

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2868 Session of
2002

INTRODUCED BY HABAY, BELFANTI, CAPPELLI, CORRIGAN, DALEY,
GEORGE, HARHART, JAMES, LEDERER, PIPPY AND E. Z. TAYLOR,
SEPTEMBER 30, 2002

REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,
SEPTEMBER 30, 2002

AN ACT

1 Providing for protection of the public against the threat of
2 chemical attacks and for penalties; and making an
3 appropriation.

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

6 Section 1. Short title.

7 This act shall be known and may be cited as the Chemical
8 Security Act.

9 Section 2. Findings.

10 The General Assembly finds that:

11 (1) The possible of accidents at and terrorist and
12 criminal attacks on chemical sources, such as industrial
13 facilities, poses a serious threat to public health, safety
14 and welfare, critical infrastructure, national security and
15 the environment.

16 (2) The possibility of theft of dangerous chemicals from
17 chemical sources for use in terrorist attacks poses a further

1 threat to public health, safety and welfare, critical
2 infrastructure, national security and the environment.

3 (3) There are significant opportunities to prevent theft
4 from and criminal attack on chemical sources and reduce the
5 harm that such acts would produce by:

6 (i) Reducing usage and storage of chemicals by
7 changing production methods and processes.

8 (ii) Employing inherently safer technologies in the
9 manufacture, transport and use of chemicals.

10 (iii) Enhancing secondary containment and other
11 existing mitigation measures.

12 (iv) Improving security.

13 Section 3. Definitions.

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

17 "Accidental release." An unanticipated release of a
18 substance of concern from a chemical source.

19 "Chemical source." A stationary source as defined in section
20 112(r)(2) of the Clean Air Act (69 Stat. 322, 42 U.S.C. §
21 7412(r)(2)), a vessel, a motor vehicle, rolling stock; or a
22 container that contains a substance of concern.

23 "Covered substance of concern." A substance of concern that,
24 in combination with a chemical source, is designated as a high
25 priority category under section 4(a)(1).

26 "Criminal release."

27 (1) A release from a chemical source into the
28 environment of a substance of concern that is caused, in
29 whole or in part, by a criminal act.

30 (2) A release into the environment of a substance of

1 concern that has been removed from a chemical source, in
2 whole or in part, by a criminal act.

3 (3) The authorized removal from a chemical source of a
4 substance of concern.

5 "Safer design and maintenance." The term includes, with
6 respect to a chemical source that is within a high priority
7 category designated under section 4(a)(1), implementation, to
8 the extent practicable, of the practices of:

9 (1) Preventing or reducing the vulnerability of the
10 chemical source to a release of a covered substance of
11 concern through use of inherently safer technology.

12 (2) Reducing any vulnerability of the chemical source to
13 a release of a covered substance of concern that remains
14 after taking the measures described in paragraph (1) through
15 use of well-maintained secondary containment, control or
16 mitigation equipment.

17 (3) Reducing any vulnerability of the chemical source to
18 a release of a covered substance of concern that remains
19 after taking the measures described in paragraphs (1) and
20 (2):

21 (i) Making the chemical source highly resistant to
22 intruders.

23 (ii) Improving security and employee training,
24 including personnel background checks.

25 (4) Reducing the potential consequences of any
26 vulnerability of the chemical source to a release of a
27 covered substance of concern through the use of buffer zones
28 between the chemical source and surrounding populations,
29 including buffer zones between the chemical source and
30 residences, schools, hospitals, senior centers, shopping

1 centers and malls, sports and entertainment arenas, public
2 roads and transportation routes and other population centers.

3 "Secretary." The Secretary of Environmental Protection of
4 the Commonwealth.

5 "Substance of concern."

6 (1) Any hazardous substance as defined in section 101 of
7 the Comprehensive Environmental Response, Compensation, and
8 Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767).

9 (2) Any pollutant or contaminant as defined in section
10 101 of the Comprehensive Environmental Response,
11 Compensation, and Liability Act of 1980.

