

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1

Session of 1995

INTRODUCED BY BRIGHTBILL, PORTERFIELD, SHAFFER, LAVALLE, MUSTO, STEWART, BELAN, JUBELIRER, LOEPER, ROBBINS, STAPLETON, STOUT, WAGNER, BAKER, AFFLERBACH, BELL, ANDREZESKI, CORMAN, BODACK, FISHER, FUMO, GERLACH, JONES, GREENLEAF, KASUNIC, HART, MELLOW, O'PAKE, HELFRICK, HOLL, TARTAGLIONE, LEMMOND, PETERSON, PUNT, RHOADES, SALVATORE, SHUMAKER, TILGHMAN, ULIANA, WENGER, MADIGAN AND DELP, JANUARY 17, 1995

SENATOR BRIGHTBILL, ENVIRONMENTAL RESOURCES AND ENERGY, AS AMENDED, FEBRUARY 7, 1995

AN ACT

1 Providing for the recycling of existing industrial and
2 commercial sites; further defining the cleanup liability of
3 new industries and tenants; establishing a framework for
4 setting environmental remediation standards; establishing the
5 Voluntary Cleanup Loan Fund and the Industrial Land Recycling
6 Fund to aid industrial site cleanups; assigning powers and
7 duties to the Environmental Quality Board and the Department
8 of Environmental Resources; and making repeals.

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1 hereby enacts as follows:

2

CHAPTER 1

3

GENERAL PROVISIONS

4 Section 101. Short title.

5 This act shall be known and may be cited as the Land
6 Recycling and Environmental Remediation Standards 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.

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

30 (4) It is necessary for the General Assembly to adopt a

1 statute which sets environmental remediation standards to
2 provide a uniform framework for cleanup decisions because few
3 environmental statutes set cleanup standards and to avoid
4 potentially conflicting and confusing environmental
5 standards. The General Assembly also has a duty to implement
6 the provisions of section 27 of Article I of the Constitution
7 of Pennsylvania with respect to environmental remediation
8 activities.

9 (5) Cleanup plans should be based on the actual risk
10 that contamination on the site may pose to public health and
11 the environment, taking into account its future use and the
12 degree to which contamination can spread offsite and expose
13 the public or the environment to risk, not on cleanup
14 policies requiring every site in this Commonwealth to be
15 returned to a pristine condition.

16 (6) The Department of Environmental Resources now
17 routinely through its permitting policies determines when
18 contamination will and will not pose a significant risk to
19 public health or the environment. Similar concepts should be
20 used in establishing cleanup policies.

21 (7) The public is entitled to understand how remediation
22 standards are applied to a site through a plain language
23 description of contamination present on a site, the risk it
24 poses to public health and the environment and any proposed
25 cleanup measure.

26 Section 103. Definitions.

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

30 "Agricultural chemical." A substance defined as a

1 fertilizer, soil conditioner or plant growth substance under the
2 act of May 29, 1956 (P.L.1795, No.598), known as the
3 Pennsylvania Fertilizer, Soil Conditioner and Plant Growth
4 Substance Law, or a substance regulated under the act of March
5 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide
6 Control Act of 1973.

7 "Agricultural chemical facility." A facility where
8 agricultural chemicals are held, stored, blended, formulated,
9 sold or distributed. The term does not include facilities
10 identified by SIC 2879 where agricultural chemicals are
11 manufactured.

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

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

19 "BADCT" or "Best Available Demonstrated Control Technology."
20 The commercially available engineering technology which has
21 demonstrated at full scale on a consistent basis that it most
22 effectively achieves the standard for a remediation action for a
23 regulated substance at a contaminated site under similar
24 applications.

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

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

30 "Contaminant." A regulated substance released into the

1 environment.

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

5 "Department." The Department of Environmental Resources of
6 the Commonwealth or its successor agency.

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

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

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

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

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

24 "Hazard quotient." The ratio of a single substance exposure
25 level over a specified period, e.g. subchronic, to a reference
26 dose for that substance derived from a similar 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." Commercial, manufacturing, public
4 utility, mining or any other activity done to further either the
5 development, manufacturing or distribution of goods and
6 services, including, but not limited to, administration of
7 business activities, research and development, warehousing,
8 shipping, transport, remanufacturing, stockpiling, storage,
9 solid waste management, repair and maintenance of raw materials,
10 intermediate and final products and solid waste created during
11 such activities, commercial machinery and equipment.

12 "Institutional controls." A measure undertaken to limit or
13 prohibit certain activities that may interfere with the
14 integrity of a remedial action or result in exposure to
15 regulated substances at a site. These include, but are not
16 limited to, fencing or restrictions on the future use of the
17 site.

18 "Medium-specific concentration." The concentration
19 associated with a specified environmental medium for potential
20 risk exposures.

21 "Mitigation measures." Any remediation action performed by a
22 person prior to or during implementation of a remediation plan
23 with the intent to protect human health and the environment.

24 "Municipality." A township, borough, city, incorporated
25 village or home rule municipality. This term shall not include a
26 county.

27 "Nonresidential property." Any real property on which
28 commercial, industrial, manufacturing or any other activity is
29 done to further either the development, manufacturing or
30 distribution of goods and services, including, but not limited

1 to, administration of business activities, research and
2 development, warehousing, shipping, transport, remanufacturing,
3 stockpiling of raw materials, storage, repair and maintenance of
4 commercial machinery and equipment or intermediate and final
5 products and solid waste management. This term shall not include
6 schools, nursing homes or other residential-style facilities.

7 "Person." An individual, firm, corporation, association,
8 partnership, consortium, joint venture, commercial entity,
9 authority, nonprofit corporation, interstate body or other legal
10 entity which is recognized by law as the subject of rights and
11 duties. The term includes the Federal Government, State
12 government, political subdivisions and Commonwealth
13 instrumentalities.

