one time to the department for  
23 review.

24 (7) Decisions by the department involving the reports  
25 and evaluations required under this section shall be  
26 considered appealable actions under the act of July 13, 1988  
27 (P.L.530, No.94), known as the Environmental Hearing Board  
28 Act.

29 (1) Deed notice.--Persons attaining and demonstrating  
30 compliance with site-specific standards for a regulated

1 substance on a site shall be subject to the deed acknowledgment  
2 requirements of the act of July 7, 1980 (P.L.380, No.97), known  
3 as the Solid Waste Management Act, or the act of October 18,  
4 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup  
5 Act. The notice shall include whether residential or  
6 nonresidential exposure factors were used to comply with the  
7 site-specific standard.

8 (m) Notice and review provisions.--Persons utilizing the  
9 site-specific standard shall comply with the following  
10 requirements for notifying the public and the department of  
11 planned remediation activities:

12 (1) (i) A notice of intent to remediate a site shall be  
13 submitted to the department which provides, to the extent  
14 known, a brief description of the location of the site, a  
15 listing of the contaminant or contaminants involved and  
16 the proposed remediation measures. The department shall  
17 publish an acknowledgment noting receipt of the notice of  
18 intent in the Pennsylvania Bulletin. At the same time a  
19 notice of intent to remediate a site is submitted to the  
20 department, a copy of the notice shall be provided to the  
21 municipality in which the site is located and a summary  
22 of the notice of intent shall be published in a newspaper  
23 of general circulation serving the area in which the site  
24 is located.

25 (ii) The notices required by this paragraph shall  
26 include a 30-day public and municipal comment period  
27 during which the community can request to be involved in  
28 the development of the cleanup and reuse plans for the  
29 site. If requested by the community, the person  
30 undertaking the cleanup shall develop and implement a

1 public involvement program plan which meets the  
2 requirements of subsection (n). Persons undertaking the  
3 cleanup are encouraged to develop a proactive approach to  
4 working with the community in developing and implementing  
5 cleanup and reuse plans.

6 (2) The following notice and review provisions apply  
7 each time a remedial investigation report, risk assessment  
8 report, cleanup plan and final report demonstrating  
9 compliance with the site-specific standard is submitted to  
10 the department:

11 (i) When the report or plan is submitted to the  
12 department, a notice of its submission shall be provided  
13 to the municipality in which the site is located and a  
14 notice summarizing the findings and recommendations of  
15 the report or plan shall be published in a newspaper of  
16 general circulation serving the area in which the site is  
17 located. If the community requested to be involved in the  
18 development of the cleanup and reuse plans, the reports  
19 and plans shall also include the comments submitted by  
20 the community and the responses from the persons  
21 preparing the reports and plans.

22 (ii) The department shall review the report or plan  
23 within no more than 90 days of its receipt or notify the  
24 person submitting the report of deficiencies. If the  
25 department does not provide a written response with the  
26 deficiencies within 90 days, the report shall be deemed  
27 approved.

28 (3) When the remedial investigation report, risk  
29 assessment report and cleanup plan are submitted to the  
30 department, the department shall notify persons of any

1 deficiencies within 120 days of last submission. If the  
2 department does not provide a written response with the  
3 deficiencies within 120 days, the reports shall be deemed  
4 approved.

5 (n) Community involvement.--Persons using site-specific  
6 standards are required to develop a community involvement plan  
7 which involves the community in the cleanup and use of the  
8 property if the community requests to be involved in the cleanup  
9 and reuse plans for the site. The plan shall propose measures to  
10 involve the community in the development and review of the  
11 remedial investigation report, risk assessment report, cleanup  
12 plan and final report. Depending on the site involved,  
13 techniques such as developing a proactive community information  
14 and consultation program that includes public meetings and  
15 roundtable discussions, convenient locations where documents  
16 related to a cleanup can be made available to the public and  
17 designating a single contact person to whom community residents  
18 can ask questions; the formation of a community-based group  
19 which is used to solicit suggestions and comments on the various  
20 reports required by this section; if needed, the retention of  
21 trained, independent third parties to facilitate meetings and  
22 discussions and perform mediation services.