12 (3) Petroleum, including crude oil and any fraction of
13 crude oil.

14 "Use of inherently safer technology."

15 (1) With respect to a chemical source, the term means
16 use of a technology, product, raw material or practice that,
17 as compared with the technologies, product, raw materials or
18 practices currently in use:

19 (i) Reduces or eliminates the possibility of a
20 release of a substance of concern from the chemical
21 source prior to secondary containment, control or
22 mitigation.

23 (ii) Reduces or eliminates the threats to public
24 health and the environment associated with a release or
25 potential release of a substance of concern from the
26 chemical source.

27 (2) The term includes input substitution, catalyst or
28 carrier substitution, process redesign, including reuse or
29 recycling of a substance of concern, product reformulation,
30 procedure simplification and technology modification so as

1 to:

2 (i) Use less hazardous substances or benign
3 substances.

4 (ii) Use a smaller quantity of covered substances of
5 concern.

6 (iii) Reduce hazardous pressures or temperatures.

7 (iv) Reduce the possibility and potential
8 consequences of equipment failure and human error.

9 (v) Improve inventory control and chemical use
10 efficiency.

11 (vi) Reduce or eliminate storage, transportation,
12 handling, disposal and discharge of substances of
13 concern.

14 Section 4. Prevention of criminal releases.

15 (a) Designation and regulation of high priority combinations
16 by the secretary.--

17 (1) Not later than one year after the date of enactment
18 of this act, the secretary, in consultation with the Attorney
19 General and State and local agencies responsible for planning
20 for and responding to accidental and criminal releases and
21 providing emergency health care, shall promulgate regulations
22 to designate certain combinations of chemical sources and
23 substances of concern as high priority categories based on
24 the severity of the threat posed by an accidental release or
25 criminal release from the chemical sources.

26 (2) In designating high priority categories under
27 paragraph (1), the secretary, in consultation with the
28 Attorney General, shall consider:

29 (i) The severity of the harm that could be caused by
30 an accidental release or a criminal release.

(ii) The proximity to population centers.

(iii) The threats to national security.

(iv) The threats to critical infrastructure.

(v) Threshold quantities of substances of concern that pose a serious threat.

(vi) Such other safety or security factors as the secretary, in consultation with the Attorney General, determines to be appropriate.

(3) Not later than one year after the date of promulgation of regulations under paragraph (1), the secretary, in consultation with the Attorney General and State and local agencies responsible for responding to accidental releases and emergency health care, shall promulgate regulations to require each owner and each operator of a chemical source that is within a high priority category designated under paragraph (1) to take adequate actions, including safer design and maintenance of the chemical source, to prevent, control and minimize the potential consequences of an accidental release or a criminal release of a covered substance of concern.

(4) Not later than five years after the date of promulgation of regulations under paragraphs (1) and (3), the secretary, in consultation with the Attorney General, shall review the regulations and make any necessary revisions.

(b) Establishment of duty to prevent criminal releases.--

Each owner and operator of a chemical source that is within a high priority category designated under subsection (a) has a general duty with respect to covered substances of concern in the same manner and to the same extent as the duty imposed under section 5 of the Occupational Safety and Health Act of 1970

1 (Public Law 91-596, 29 U.S.C. § 651 et seq.):

2 (1) To identify hazards that may result from an
3 accidental release or a criminal release using appropriate
4 hazard assessment techniques.

5 (2) To ensure safer design and maintenance of the
6 chemical source by taking such actions as are necessary to
7 prevent accidental releases and criminal releases.

8 (3) To minimize the consequences of any accidental
9 release or criminal release that does occur.

10 Section 5. Abatement action.

11 In addition to any other action taken by a State or local
12 government, if the secretary or the Attorney General determines
13 that there may be an imminent and substantial endangerment to
14 the public health or welfare or the environment because of a
15 potential accidental release or criminal release from a chemical
16 source or a failure to provide information or access requested
17 under section 6, the secretary or the Attorney General may:

18 (1) secure such relief as is necessary to abate the
19 danger or threat; or

20 (2) after notice to the affected area, take other action
21 under this section, including issuing such orders as are
22 necessary to protect public health, welfare or the
23 environment.