14 "Point of compliance." For the purposes of determining
15 compliance with groundwater standards, the property boundary at
16 the time the area of contamination is defined or such point
17 beyond the property boundary as the Department of Environmental
18 Resources may determine to be appropriate.

19 "Practical quantitation limit." The lowest limit that can be
20 reliably achieved within specified limits of precision and
21 accuracy under routine laboratory conditions for a specified
22 matrix and based on quantitation, precision and accuracy, normal
23 operation of a laboratory and the practical need in a
24 compliance-monitoring program to have a sufficient number of
25 laboratories available to conduct the analyses.

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

28 "Regulated substance." The term shall include hazardous
29 substances regulated under the act of October 18, 1988 (P.L.756,
30 No.108), known as the Hazardous Sites Cleanup Act, and

1 substances covered by the act of June 22, 1937 (P.L.1987,
2 No.394), known as The Clean Streams Law, the act of January 8,
3 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control
4 Act, the act of July 7, 1980 (P.L.380, No.97), known as the
5 Solid Waste Management Act, the act of July 13, 1988 (P.L.525,
6 No.93), referred to as the Infectious and Chemotherapeutic Waste
7 Law, and the act of July 6, 1989 (P.L.169, No.32), known as the
8 Storage Tank and Spill Prevention Act.

9 "Release." Spilling, leaking, pumping, pouring, emitting,
10 emptying, discharging, injecting, escaping, leaching, dumping or
11 disposing of a regulated substance into the environment in a
12 manner not authorized by the Department of Environmental
13 Resources. The term includes the abandonment or discarding of
14 barrels, containers, vessels and other receptacles containing a
15 regulated substance.

16 "Remediation." To clean up, mitigate, correct, abate,
17 minimize, eliminate, control or prevent a release of a regulated
18 substance into the environment in order to protect the present
19 or future public health, safety, welfare or the environment,
20 including preliminary actions to study or assess the release.

21 "Residential property." Any property or portion of the
22 property which does not meet the definition of "nonresidential
23 property."

24 "Responsible person." The term shall have the same meaning
25 as given to it in the act of October 18, 1988 (P.L.756, No.108),
26 known as the Hazardous Sites Cleanup Act, and shall include a
27 person subject to enforcement actions for substances covered by
28 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean
29 Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787),
30 known as the Air Pollution Control Act, the act of July 7, 1980

1 (P.L.380, No.97), known as the Solid Waste Management Act, the
2 act of July 13, 1988 (P.L.525, No.93), referred to as the
3 Infectious and Chemotherapeutic Waste Law, and the act of July
4 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill
5 Prevention Act.

6 "Secretary." The Secretary of Environmental Resources of the
7 Commonwealth.

8 "Site." The extent of contamination originating within the
9 property boundaries and all areas in close proximity to the
10 contamination necessary for the implementation of remediation
11 activities to be conducted under this act.

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

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

17 Section 104. Powers and duties.

18 (a) Environmental Quality Board.--The Environmental Quality
19 Board shall have the power and its duty shall be to adopt by
20 regulation Statewide health standards, appropriate
21 mathematically valid statistical tests to define compliance with
22 this act and other regulations that may be needed to implement
23 the provisions of this act. Any regulations needed to implement
24 this act shall be proposed by the department no later than 12
25 months after the effective date of this act and shall be
26 finalized no later than 24 months after the effective date of
27 this act, unless otherwise specified in this act.

28 (b) Department.--The department shall have the power and its
29 duty shall be to implement the provisions of this act.

30 Section 105. Cleanup Standards Scientific Advisory Board.

1 (a) Establishment.--There is hereby created a 13-member
2 Cleanup Standards Scientific Advisory Board for the purpose of
3 assisting the department and the Environmental Quality Board in
4 developing Statewide health standards, determining the
5 appropriate statistically and scientifically valid procedures to
6 be used, determining the appropriate risk factors and providing
7 other technical and scientific advice as needed to implement the
8 provisions of this act.

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

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

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

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

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

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

23 Section 106. Scope.

24 The environmental remediation standards established under
25 this act shall be used whenever site remediation and cleanup is
26 conducted under the act of June 22, 1937 (P.L.1987, No.394),
27 known as The Clean Streams Law, the act of January 8, 1960 (1959
28 P.L.2119, No.787), known as the Air Pollution Control Act, the
29 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
30 Management Act, the act of July 13, 1988 (P.L.525, No.93),

1 referred to as the Infectious and Chemotherapeutic Waste Law,
2 the act of October 18, 1988 (P.L.756, No.108), known as the
3 Hazardous Sites Cleanup Act, and the act of July 6, 1989
4 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
5 Act, to be eligible for cleanup liability protection under
6 Chapter 5.

7 Section 107. Existing standards.

8 (a) General rule.--The department may continue to use
9 cleanup standards not adopted under the provisions of this act
10 for a period of up to three years after the effective date of
11 this act, unless such existing standards are revised or replaced
12 by regulations adopted under this act. All regulations,
13 policies, guidance documents and procedures relating to
14 remediation which were not adopted under the provisions of this
15 act shall expire three years after the effective date of this
16 act. The standards established in sections 302, 303(b)(3) and
17 304 shall be available for use on the effective date of this act
18 and shall supersede existing regulations, policies, guidance
19 documents and procedures.

20 (b) Agreements and consent orders.--The standards
21 established under this act are not intended to impose more
22 stringent cleanup standards than those which are contained in
23 any prior administrative consent order, consent adjudication,
24 judicially approved consent order, or other settlement agreement
25 entered into with the department under the authority of any of
26 the statutes referred to in section 104 and which were entered
27 into with the department on or before the effective date of this
28 act, unless all parties thereto agree to such change.