23 Section 505. Reuse of industrial areas.

24 (a) Special sites.--The current owner of a property used for  
25 industrial activities and a prospective innocent purchaser of  
26 such property may jointly elect to follow the review procedures  
27 of this section. Such joint election shall be submitted to the  
28 department in writing signed by both the property owner and the  
29 prospective innocent purchaser.

30 (b) Baseline report.--A baseline environmental report shall

1 be prepared for the property based on a work plan approved by  
2 the department to establish a reference point showing existing  
3 contamination on the site. The report shall describe the  
4 proposed remediation measures to be undertaken within the limits  
5 of cleanup liability found in section 702. The report shall also  
6 include a description of the existing or potential public  
7 impacts, both beneficial and detrimental, of the use or reuse of  
8 the property for employment opportunities, housing, open space,  
9 recreation or other use.

10 (c) Public review.--Persons undertaking the cleanup and  
11 reuse of sites under this section shall comply with the  
12 following public notice and review requirements:

13 (1) A notice of intent to remediate a site shall be  
14 submitted to the department which provides, to the extent  
15 known, a brief description of the location of the site, a  
16 listing of the contaminant or contaminants involved and the  
17 proposed remediation measures. The department shall publish  
18 an acknowledgment noting receipt of the notice of intent in  
19 the Pennsylvania Bulletin. At the same time a notice of  
20 intent to remediate a site is submitted to the department,  
21 the person undertaking the cleanup shall provide a copy of  
22 the notice to the municipality in which the site is located  
23 and shall publish a summary of the notice of intent in a  
24 newspaper of general circulation serving the area in which  
25 the site is located.

26 (2) The notices required by this subsection shall  
27 include a 30-day public and municipal comment period during  
28 which the community can request to be involved in the  
29 development of the cleanup and reuse plans for the site. If  
30 requested by the community, the person undertaking the

1 cleanup shall develop and implement a public involvement  
2 program plan which meets the requirements of section 504(n).  
3 Persons undertaking the cleanup are encouraged to develop a  
4 proactive approach to working with the community in  
5 developing and implementing cleanup and reuse plans.

6 (d) Department review.--No later than 90 days after the  
7 completed environmental report is submitted for review, the  
8 department shall determine whether the report adequately  
9 identifies the environmental hazards and risks posed by the  
10 site. The comments obtained as a result of a community  
11 involvement plan developed pursuant to section 504(n) shall also  
12 be considered by the department. The department shall notify the  
13 person submitting the report of deficiencies within 90 days. If  
14 the department does not provide a written response with the  
15 deficiencies within 90 days, the study shall be deemed approved.

16 (e) Agreement.--The department and the prospective innocent  
17 purchaser undertaking the reuse of a special industrial site  
18 shall enter into an agreement, based on the environmental  
19 report, which outlines cleanup responsibility for the property,  
20 if any, consistent with the provisions of Chapter 7.

21 (f) Department actions.--A person entering into an agreement  
22 pursuant to this section shall not interfere with any subsequent  
23 remediation efforts by the department or others to deal with  
24 contamination identified in the baseline environmental report so  
25 long as it does not disrupt the use of the property.

26 (g) Deed notice.--Persons entering into agreements pursuant  
27 to this section shall be subject to the deed acknowledgment  
28 requirements of the act of July 7, 1980 (P.L.380, No.97), known  
29 as the Solid Waste Management Act, or the act of October 18,  
30 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup

1 Act, where applicable.

2 Section 506. Local land development controls.

3 This act shall not affect the ability of local governments to  
4 regulate land development under the act of July 31, 1968  
5 (P.L.805, No.247), known as the Pennsylvania Municipalities  
6 Planning Code. The use of the identified property and any deed  
7 restrictions used as part of a remediation plan shall comply  
8 with local land development controls adopted under the  
9 Pennsylvania Municipalities Planning Code.

10 Section 507. Immediate response.

11 (a) Emergency response.--The provisions of this chapter  
12 shall not prevent or impede the immediate response of the  
13 department or responsible person to an emergency which involves  
14 an imminent or actual release of a regulated substance which  
15 threatens public health or the environment. The final  
16 remediation of the site shall comply with the provisions of this  
17 chapter which shall not be prejudiced by the mitigation measures  
18 undertaken to that point.

