

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1852

Session of
1987

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AND McHALE, OCTOBER 14, 1987

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 23, 1988

AN ACT

1 Providing for the cleanup of hazardous waste sites; providing
2 further powers and duties of the Department of Environmental
3 Resources and the Environmental Quality Board; providing for
4 response and investigations for liability and cost recovery;
5 establishing the Hazardous Sites Cleanup Fund; providing for
6 certain fees and for enforcement, remedies and penalties; and
7 making an appropriation.

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18 QUALITY BOARD.

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

22 CHAPTER 1
23 PRELIMINARY PROVISIONS

24 Section 101. Short title.

25 This act shall be known and may be cited as the Hazardous
26 Sites Cleanup Act.

27 Section 102. Declaration of policy.

28 The General Assembly finds and declares as follows:

29 (1) The citizens of this Commonwealth have a right to
30 clean water and a healthy environment, and the General

1 Assembly has a responsibility to insure the protection of
2 that right.

3 (2) Hazardous substances which have been released into
4 the environment through improper disposal or other means pose
5 a real and substantial threat to the public health and
6 welfare of the residents of this Commonwealth and to the
7 natural resources upon which they rely.

8 (3) The cleanup of sites that are releasing or
9 threatening the release of hazardous substances into the
10 environment and the replacement of contaminated water
11 supplies protects the public health, preserves and restores
12 natural resources and is vital to the economic development of
13 this Commonwealth.

14 (4) When releases of hazardous substances contaminate
15 public water supplies, the replacement of those water
16 supplies is frequently beyond the resources of the people
17 affected.

18 (5) Traditional legal remedies have not proved adequate
19 for preventing the release of hazardous substances into the
20 environment or for preventing the contamination of water
21 supplies. It is necessary, therefore, to clarify the
22 responsibility of persons who own, possess, control or
23 dispose of hazardous substances; to provide new remedies to
24 protect the citizens of this Commonwealth against the release
25 of hazardous substances; and to assure the replacement of
26 water supplies.

27 (6) Traditional methods of administrative and judicial
28 review have interfered with responses to the release of
29 hazardous substances into the environment. It is, therefore,
30 necessary to provide a special procedure which will postpone

1 both administrative and judicial review until after the
2 completion of the response action.

3 (7) The Federal Superfund Act provides numerous
4 opportunities for states to participate in the cleanup of
5 hazardous sites. It is in the interest of the citizens of
6 this Commonwealth that the Commonwealth be authorized to
7 participate in such cleanups and related activities to the
8 fullest extent.

9 (8) Many of the hazardous sites in this Commonwealth
10 which do not qualify for cleanup under the Federal Superfund
11 Act pose a substantial threat to the public health and
12 environment. Therefore, an independent site cleanup program
13 is necessary to promptly and comprehensively address the
14 problem of hazardous substance releases in this Commonwealth,
15 whether or not these sites qualify for cleanup under the
16 Federal Superfund Act.

17 (9) Extraordinary enforcement remedies and procedures
18 are necessary and appropriate to encourage responsible
19 persons to cleanup hazardous sites and to deter persons in
20 possession of hazardous substances from careless or haphazard
21 management.

22 (10) Persons engaged in the transportation and
23 management of hazardous waste should contribute to the fund
24 through a hazardous waste management fee that is designed to
25 encourage and reward sound waste management practices such as
26 source reduction, recycling and on-site treatment.

27 (11) The following are the purposes of this act:

28 (i) Authorize the department to participate in the
29 investigation, assessment and cleanup of sites under the
30 Federal Superfund Act to the full extent provided by that

1 act.

2 (ii) Establish independent authority for the
3 department to conduct site investigations and
4 assessments; to provide for the cleanup of sites in this
5 Commonwealth that are releasing or threatening the
6 release of hazardous substances or contaminants into the
7 environment; to require the replacement of water supplies
8 contaminated by these substances; to take other
9 appropriate response actions and recover from responsible
10 persons its costs for conducting the responses.

11 (iii) Establish the fund to provide to the
12 department the financial resources needed to plan and
13 implement a timely and effective response to the release
14 of hazardous substances and contaminants, including
15 emergency response actions, studies and investigations,
16 planning, remedial ~~action~~ RESPONSE, maintenance and <—
17 monitoring activities, replacement of water supplies and
18 protection of the public from the hazardous site.