29 CHAPTER 3

30 REMEDIATION STANDARDS AND REVIEW PROCEDURES

1 Section 301. Remediation standards.

2 (a) Standards.--Any person who proposes to respond to the
3 release of a regulated substance at a site and to be eligible
4 for the cleanup liability protection under Chapter 5 shall
5 select and attain compliance with one or more of the following
6 environmental standards when conducting remediation activities:

7 (1) a background standard which achieves background or
8 the practical quantitation limit as further specified in
9 section 302;

10 (2) a Statewide health standard adopted by the
11 Environmental Quality Board which achieves a uniform
12 Statewide health-based level so that any substantial present
13 or probable future risk to human health and the environment
14 is eliminated as specified in section 303; or

15 (3) a site-specific standard which achieves remediation
16 levels based on a site-specific risk assessment so that any
17 substantial present or probable future risk to human health
18 and the environment is eliminated or reduced to protective
19 levels based upon the present or currently planned future use
20 of the property comprising the site as specified in section
21 304.

22 (b) Combination of standards.--A person may use a
23 combination of the remediation standards to implement a site
24 remediation plan and may propose to use the site-specific
25 standard whether or not efforts have been made to attain the
26 background or Statewide health standard.

27 Section 302. Background standard.

28 (a) Standard.--Persons selecting the background standard
29 shall meet a standard that is the greater of either of the
30 following concentrations for each regulated substance in each

1 environmental medium:

2 (1) background as represented by the results of analyses
3 of representative samples; or

4 (2) the achievable practical quantitation limit.

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

8 (1) Attainment of the background standard shall be
9 demonstrated by collection and analysis of representative
10 samples from environmental media of concern, including soils
11 and groundwater in aquifers in the area where the
12 contamination occurs through the application of statistical
13 tests set forth in regulation or, if no regulations have been
14 adopted, in a demonstration of a mathematically valid
15 application of statistical tests. The Department of
16 Environmental Resources shall also recognize those methods of
17 attainment demonstration generally recognized as appropriate
18 for that particular remediation.

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

22 (i) The descriptions of procedures and conclusions
23 of the site investigation to characterize the nature,
24 extent, direction, volume and composition.

25 (ii) The basis for selecting environmental media of
26 concern, descriptions of removal or decontamination
27 procedures performed in remediation, summaries of
28 sampling methodology and analytical results which
29 demonstrate that remediation has attained the background
30 standard.

1 (3) Where remediation measures do not involve removal or
2 treatment of a contaminant to the background standard, the
3 final report shall demonstrate that any remaining
4 contaminants on the site will meet Statewide health standards
5 and show compliance with any postremediation care
6 requirements that may be needed to maintain compliance with
7 the Statewide health standards.

8 (4) Institutional controls such as fencing and future
9 land use restrictions on a site may not be used to attain the
10 background standard. Institutional controls may be used to
11 maintain the background standard after remediation occurs.

12 (c) Authority reserved.--If a person fails to demonstrate
13 attainment of the background standard, the department may
14 require that additional remediation measures be taken in order
15 to meet the background standard or the person may select to meet
16 the requirements of section 303 or 304.

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

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

30 (1) Notice of intent to initiate remediation activities

1 shall be made in the following manner:

2 (i) A notice of intent to remediate a site shall be
3 submitted to the department which, to the extent known,
4 provides a brief description of the location of the site,
5 a listing of the contaminant or contaminants involved, a
6 description of the intended future use of the property
7 for employment opportunities, housing, open space,
8 recreation or other uses, and the proposed remediation
9 measures. The department shall publish an acknowledgment
10 noting receipt of the notice of intent in the
11 Pennsylvania Bulletin.

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

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

24 (3) The department shall review the final report
25 demonstrating attainment of the background standard within 60
26 days of its receipt or notify the person submitting the
27 report of substantive deficiencies. If the department does
28 not respond with deficiencies within 60 days, the final
29 report shall be deemed approved.

30 (4) The notices provided for in paragraphs (1) and (2)

1 are not required to be made or published if the person
2 conducting the remediation submits the final report
3 demonstrating attainment of the background standard as
4 required by this section within 90 days of the release. If
5 the final report demonstrating attainment is not submitted to
6 the department within 90 days of the release, all notices and
7 procedures required by this section shall apply. This
8 paragraph is only applicable to releases occurring after the
9 effective date of this act.

10 Section 303. Statewide health standard.

11 (a) Standard.--The Environmental Quality Board shall
12 promulgate Statewide health standards for regulated substances
13 for each environmental medium. ~~The standards shall include any~~ <—
14 ~~existing numerical residential and nonresidential health based~~
15 ~~standards adopted by the department and by the Federal~~
16 ~~Government, including health advisory levels, by regulation or~~
17 ~~statute.~~ THE STANDARDS SHALL INCLUDE ANY EXISTING NUMERICAL <—
18 RESIDENTIAL AND NONRESIDENTIAL HEALTH-BASED STANDARDS ADOPTED BY
19 THE DEPARTMENT AND BY THE FEDERAL GOVERNMENT BY REGULATION OR
20 STATUTE, AND HEALTH ADVISORY LEVELS. For those health-based
21 standards not already established by regulation OR STATUTE, the <—
22 department shall, by regulation, propose residential and
23 nonresidential medium-specific concentrations within 12 months
24 of the effective date of this act. The Environmental Quality
25 Board shall also promulgate, along with the standards, the
26 methods used to calculate the standards. Standards adopted under
27 this section shall be no more stringent than those standards
28 adopted by the Federal Government.

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

1 concentration limit:

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

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

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

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

1 to be determined by any one of the following methods:

2 (i) A value which is 100 times the medium-specific
3 concentration for groundwater.

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

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

18 (5) For the nonresidential standard, the concentration
19 of a regulated substance in soil within a depth of 15 feet
20 from the existing ground surface shall not exceed either the
21 direct contact soil medium-specific concentration based on
22 nonresidential exposure factors using valid scientific
23 methods reflecting worker exposure or the soil to groundwater
24 pathway numeric value determined in accordance with paragraph
25 (4).