19 (b) Interim response.--The provisions of this chapter shall  
20 not prevent or impede a responsible person from undertaking  
21 mitigation measures to prevent significant impacts on human  
22 health or the environment. Those mitigation measures may include  
23 limiting public access to the release area, installing drainage  
24 controls to prevent runoff, stabilization and maintenance of  
25 containment structures, actions to prevent the migration of  
26 regulated substances, on-site treatment or other measures not  
27 prohibited by the department. The final remediation of the site  
28 shall comply with the provisions of this chapter which shall not  
29 be prejudiced by the mitigation measures undertaken to that  
30 point.



1 (c) Oil Pollution Act/Oil Spill Responder Liability Act.--  
2 Nothing in this act shall be deemed to apply to removal of a  
3 discharge pursuant to section 4201 of the Oil Pollution Act of  
4 1990 (Public Law 101-380, 104 Stat. 484) or pursuant to the act  
5 of June 11, 1992 (P.L.303, No.52), known as the Oil Spill  
6 Responder Liability Act.

7 CHAPTER 7  
8 CLEANUP LIABILITY PROTECTION

9 Section 701. Cleanup liability protection.

10 (a) General rule.--Any person demonstrating compliance with  
11 the environmental remediation standards established in Chapter 5  
12 shall be relieved of further liability for the remediation of  
13 the site under the statutes outlined in section 104 for any  
14 contamination identified in reports submitted to and approved by  
15 the department to demonstrate compliance with these standards  
16 and shall not be subject to citizen suits or other contribution  
17 actions brought by responsible persons. The cleanup liability  
18 protection provided by this chapter applies to the following  
19 persons:

20 (1) The current or future owner of the identified  
21 property who participated in the remediation of the site.

22 (2) A person who develops or otherwise operates or  
23 occupies the identified site.

24 (3) A successor or assign of any person to whom the  
25 liability protection applies.

26 (4) A public utility to the extent the public utility  
27 performs activities on the identified site.

28 (b) Liability.--A person shall not be considered a person  
29 responsible for a release or a threatened release of a regulated  
30 substance simply by virtue of conducting an environmental

1 assessment or transaction screen on a property. Nothing in this  
2 section relieves a person of any liability for failure to  
3 exercise due diligence in performing an environmental assessment  
4 or transaction screen.

5 (c) Illegal activities.--The provisions of this chapter do  
6 not create a defense against the imposition of criminal and  
7 civil fines and penalties or administrative penalties otherwise  
8 authorized by law and imposed as the result of the illegal  
9 disposal of waste or for the pollution of the land, air or  
10 waters of this Commonwealth on the identified site.

11 Section 702. Reused industrial sites.

12 (a) Agreement.--The department and the prospective innocent  
13 purchaser undertaking the reuse of an industrial site under  
14 section 505 shall enter into an agreement, based on the  
15 environmental report, which outlines cleanup responsibility for  
16 the site. Any person included in such an agreement shall not be  
17 subject to a citizen suit or other contribution actions brought  
18 by responsible persons or further action by the department to  
19 compel site remediation, except as necessary to enforce the  
20 terms of the agreement.

21 (b) Liability.--The cleanup liabilities of the prospective  
22 innocent purchaser undertaking the reuse of an industrial site  
23 under section 505 shall include only the following:

24 (1) The person shall only be responsible for remediation  
25 of any immediate, direct or imminent threats to public health  
26 or the environment, such as drummed waste, which would  
27 prevent the site from being occupied for its intended  
28 purpose.

29 (2) The person shall not be held responsible for the  
30 remediation of any contamination identified in the

1 environmental report, other than the contamination noted in  
2 paragraph (1).

3 (3) Nothing in this act shall relieve the person from  
4 any cleanup liability for contamination later caused by that  
5 person on the site.

6 (c) Successor, assign, developer or occupier.--A successor  
7 or assign of any person to whom cleanup liability protection  
8 applies for a site or a future developer or occupier of the site  
9 shall not be considered a responsible person for purposes of  
10 assigning cleanup liability, provided the successor or assign is  
11 not a person responsible for contamination on the site who did  
12 not participate in the environmental remediation action.

13 (d) Public utility.--A public utility shall not be  
14 considered a responsible person for purposes of assigning  
15 cleanup liability to the extent the public utility performs  
16 activities on the identified site, provided the public utility  
17 is not a person responsible for contamination on the property.