19 (iv) Establish hazardous waste transportation and
20 management fees to encourage preferred hazardous waste
21 management practices and implement the hazardous waste
22 management hierarchy described in the hazardous waste
23 facilities plan and to generate revenues for the fund.

24 (v) Establish and maintain a cooperative State and
25 Federal program for the investigation and cleanup of
26 sites containing hazardous substances or contaminants and
27 for the replacement of affected water supplies and to
28 take other appropriate response actions.

29 (vi) Protect the public health, safety and welfare
30 and the natural resources of this Commonwealth from the

1 short-term and long-term effects of the release of
2 hazardous substances and contaminants into the
3 environment.

4 (vii) Provide a flexible and effective means to
5 implement and enforce the provisions of this act.

6 (viii) Encourage the ~~existing~~ SITING of new hazardous <—
7 waste management facilities to properly store, treat and
8 dispose of hazardous materials.

9 (ix) Encourage responsible persons to voluntarily
10 perform response activities.

11 Section 103. Definitions.

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

15 "Act of God." An unanticipated grave natural disaster or
16 other natural phenomenon of an exceptional, inevitable and
17 irresistible character the effects of which could not have been
18 prevented or avoided by the exercise of due care or foresight.

19 "Alternative water supplies." Includes but is not limited to
20 drinking water and household water supplies.

21 "Board." The Environmental Hearing Board of the
22 Commonwealth.

23 "Captive facility." A facility which is located upon lands
24 owned by a generator of hazardous waste and which is operated to
25 provide for the treatment or disposal solely of that generator's
26 hazardous waste.

27 "Claim." A demand in writing for a sum certain.

28 "Contaminant." Includes but is not limited to a substance
29 whose release is regulated under a statute administered by the
30 department or an element, substance, compound or mixture,

1 including disease-causing agents, which, after release into the
2 environment, may cause either of the following:

3 (1) In humans or other organisms or their offspring,
4 death; disease; behavioral abnormalities; cancer; genetic
5 mutation; physiological malfunctions, including malfunctions
6 in reproductions; or physical deformations.

7 (2) Damage to natural resources.

8 "Department." The Department of Environmental Resources of
9 the Commonwealth.

10 "Disposal." The incineration, combustion, evaporation, air
11 stripping, deposition, injection, dumping, spilling, leaking,
12 mixing or placing of a hazardous substance or contaminant into
13 the air, water or land in a manner which allows it to enter the
14 environment.

15 "Drinking water supply." A raw or finished water source that
16 is or may be used by a public water system, as defined in the
17 Safe Drinking Water Act (Public Law 95-323, 21 U.S.C. § 349 and
18 42 U.S.C. §§ 201 and 300f et seq), or as drinking water by one
19 or more individuals.

20 "Environment." Surface water, groundwater, drinking water
21 supply, land surface or subsurface strata or ambient air within
22 this Commonwealth.

23 "Federal Superfund Act." The Comprehensive Environmental
24 Response Compensation and Liability Act of 1980 (Public Law 96-
25 510, 94 Stat.2767).

26 "Federal Superfund Program." The hazardous waste site
27 cleanup program provided for in the Federal Superfund Act.

28 "Fund." The Hazardous Sites Cleanup Fund established by
29 section 901.

30 "Groundwater." Water occurring in a saturated zone or

1 stratum or percolating beneath the surface of land.

2 "Hazardous substance."

3 (1) Any element, compound or material which can pose a
4 threat to the public health or the environment when released
5 into the environment. The term includes, but is not limited
6 to:

7 (i) A hazardous waste designated under the act of
8 July 7, 1980 (P.L.380, No.97), known as the Solid Waste
9 Management Act.

10 (ii) A hazardous substance designated pursuant to
11 the Federal Superfund Act.

12 (iii) A hazardous material designated under the
13 Hazardous Materials Transportation Act (Public law 93-
14 633, 88 Stat.2156).

15 (iv) An object or material which is contaminated
16 with a hazardous substance.

17 (v) Other substances designated by the department as
18 detrimental to public health, safety and the environment
19 by regulation.

20 (vi) Waste oil.

21 (2) The term does not include petroleum products,
22 including crude oil or any fraction thereof, which are not
23 otherwise specifically listed or designated as a hazardous
24 substance under paragraph (1) nor natural gas, natural gas
25 liquids, liquefied natural gas or synthetic gas usable for
26 fuel or mixtures of natural gas and synthetic gas usable for
27 fuel.