26 ~~(6) The concentration of a regulated substance~~ ←
27 ~~throughout the soil column shall not exceed the lower of the~~
28 ~~soil medium specific concentration based on residential~~
29 ~~exposure factors or the soil to groundwater pathway numeric~~
30 ~~value determined by the following:~~

1 ~~(i) A value which is 100 times the medium specific~~
2 ~~concentration for groundwater.~~

3 ~~(ii) A concentration in soil that does not produce a~~
4 ~~leachate in excess of medium specific concentrations for~~
5 ~~groundwater when subjected to the Synthetic Precipitation~~
6 ~~Leaching Procedures, Method 1312 of SW 846, Test Methods~~
7 ~~for Evaluating Solid Waste, promulgated by EPA. Other~~
8 ~~test methods that accurately simulate conditions at the~~
9 ~~site may be used in the demonstration in place of this~~
10 ~~method.~~

11 ~~(7)~~ (6) Exposure scenarios for medium-specific
12 concentrations for nonresidential conditions shall be
13 established using valid scientific methods reflecting worker
14 exposure.

15 (c) Additional limits.--For those regulated substances where
16 medium-specific concentration limits cannot be established using
17 the procedures in subsection (b), the medium-specific
18 concentration limits for the ingestion of groundwater,
19 inhalation of soils, ingestion and inhalation of volatiles and
20 particulates from the soils shall be calculated by the
21 department using valid scientific methods, reasonable exposure
22 pathway assumptions and exposure factors for residential and
23 nonresidential land use which are no more stringent than the
24 standard default exposure factors established by EPA based on
25 the following levels of risk:

26 (1) For a regulated substance which is a carcinogen, the
27 medium-specific concentration is the concentration which
28 represents an excess upper bound lifetime cancer target risk
29 of between 1 in 10,000 and 1 in 1,000,000 due to continuous
30 lifetime exposure for residential scenarios and a

1 noncontinuous exposure for nonresidential exposure scenarios.

2 (2) For a regulated substance which is a systemic
3 toxicant, the medium-specific concentration is the
4 concentration to which human populations could be exposed by
5 direct ingestion or inhalation on a daily basis without
6 appreciable risk of deleterious effects for the exposed
7 population.

8 (d) Relationship to background.--The concentration of a
9 regulated substance in an environmental media of concern on a
10 site where the Statewide health standard has been selected shall
11 not be required to meet the Statewide health standard if the
12 Statewide health standard is numerically less than the
13 achievable practical quantitative limit. In such cases, the
14 achievable practical quantitative limit shall apply.

15 (e) Attainment.--Final certification that a site or portion
16 of a site meets the Statewide health standard shall be
17 documented in the following manner:

18 (1) Attainment of cleanup levels shall be demonstrated
19 by collection and analysis of representative samples from the
20 environmental medium of concern, including soils, and
21 groundwater in aquifers at the point of compliance through
22 the application of statistical tests set forth in regulation
23 or, if no regulations have been adopted, in a demonstration
24 of a mathematically valid application of statistical tests.
25 The Department of Environmental Resources shall also
26 recognize those methods of attainment demonstration generally
27 recognized as appropriate for that particular remediation.

28 (2) A final report that documents attainment of the
29 Statewide health standard shall be submitted to the
30 department which includes the descriptions of procedures and

1 conclusions of the site investigation to characterize the
2 nature, extent, direction, rate of movement off the site and
3 cumulative effects, if any, volume, composition,
4 concentration of contaminants in environmental media, the
5 basis for selecting environmental media of concern,
6 documentation supporting the selection of residential or
7 nonresidential exposure factors, descriptions of removal or
8 decontamination procedures performed in remediation,
9 summaries of sampling methodology and analytical results
10 which demonstrate that contaminants have been removed or
11 decontaminated to applicable levels and documentation of
12 compliance with postremediation care requirements if they are
13 needed to maintain the Statewide health standard.

14 (3) Institutional controls such as fencing and future
15 land use restrictions on a site may not be used to attain the
16 Statewide health standard. Institutional controls may be used
17 to maintain the Statewide health standard after remediation
18 occurs.

19 (f) Authority reserved.--If a person fails to demonstrate
20 attainment of the Statewide health standard, the department may
21 require that additional remediation measures be taken in order
22 to meet the health standard or the person may select to meet the
23 requirements of section 302 or 304.

24 (g) Deed notice.--Persons attaining and demonstrating
25 compliance with the Statewide health standard considering
26 residential exposure factors for a regulated substance on the
27 entire site shall not 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. An existing acknowledgment contained in a deed prior to
2 demonstrating compliance with the residential Statewide health
3 standard may be removed. The deed acknowledgment requirements
4 shall apply where nonresidential exposure factors were used to
5 comply with the Statewide health standard.

6 (h) Notice and review provisions.--Persons utilizing the
7 Statewide health standard shall comply with the following
8 requirements for notifying the public and the department of
9 planned remediation activities:

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

12 (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, a
16 description of the intended future use of the property
17 for employment opportunities, housing, open space,
18 recreation or other uses and the proposed remediation
19 measures. The department shall publish an acknowledgment
20 noting receipt of the notice of intent in the
21 Pennsylvania Bulletin.

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

29 (2) Notice of the submission of the final report
30 demonstrating attainment of the Statewide health standard

1 shall be given to the municipality in which the remediation
2 site is located, published in a newspaper of general
3 circulation serving the area and in the Pennsylvania
4 Bulletin.

5 (3) The department shall review the final report
6 demonstrating attainment of the Statewide health standard
7 within 60 days of its receipt or notify the person submitting
8 the report of substantive deficiencies. If the department
9 does not respond with deficiencies within 60 days, the final
10 report shall be deemed approved.