18 Section 703. Existing exclusions.

19 The protection from cleanup liability afforded under this act  
20 shall be in addition to the exclusions from being a responsible  
21 person under the statutes listed in section 104.

22 Section 704. New liability.

23 Nothing in this act shall relieve a person receiving  
24 protection from cleanup liability under this chapter from any  
25 cleanup liability for contamination later caused by that person  
26 on a site which has demonstrated compliance with one or more of  
27 the environmental remediation standards established in Chapter  
28 5.

29 Section 705. Reopener.

30 Any person who completes remediation in compliance with this

act shall not be required to undertake additional remediation actions unless the department can show that:

(1) fraud was committed in the certification of the site that resulted in avoiding the need for further cleanup of the site;

(2) new information confirms the existence of an area of previously unknown contamination;

(3) the remediation method failed to meet or maintain one or a combination of the three cleanup standards; or

(4) substantial changes in exposure conditions, such as a change from nonresidential to residential use or new information about regulated substances associated with the site which results in the level of risk achieved by meeting the standard set forth in section 504 increasing beyond the acceptable risk range. In the case of change in use, only the person undertaking such a change may be required to complete additional remediation actions.

Section 706. Authority reserved.

Except as otherwise specifically provided, nothing in this act shall affect the ability or authority of any person to seek any relief available against any party who may have liability with respect to a site. This act shall not affect the ability or authority to seek contribution from any person who may have liability with respect to the site and is not covered by the cleanup liability protection provisions of this act.

## CHAPTER 9

(RESERVED)

## CHAPTER 11

### INDUSTRIAL LAND RECYCLING FUND

Section 1101. Industrial Land Recycling Fund.

1 (a) Fund.--There is hereby established a separate account in  
2 the State Treasury, to be known as the Industrial Land Recycling  
3 Fund, which shall be a special fund administered by the  
4 department.

5 (b) Purpose.--The moneys deposited in this fund shall be  
6 used by the department for the purpose of implementing the  
7 provisions of this act. Moneys from the Hazardous Sites Cleanup  
8 Fund shall also be available to the department to remediate a  
9 release or threatened release on a property covered by the  
10 provisions of this act.

11 (c) Funds.--In addition to any funds appropriated by the  
12 General Assembly, Federal funds and private contributions and  
13 any fines and penalties assessed under this act shall be  
14 deposited into the fund.

15 (d) Annual report.--The department shall on October 1 of  
16 each year report to the General Assembly on the expenditures and  
17 commitments made from the Industrial Land Recycling Fund.

18 Section 1102. Environmental Assessment Fund.

19 (a) Establishment.--There is hereby established a separate  
20 account in the State Treasury, to be known as the Environmental  
21 Assessment Fund, which shall be a special fund administered by  
22 the Department of Commerce. Within 60 days of the effective date  
23 of this act, the Department of Commerce shall finalize  
24 guidelines for the administration of this fund and shall issue  
25 application forms for this fund.

26 (b) Purpose.--The Environmental Assessment Fund is to help  
27 provide grants for conducting environmental assessments to the  
28 following categories of applicants:

- 29 (1) Local economic development agencies or  
30 municipalities for the purpose of providing financial

1 assistance to persons who wish to conduct environmental  
2 assessments and develop cleanup plans.

3 (2) Prospective innocent purchasers of abandoned  
4 industrial sites.

5 (c) Funds.--In addition to any funds appropriated by the  
6 General Assembly, \$5,000,000 shall be transferred on July 1 of  
7 each year from the Hazardous Sites Cleanup Fund established by  
8 the act of October 18, 1988 (P.L.756, No.108), known as the  
9 Hazardous Sites Cleanup Act, to the Environmental Assessment  
10 Fund for the purpose of providing grants under subsection (b)(1)  
11 to local economic development agencies and municipalities and  
12 \$1,000,000 shall be transferred on July 1 of each year from the  
13 Hazardous Sites Cleanup Fund to the Environmental Assessment  
14 Fund for the purpose of providing grants under subsection (b)(2)  
15 to prospective innocent purchasers of abandoned industrial  
16 sites. Any interest earned by moneys in this fund shall remain  
17 in this fund. The first transfer of moneys from the Hazardous  
18 Sites Cleanup Fund required by this subsection shall occur  
19 within 60 days of the effective date of this act.