24 Section 6. Recordkeeping and entry.

25 (a) Authority of secretary and Attorney General.--

26 (1) The secretary or the Attorney General may require
27 any person that the secretary or the Attorney General
28 believes may have information relating to a potential
29 accidental release or criminal release from a chemical
30 source, or any person that is subject to any requirement of

1 this act, on a one-time, periodic or continuing basis to:

2 (i) Establish and maintain such records.

3 (ii) Make such reports.

4 (iii) Provide such other information as the
5 secretary or the Attorney General may reasonably require.

6 (2) The secretary or the Attorney General or an
7 authorized representative of the secretary or the Attorney
8 General, on presentation of credentials:

9 (i) shall have a right of entry to, on or through
10 any premises of an owner or operator of a chemical source
11 described in paragraph (1) or any premises in which any
12 records required to be maintained under paragraph (1) are
13 located; and

14 (ii) may at reasonable times have access to and may
15 copy, any records, reports or other information required
16 under paragraph (1).

17 (b) Availability of records, reports and information to
18 public and disclosure of national security secrets or trade
19 secrets.--

20 (1) Except as provided in paragraphs (2) and (3), any
21 record, report or other information obtained under subsection
22 (a) shall be available to the public.

23 (2) The secretary or the Attorney General may not
24 disclose to the public any matter or information authorized
25 to be kept secret in the interest of national defense or
26 national security under 5 U.S.C. § 552 (relating to public
27 information; agency rules, opinions, orders, records, and
28 proceedings).

29 (3) (i) On a showing by any person, satisfactory to the
30 secretary or the Attorney General, that making public of

1 any record, report or other information or particular
2 portion thereof to which the secretary or the Attorney
3 General has access under subsection (a) would divulge any
4 method or process entitled to protection as a trade
5 secret of the person, the secretary or the Attorney
6 General shall consider the record, report or other
7 information or particular portion thereof to be
8 confidential.

9 (ii) Notwithstanding subparagraph (i), the secretary
10 or the Attorney General may disclose any record, report
11 or other information considered to be confidential under
12 subparagraph (i) to any other officer, employee or
13 authorized representative of the United States or the
14 Commonwealth that is concerned with carrying out this act
15 or when relevant in any proceeding under this act.

16 (c) Compliance orders.

17 (1) If a person does not consent to a request made by
18 the secretary or the Attorney General or an authorized
19 representative of the secretary or the Attorney General under
20 subsection (a), the secretary or the Attorney General may
21 issue an order directing compliance with the request.

22 (2) An order under paragraph (1) may be issued after
23 such notice and opportunity for hearing as are reasonably
24 appropriate under the circumstances.

25 Section 7. Penalties.

26 (a) Civil penalties.--An owner or operator of a chemical
27 source that violates or fails to comply with an order issued or
28 regulation promulgated under this act shall be subject to a
29 civil penalty of not more than \$25,000 for each day in which the
30 violation occurs or the failure to comply continues.

1 (b) Criminal penalties.--An owner or operator of a chemical
2 source that knowingly violates or fails to comply with an order
3 issued or a regulation promulgated under this act shall:

4 (1) in the case of a first violation or failure to
5 comply, be fined not less than \$2,500 nor more than \$25,000
6 per day of violation or be imprisoned not more than one year,
7 or both; and

8 (2) in the case of a subsequent violation or failure to
9 comply, be fined not more than \$50,000 per day of violation
10 or be imprisoned not more than two years, or both.

11 Section 8. No effect on requirements under other law.

12 Nothing in this act affects any duty or other requirement
13 imposed under any other Federal or State law.

14 Section 9. Appropriation.

15 The sum of \$ is appropriated from the General
16 Fund to the Department of Environmental Protection for the
17 fiscal year July 1, 2002, to June 30, 2003, to carry out the
18 provisions of this act.

19 Section 10. Effective date.

20 This act shall take effect in 60 days.