11 (4) The notices provided for in paragraphs (1) and (2)
12 are not required to be made or published if the person
13 conducting the remediation submits the final report
14 demonstrating attainment of the Statewide health standard as
15 required by this section within 90 days of the release. If
16 the final report demonstrating attainment is not submitted to
17 the department within 90 days of the release, all notices and
18 procedures required by this section shall apply. This
19 paragraph is only applicable to releases occurring after the
20 effective date of this act.

21 Section 304. Site-specific standard.

22 (a) General.--Where a site-specific standard is selected as
23 the environmental remediation standard or where the background
24 or Statewide health standard is selected but not achieved, site
25 investigation, risk assessment, cleanup plans and final reports
26 shall be developed using the procedures and factors established
27 by this section.

28 (b) Carcinogens.--For known or suspected carcinogens, soil
29 and groundwater cleanup standards shall be established at
30 exposures which represent an excess upper-bound lifetime risk of

1 between 1 in 10,000 and 1 in 1,000,000. The cumulative excess
2 risk to exposed populations, including sensitive subgroups,
3 shall not be greater than 1 in 10,000.

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

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

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

18 (i) The current and probable future use of
19 groundwater shall be identified and protected.
20 Groundwater that has a background total dissolved solids
21 content greater than 2,500 milligrams per liter or is not
22 capable of transmitting water to a pumping well in usable
23 and sustainable quantities shall not be considered a
24 current or potential source of drinking water.

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

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

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

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

23 (f) Factors.--In determining soil and groundwater cleanup
24 standards under subsections (d) and (e), the following factors
25 shall also be considered:

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

1 (2) Use of appropriate statistical techniques,
2 including, but not limited to, Monte Carlo simulations, to
3 establish statistically valid cleanup standards.

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

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

10 (g) Air and surface water.--Any discharge into surface water
11 or any emissions to the outdoor air which occur during or after
12 attainment of the site-specific standard shall comply with
13 applicable laws and regulations relating to surface water
14 discharges or emissions into the outdoor air, unless the site
15 investigation and site assessment demonstrate, using the latest
16 peer-reviewed toxicological data, that a standard other than
17 those in applicable laws and regulations would protect public
18 health and the environment.

19 (h) Relationship to background.--The concentration of a
20 regulated substance in an environmental medium of concern on a
21 site where the site-specific standard has been selected shall
22 not be required to meet the site-specific standard if the site-
23 specific standard is numerically less than the achievable
24 practical quantitative limit. In such cases, the achievable
25 practical quantitative limit shall apply.

26 (i) Combination of measures.--The standards may be attained
27 through a combination of remediation activities that can include
28 treatment, removal, engineering or institutional controls and
29 can include innovative or other demonstrated measures.

30 (j) Remedy evaluation.--The final remediation plan for a

1 site submitted to the department shall include remediation
2 alternatives and a final remedy which consider each of the
3 following factors:

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

6 (i) The magnitude of risks remaining after
7 completion of the remedial action.

8 (ii) The type, degree and duration of
9 postremediation care required, including, but not limited
10 to, operation and maintenance, monitoring, inspections
11 and reports and their frequencies or other activities
12 which will be necessary to protect human health and the
13 environment.

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

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

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

21 (vi) Time to achieve cleanup standards.

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

29 (3) Short-term risks and effectiveness of the remedy,
30 including the short-term risks that may be posed to the

1 community, workers or the environment during implementation
2 of the remedy and the effectiveness and reliability of
3 protective measures to address short-term risks.

4 (4) The ease or difficulty of implementing the proposed
5 remedy, including commercially available remedial measures
6 which are BADCT, degree of difficulty associated with
7 constructing the remedy, expected operational reliability,
8 available capacity and location of needed treatment, storage
9 and disposal services for wastes, time to initiate remedial
10 efforts and approvals necessary to implement the remedial
11 efforts.

12 (5) The cost of the remediation measure, including
13 capital costs, operation and maintenance costs, net present
14 value of capital and operation and maintenance costs and the
15 total costs and effectiveness of the system.

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

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

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

27 (2) Attainment of the site-specific standard shall be
28 demonstrated by collection and analysis of samples from
29 affected media, as applicable, such as surface water, soil,
30 groundwater in aquifers at the point of compliance through

1 the application of statistical tests set forth in regulation
2 or, if no regulations have been adopted, in a demonstration
3 of a mathematically valid application of statistical tests.
4 The Department of Environmental Resources shall also
5 recognize those methods of attainment demonstration generally
6 recognized as appropriate for that particular remediation.

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

12 (1) A remedial investigation report shall be submitted
13 which includes:

14 (i) Documentation and descriptions of procedures and
15 conclusions from the site investigation to characterize
16 the nature, extent, direction, rate of movement, volume
17 and composition of regulated substances.

18 (ii) The concentration of regulated substances in
19 environmental media of concern, including summaries of
20 sampling methodology and analytical results, and
21 information obtained from attempts to comply with the
22 background or Statewide health standards, if any.

23 (iii) A description of the existing or potential
24 public benefits of the use or reuse of the property for
25 employment opportunities, housing, open space, recreation
26 or other uses.

27 (iv) A fate and transport analysis may be included
28 in the report to demonstrate that no present or future
29 exposure pathways exist.

30 (v) If no exposure pathways exist, a risk assessment

1 report and cleanup plan are not required and no remedy is
2 required to be proposed or completed.

3 (2) If required, a risk assessment report shall describe
4 the potential adverse effects under both current and planned
5 future conditions caused by the presence of a regulated
6 substance in the absence of any further control, remediation
7 or mitigation measures. A baseline risk assessment report is
8 not required where it is determined that a specific
9 remediation measure can be implemented to attain the site-
10 specific standard.