20 (d) Annual report.--The Department of Commerce shall on  
21 October 1 of each year report to the General Assembly on the  
22 grants and expenditures made from this fund.

23 Section 1103. Voluntary Cleanup Fund.

24 (a) Establishment.--There is hereby established a separate  
25 account in the State Treasury, to be known as the Voluntary  
26 Cleanup Fund, which shall be a special fund administered by the  
27 Department of Commerce. Within 60 days of the effective date of  
28 this act, the Department of Commerce shall finalize guidelines  
29 and issue application forms to administer this fund.

30 (b) Purpose.--The Voluntary Cleanup Fund is to help provide

1 financial assistance to persons who did not cause or contribute  
2 to the contamination on the site and who propose to undertake  
3 the voluntary remediation of a property. The financial  
4 assistance shall be in an amount of up to 75% of the costs  
5 incurred for completing an environmental study and implementing  
6 a cleanup plan for the following categories of applicants:

7 (1) Local economic development agencies shall be  
8 eligible for grants and low interest loans at a rate of not  
9 more than 2% for the purpose of completing environmental  
10 studies and implementing cleanup plans.

11 (2) Political subdivisions or their instrumentalities  
12 shall be eligible for grants and low interest loans at a rate  
13 of not more than 2% for the purposes of completing  
14 environmental studies and implementing cleanup plans or for  
15 the purpose of providing financial assistance to a business  
16 which has no more than 50 employees to complete environmental  
17 studies and implementing cleanup plans.

18 (3) Other applicants shall be eligible for low interest  
19 loans at a rate of not more than 2% for the purpose of  
20 completing environmental studies and implementing cleanup  
21 plans.

22 (c) Priority for financial assistance.--The Department of  
23 Commerce shall take all of the following factors into  
24 consideration when determining which applicants shall receive  
25 financial assistance under this section:

26 (1) The benefit of the remedy to public health, safety  
27 and the environment.

28 (2) The permanence of the remedy.

29 (3) The cost effectiveness of the remedy in comparison  
30 with other alternatives.

1           (4) The financial condition of the applicant.

2           (5) The financial or economic distress of the area in  
3       which the cleanup is being conducted.

4           (6) The potential for economic development.

5       (d) Terms and conditions.--The Department of Commerce shall  
6       have the power to set terms applicable to loans and grants it  
7       deems appropriate. The Department of Commerce may consider such  
8       factors as it deems relevant, including current market interest  
9       rates, and the necessity to maintain the moneys in this fund in  
10      a financially sound manner. Loans may be made based upon the  
11      ability to repay from future revenue to be derived from the  
12      cleanup, by a mortgage or other property lien, or on any other  
13      fiscal matters which the Department of Commerce deems  
14      appropriate.

15      (e) Funds.--In addition to any funds appropriated by the  
16      General Assembly, \$19,000,000 shall be transferred from the  
17      Hazardous Sites Cleanup Fund established by the act of October  
18      18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup  
19      Act, to the Voluntary Cleanup Fund for the purpose of  
20      implementing the program established in this section. Moneys  
21      received by the Department of Commerce as repayment of  
22      outstanding loans shall be deposited in the fund. Any interest  
23      earned by moneys in this fund shall remain in this fund. The  
24      first transfer of moneys from the Hazardous Sites Cleanup Fund  
25      required by this subsection shall occur within 60 days of the  
26      effective date of this act.

27      (f) Annual report.--The Department of Commerce shall on  
28      October 1 of each year report to the General Assembly on the  
29      grants, loans, expenditures and commitments made from this fund.  
30      Section 1104. Fees.



1 (a) Amount.--The department shall collect the following fees  
2 for the review of reports required to be submitted to implement  
3 the provisions of this act:

4 (1) A person utilizing the background or Statewide  
5 health standards for environmental remediation shall pay a  
6 fee of \$250 upon submission of the report certifying  
7 compliance with the standards.

8 (2) A person utilizing site-specific standards for  
9 environmental remediation shall pay a fee of \$250 each upon  
10 the submission of a remedial investigation, risk assessment  
11 and cleanup plan and an additional \$500 at the time of  
12 submission of the final report certifying compliance with the  
13 standards.

14 (3) A person utilizing a combination of background,  
15 Statewide and site-specific standards shall pay the fees  
16 required by paragraphs (1) and (2), as applicable.

17 (4) No fee shall be charged for corrective actions  
18 undertaken under the act of July 6, 1989 (P.L.169, No.32),  
19 known as the Storage Tank and Spill Prevention Act.

20 (b) Deposit.--Fees imposed under this section shall be  
21 deposited in the Industrial Land Recycling Fund established  
22 under section 1101.

## 23 CHAPTER 13

### 24 MISCELLANEOUS PROVISIONS

25 Section 1301. Plain language.

26 Remedial investigation, risk assessment, cleanup plans and  
27 other reports and notices required to be submitted to implement  
28 the provisions of this act shall contain a summary or special  
29 section that includes a plain language description of the  
30 information included in the report in order to enhance the

1 opportunity for public involvement and understanding of the  
2 remediation process.

3 Section 1302. Permits.

4 A State or local permit or permit revisions shall not be  
5 required for remediation activities undertaken entirely on the  
6 site if they are undertaken pursuant to the requirements of this  
7 act.

8 Section 1303. Future actions.

9 At any time, a request may be made to the department to  
10 change the land use of the site from nonresidential to  
11 residential. The department shall only approve the request upon  
12 a demonstration that the site meets all the applicable cleanup  
13 standards for residential use of the property. Any existing deed  
14 acknowledgment contained in the deed prior to demonstrating  
15 compliance with the residential use standard may be removed.

16 Section 1304. Relationship to Federal and State programs.

17 (a) Federal.--The provisions of this act shall not prevent  
18 the Commonwealth from enforcing specific numerical cleanup  
19 standards, monitoring or compliance requirements required to be  
20 enforced by the Federal Government as a condition of primacy or  
21 to receive Federal funds.

22 (b) State priority list.--Any remediation undertaken on a  
23 site included on the State priority list established under the  
24 act of October 18, 1988 (P.L.756, No.108), known as the  
25 Hazardous Sites Cleanup Act, shall attain the site-specific  
26 standard established in section 504, but with respect to  
27 carcinogens, the range of risk in section 504(b)(2) shall apply,  
28 and shall be performed in compliance with the administrative  
29 record and other procedural and public review requirements of  
30 Chapter 5 of the Hazardous Sites Cleanup Act.

(c) Storage tanks.--The environmental remediation standards established under this act, but with respect to carcinogens, sections 503(c)(2) and 504(b)(2) shall apply and shall be used in corrective actions undertaken pursuant to the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act. However, the procedures in the Storage Tank and Spill Prevention Act for giving notice and for reviewing and approving corrective actions shall be used in lieu of the procedures, notices and reviews required by this act.

Section 1305. Enforcement.

(a) General rule.--The department is authorized to use the enforcement and penalty provisions applicable to the environmental medium or activity of concern, as appropriate, established under the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, the act of July 13, 1988 (P.L.525, No.93), referred to as the Infectious and Chemotherapeutic Waste Law, the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, or the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, to enforce the provisions of this act.

(b) Fraud.--Any person who willfully commits fraud demonstrating attainment with one or more standards established under this act shall, upon conviction, be subject to an additional penalty of up to \$50,000 for each separate offense or to imprisonment for a period of not more than one year for each separate offense, or both. Each day from the date of demonstration of attainment shall be a separate offense.

1 Section 1306. Past penalties.

2 Persons who have no responsibility for contamination on a  
3 site and participate in environmental remediation activities  
4 under this act shall not be responsible for paying any fines or  
5 penalties levied against any person responsible for  
6 contamination on the property.

7 Section 1307. Repeals.

8 (a) Absolute.--Section 504(b), (c), (d), (e), (f) and (h) of  
9 the act of October 18, 1988 (P.L.756, No.108), known as the  
10 Hazardous Sites Cleanup Act, are repealed.

11 (b) General.--All other acts and parts of acts are repealed  
12 insofar as they are inconsistent with this act and related to  
13 environmental remediation.

14 Section 1308. Effective date.

15 This act shall take effect in 60 days.