11 (3) A cleanup plan shall evaluate the relative abilities
12 and effectiveness of potential remedies to achieve the
13 requirements for remedies described in subsection (k) when
14 considering the evaluation factors described in subsection
15 (j). The plan shall select a remedy which achieves the
16 requirements for remedies described in subsection (k). The
17 department may require a further evaluation of the selected
18 remedy or an evaluation of one or more additional remedies in
19 response to comments received from the community surrounding
20 the site as a result of the community involvement plan
21 established in subsection (o) which are based on the factors
22 described in subsection (j) or as a result of its own
23 analysis which are based on the evaluation factors described
24 in subsection (j).

25 (4) A final report demonstrating that the approved
26 remedy has been completed in accordance with the cleanup plan
27 shall be submitted to the department.

28 (5) Nothing in this section shall preclude a person from
29 submitting a remedial investigation report, risk assessment
30 report and cleanup plan at one time to the department for

1 review.

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

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

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

28 (ii) The notices required by this paragraph shall
29 include a 30-day public and municipal comment period
30 during which the municipality can request to be involved

1 in the development of the remediation and reuse plans for
2 the site. If requested by the municipality, the person
3 undertaking the remediation shall develop and implement a
4 public involvement program plan which meets the
5 requirements of subsection (o). Persons undertaking the
6 remediation are encouraged to develop a proactive
7 approach to working with the municipality in developing
8 and implementing remediation and reuse plans.

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

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

26 (ii) The department shall review the report or plan
27 within no more than ~~45~~ 90 days of its receipt or notify <—
28 the person submitting the report of deficiencies. If the
29 department does not respond with deficiencies within ~~45~~ <—
30 90 days, the report shall be deemed approved.

1 (3) If the remedial investigation report, risk
2 assessment report and cleanup plan are submitted at the same
3 time to the department, the department shall notify persons
4 of any deficiencies in 90 days. If the department does not
5 respond with deficiencies within 90 days, the reports are
6 deemed approved.

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

26 Section 305. Special industrial areas.

27 (a) Special sites.--For property used for industrial
28 activities where there is now no financially viable responsible
29 person to clean up contamination or for land located within
30 enterprise zones designated pursuant to the requirements of the

1 Department of Community Affairs, the review procedures of this
2 section shall apply for persons conducting remediation
3 activities who are not responsible for contamination on the
4 property. Any environmental remediation undertaken pursuant to
5 this section shall comply with one or more of the standards
6 established in this chapter.

7 (b) Baseline report.--A baseline environmental report shall
8 be conducted on the property based on a work plan approved by
9 the department to establish a reference point showing existing
10 contamination on the site. The report shall describe the
11 proposed remediation measures to be undertaken within the limits
12 of cleanup liability found in section 502. The report shall also
13 include a description of the existing or potential public
14 benefits of the use or reuse of the property for employment
15 opportunities, housing, open space, recreation or other use.

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

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

1 (2) The notices required by this subsection shall
2 include a 30-day public and municipal comment period during
3 which the municipality can request to be involved in the
4 development of the remediation and reuse plans for the site.
5 If requested by the municipality, the person undertaking the
6 remediation shall develop and implement a public involvement
7 program plan which meets the requirements of section 304(o).
8 Persons undertaking the remediation are encouraged to develop
9 a proactive approach to working with the municipality in
10 developing and implementing remediation and reuse plans.

11 (d) Department review.--No later than 90 days after the
12 completed environmental report is submitted for review, the
13 department shall determine whether the report adequately
14 identifies the environmental hazards and risks posed by the
15 site. The comments obtained as a result of a public involvement
16 plan developed under section 304(o) shall also be considered by
17 the department. The department shall notify the person
18 submitting the report of deficiencies within 90 days. If the
19 department does not respond within 90 days, the study is
20 considered approved.

21 (e) Agreement.--The department and the person undertaking
22 the reuse of a special industrial site shall enter into an
23 agreement based on the environmental report which outlines
24 cleanup liability for the property.

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

30 (g) Deed notice.--Persons entering into agreements pursuant

1 to this section 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, where applicable.

6 Section 306. Privatization.

7 (a) General.--The department shall develop a program to use
8 private firms to undertake a portion of the technical reviews
9 required under this act. As part of the program, the department
10 may:

11 (1) Develop a system of prequalified firms which
12 supervise the development and implementation of cleanup plans
13 and certify properties as meeting the environmental
14 remediation standards established in this chapter.

15 (2) Develop programs in which private firms perform the
16 technical review of remedial investigation reports, risk
17 assessment reports, cleanup plans and final reports required
18 to be submitted under this chapter.

19 (b) Audits.--The department shall develop an auditing
20 program sufficient to insure that private firms meet the
21 requirements of the program.

22 (c) Report.--The department shall on October 1 of each year
23 report to the General Assembly on the activities the department
24 has undertaken pursuant to this section.

25 Section 307. Local land development controls.

26 This act shall not affect the ability of local governments to
27 regulate land development under the act of July 31, 1968
28 (P.L.805, No.247), known as the Pennsylvania Municipalities
29 Planning Code. The use of the identified property and any deed
30 restrictions used as part of a remediation plan shall comply

1 with local land development controls adopted under the
2 Pennsylvania Municipalities Planning Code.
3 Section 308. Immediate response.

4 (a) Emergency response.--The provisions of this chapter
5 shall not prevent or impede the immediate response of the
6 department or responsible person to an emergency which involves
7 an imminent or actual release of a regulated substance which
8 threatens public health or the environment. The final
9 remediation of the site shall comply with the provisions of this
10 chapter which shall not be prejudiced by the mitigation measures
11 undertaken to that point.

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

24 Section 309. Appealable actions.

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

29 CHAPTER 5

30 CLEANUP LIABILITY PROTECTION

1 Section 501. Cleanup liability protection.

2 (a) General.--Any person demonstrating compliance with the
3 environmental remediation standards established in Chapter 3
4 shall be relieved of further liability for the remediation of
5 the site under the statutes outlined in section 106 for any
6 contamination identified in reports submitted to and approved by
7 the department to demonstrate compliance with these standards
8 and shall not be subject to citizen suits or other contribution
9 actions brought by responsible persons. The cleanup liability
10 protection provided by this chapter applies to the following
11 persons:

12 (1) The current or future owner of the identified
13 property, who participated in the remediation of the site.

14 (2) A person who develops or otherwise occupies the
15 identified site.

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

18 (4) A public utility to the extent the public utility
19 performs activities on the identified site.

20 (b) Assessments.--A person shall not be considered a person
21 responsible for a release or a threatened release of a regulated
22 substance simply by virtue of conducting an environmental
23 assessment or transaction screen on a property. Nothing in this
24 section relieves a person of any liability for failure to
25 exercise due diligence in performing an environmental assessment
26 or transaction screen.

27 (c) Illegal activities.--The provisions of this chapter do
28 not create a defense against the imposition of criminal and
29 civil fines and penalties or administrative penalties otherwise
30 authorized by law and imposed as the result of the illegal

1 disposal of waste or for the pollution of the land, air or
2 waters of this Commonwealth on the identified site.

3 Section 502. Special industrial sites.

4 (a) Agreement.--The department and the person undertaking
5 the reuse of an abandoned industrial site under section 305
6 shall enter into an agreement based on the environmental report
7 which outlines cleanup liability for the site. Any person
8 included in such an agreement shall not be subject to a citizen
9 suit, other contribution actions brought by responsible persons
10 not participating in the remediation of the site or other
11 actions brought by the department with respect to the site
12 except those which may be necessary to enforce the terms of the
13 agreement.

14 (b) Liability.--The cleanup liabilities for the person
15 undertaking the reuse of the site shall include the following:

16 (1) The person shall only be responsible for remediation
17 of any immediate, direct or imminent threats to public health
18 or the environment, such as drummed waste, which would
19 prevent the site from being occupied for its intended
20 purpose.

21 (2) The person shall not be held responsible for the
22 remediation of any contamination identified in the
23 environmental report, other than the contamination noted in
24 paragraph (1).

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

28 (c) Developer or occupier.--A person who develops or
29 occupies the site shall not be considered a responsible person
30 for purposes of assigning cleanup liability.

1 (d) Successor or assign.--A successor or assign of any
2 person to whom cleanup liability protection applies for a site
3 shall not be considered a responsible person for purposes of
4 assigning cleanup liability, provided the successor or assign is
5 not a person responsible for contamination on the site who did
6 not participate in the environmental remediation action.

7 (e) Public utility.--A public utility shall not be
8 considered a responsible person for purposes of assigning
9 cleanup liability to the extent the public utility performs
10 activities on the identified site, provided the public utility
11 is not a person responsible for contamination on the property.

12 Section 503. Existing exclusions.

13 The protection from cleanup liability afforded under this act
14 shall be in addition to the exclusions from being a responsible
15 person under the statutes listed in section 106.

16 Section 504. New liability.

17 Nothing in this act shall relieve a person receiving
18 protection from cleanup liability under this chapter from any
19 cleanup liability for contamination later caused by that person
20 on a site which has demonstrated compliance with one or more of
21 the environmental remediation standards established in Chapter
22 3.

23 Section 505. Reopeners.

24 Any person who completes remediation in compliance with this
25 act shall not be required to undertake additional remediation
26 actions unless the department demonstrates that:

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

30 (2) new information confirms the existence of an area of

1 previously unknown contamination WHICH CONTAINS REGULATED
2 SUBSTANCES THAT HAVE BEEN SHOWN TO EXCEED THE STANDARDS
3 APPLIED TO PREVIOUS REMEDIATION AT THE SITE;

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

6 (4) the level of risk is increased beyond the acceptable
7 risk range at a site due to substantial changes in exposure
8 conditions, such as in a change in land use from
9 nonresidential to a residential use, or new information is
10 obtained about a regulated substance associated with the site
11 which revises exposure assumptions beyond the acceptable
12 range. Any person who changes the use of the property causing
13 the level of risk to increase beyond the acceptable risk
14 range shall be required by the department to undertake
15 additional remediation measures under the provisions of this
16 act.

17 Section 506. Authority reserved.

18 Except for the performance of further remediation of the
19 site, nothing in this act shall affect the ability or authority
20 of any person to seek any relief available against any party who
21 may have liability with respect to this site. This act shall not
22 affect the ability or authority to seek a contribution from any
23 person who may have liability with respect to the site and did
24 not receive cleanup liability protection under this chapter.

25 CHAPTER 7

26 INDUSTRIAL LAND RECYCLING FUND

27 Section 701. Industrial Land Recycling Fund.

28 (a) Fund.--There is hereby established a separate account in
29 the State Treasury, to be known as the Industrial Land Recycling
30 Land, which shall be a special fund administered by the

1 department.

2 (b) Purpose.--The moneys deposited in this fund shall be
3 used by the department for the purpose of implementing the
4 provisions of this act.

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

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

12 Section 702. Voluntary Cleanup Loan Program.

13 (a) Establishment.--There is hereby established a separate
14 account in the State Treasury, to be known as the Voluntary
15 Cleanup Loan Fund, which shall be a special fund administered by
16 the Department of Commerce. Within 60 days of the effective date
17 of this act, the Department of Commerce shall finalize
18 guidelines and issue application forms to administer this fund.
19 The Department of Commerce, in conjunction with the Department
20 of Environmental Resources may establish funding priorities
21 under this program.

22 (b) Purpose.--The Voluntary Cleanup Loan Fund is to help
23 provide funding to persons undertaking the voluntary remediation
24 of a property. The funding shall be in the form of low-interest
25 loans and grants for up to 75% of the costs incurred for
26 completing an environmental study and for implementing a cleanup
27 plan for the following categories of applicants:

28 (1) Local economic development agencies, public agencies
29 and local governments and persons not responsible for
30 contamination on a site shall be eligible for grants for the

1 purpose of completing environmental studies and implementing
2 cleanup plans.

3 (2) Low-interest loans shall be available at a rate of
4 not more than 2% for the purpose of completing environmental
5 studies and implementing cleanup plans to local governments,
6 public agencies and persons undertaking site remediation
7 under this act.

8 (c) Funds.--In addition to any funds appropriated by the
9 General Assembly, at least \$5,000,000 shall be transferred on
10 July 1 of each year from the Hazardous Sites Cleanup Fund
11 established by the act of October 18, 1988 (P.L.756, No.108),
12 known as the Hazardous Sites Cleanup Act, to the Voluntary
13 Cleanup Loan Fund for the purpose of implementing the program
14 established in this section. Moneys received by the Department
15 of Commerce as repayment of outstanding loans shall be deposited
16 in the fund. Any interest earned by moneys in the fund shall
17 remain in the fund. The first transfer of funds from the
18 Hazardous Sites Cleanup Fund required by this subsection shall
19 occur 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, loans, expenditures and commitments made from the fund.
23 Section 703. Fees.

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

27 (1) A person utilizing the background or Statewide
28 health standards for environmental remediation shall pay a
29 fee of \$250 upon submission of the report certifying
30 compliance with the standards.

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

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

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

13 (b) Deposit.--Fees imposed under this section shall be
14 deposited in the Industrial Land Recycling Fund established
15 under section 701.

16 CHAPTER 9

17 MISCELLANEOUS PROVISIONS

18 Section 901. Plain language.

19 Remedial investigation, risk assessment, cleanup plans and
20 other reports and notices required to be submitted to implement
21 the provisions of this act shall contain a summary or special
22 section that includes a plain language description of the
23 information included in the report in order to enhance the
24 opportunity for public involvement and understanding of the
25 remediation process.

26 Section 902. Permits.

27 A State or local permit or permit revision shall not be
28 required for remediation activities undertaken entirely on the
29 site if they are undertaken pursuant to the requirements of this
30 act.

1 Section 903. Future actions.

2 At any time, a request may be made to the department to
3 change the land use of the site from nonresidential to
4 residential. The department shall only approve the request upon
5 a demonstration that the site meets all the applicable cleanup
6 standards for residential use of the property. Any existing deed
7 acknowledgment contained in the deed prior to the demonstrating
8 compliance with the residential use standard may be removed.

9 Section 904. Relationship to Federal and State programs.

10 (a) Federal.--The provisions of this act shall not prevent
11 the Commonwealth from enforcing specific numerical cleanup
12 standards, monitoring or compliance requirements specifically
13 required to be enforced by the Federal Government as a condition
14 of primacy or to receive Federal funds.

15 (b) State priority list.--Any remediation undertaken on a
16 site included on the State priority list established under the
17 act of October 18, 1988 (P.L.756, No.108), known as the
18 Hazardous Sites Cleanup Act, shall attain the site-specific
19 standard established in section 304 and shall be performed in
20 compliance with the administrative record and other procedural
21 and public review requirements of Chapter 5 of the Hazardous
22 Sites Cleanup Act.

23 (c) Storage tanks.--The environmental remediation standards
24 established under this act shall be used in corrective actions
25 undertaken pursuant to the act of July 6, 1989 (P.L.169, No.32),
26 known as the Storage Tank and Spill Prevention Act. However, the
27 procedures in the Storage Tank and Spill Prevention Act for
28 reviewing and approving corrective actions shall be used in lieu
29 of the procedures and reviews required by this act.

30 (d) Agricultural chemical facilities.--The environmental

1 remediation standards and procedures established under this act
2 shall be used in any remediation undertaken at an agricultural
3 chemical facility. The Department of Agriculture shall have the
4 power and its duty shall be to promulgate regulations providing
5 for the option of safely reusing soil and groundwater
6 contaminated with agricultural chemicals generated as a result
7 of remediation activities at agricultural chemical facilities
8 through the land application of these materials on agricultural
9 lands. Such regulations shall provide for the appropriate
10 application rates of such materials, either alone or in the
11 combination with other agricultural chemicals, prescribe
12 appropriate operations controls and practices to protect the
13 public health, safety and welfare and the environment at the
14 site of land application.

15 (e) Oil spill response.--This act shall not apply to the
16 removal of a discharge under section 4201 of the Oil Pollution
17 Act of 1990 (Public Law 101-380, 104 Stat. 484) or the act of
18 June 11, 1992 (P.L.303, No.52), known as the Oil Spill Responder
19 Liability Act.

20 Section 905. Enforcement.

21 (a) General.--The department is authorized to use the
22 enforcement and penalty provisions applicable to the
23 environmental medium or activity of concern, as appropriate,
24 established under the act of June 22, 1937 (P.L.1987, No.394),
25 known as The Clean Streams Law, the act of January 8, 1960 (1959
26 P.L.2119, No.787), known as the Air Pollution Control Act, the
27 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
28 Management Act, the act of July 13, 1988 (P.L.525, No.93),
29 referred to as the Infectious and Chemotherapeutic Waste Law,
30 the act of October 18, 1988 (P.L.756, No.108), known as the

1 Hazardous Sites Cleanup Act, or the act of July 6, 1989
2 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
3 Act, to enforce the provisions of this act.

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

10 Section 906. Past penalties.

11 Persons who have no responsibility for contamination on a
12 site and participate in environmental remediation activities
13 under this act shall not be responsible for paying any fines or
14 penalties levied against any person responsible for
15 contamination on the property.

16 Section 907. Repeals.

17 (a) Absolute.--Section 504(b) through (f) and (h) of the act
18 of October 18, 1988 (P.L.756, No.108), known as the Hazardous
19 Sites Cleanup Act, are repealed.

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

23 Section 908. Effective date.

24 This act shall take effect in 60 days.