28 "HAZARDOUS WASTE." ANY WASTE DEFINED AS HAZARDOUS UNDER THE
29 ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN AS THE SOLID WASTE
30 MANAGEMENT ACT, AND ANY REGULATIONS PROMULGATED UNDER THAT ACT.

<—

1 "Interim response." ~~Remedial action~~ RESPONSE which does not <—
2 exceed 12 months in duration or \$2,000,000 in cost. An interim
3 response may exceed these limitations only where one of the
4 following applies:

5 (1) Continued response actions are immediately required
6 to prevent, limit or mitigate an emergency.

7 (2) There is an immediate risk to public health, safety,
8 welfare or the environment.

9 (3) Assistance will not otherwise be provided on a
10 timely basis.

11 (4) Continued response action is otherwise appropriate
12 and consistent with future remedial ~~action~~ RESPONSE to be <—
13 taken.

14 "Natural resources." Land, fish, wildlife, biota, air,
15 water, groundwater, drinking water supplies and other resources
16 belonging to, managed by, held in trust by, appertaining to or
17 otherwise controlled by the United States, the Commonwealth or a
18 political subdivision. The term includes resources protected by
19 section 27 of Article I of the Constitution of Pennsylvania.

20 "Owner or operator." A person who owns or operates or has
21 owned or operated a site, or otherwise controlled activities at
22 a site. The term does not include a person who, without
23 participating in the management of a site, holds indicia of
24 ownership primarily to protect a security interest in the site
25 nor a unit of State or local government which acquired ownership
26 or control involuntarily through bankruptcy, tax delinquency,
27 abandonment, or other circumstances in which the government
28 involuntarily acquires title by virtue of its function as
29 sovereign. This exclusion does not apply to a political
30 subdivision which has caused or contributed to the release or

1 threatened release of a hazardous substance from the facility.

2 "Person." An individual, firm, corporation, association,
3 partnership, consortium, joint venture, commercial entity,
4 authority, interstate body or other legal entity which is
5 recognized by law as the subject of rights and duties. The term
6 includes the officers and directors of any corporation or other
7 legal entities having officers, supervisors, councilmen or
8 directors. The term includes the Federal Government, state
9 governments and political subdivisions.

10 "Release." Spilling, leaking, pumping, pouring, emitting,
11 emptying, discharging, injecting, escaping, leaching, dumping or
12 disposal into the environment. The term includes the abandonment
13 or discarding of barrels, containers, vessels and other
14 receptacles containing a hazardous substance or contaminant.

15 ~~"Remedial action or remedy."~~ ~~Actions~~ "REMEDIAL RESPONSE OR
16 REMEDY." ANY RESPONSE WHICH IS NOT AN INTERIM RESPONSE.

17 "RESPONSE." ACTION taken in the event of a release or
18 threatened release of a hazardous substance or a contaminant
19 into the environment to study, assess, prevent, minimize or
20 eliminate the release in order to protect the present or future
21 public health, safety or welfare or the environment. The term
22 includes but is not limited to:

23 (1) Emergency response to the release of hazardous
24 substances or contaminants.

25 (2) Actions at or near the location of the release, such
26 as studies; health assessments; storage; confinement;
27 perimeter protection using dikes, trenches, or ditches; clay
28 cover; neutralization; cleanup or removal of released
29 hazardous substances, contaminants or contaminated materials;
30 recycling or reuse, diversion, destruction, segregation of

1 reactive wastes; dredging or excavations; repair or
2 replacement of leaking containers; collection of leachate and
3 runoff; onsite treatment or incineration; offsite transport
4 and offsite storage; treatment, destruction, or secure
5 disposition of hazardous substances and contaminants;
6 treatment of groundwater, provision of alternative water
7 supplies, fencing or other security measures; and monitoring
8 and maintenance ~~reasonable~~ REASONABLY required to assure that <—
9 these actions protect the public health, safety, and welfare
10 and the environment.

11 (3) Costs of relocation of residents and businesses and
12 community facilities when the department determines that,
13 alone or in combination with other measures, relocation is
14 more cost effective than and environmentally preferable to
15 the transportation, storage, treatment, destruction or secure
16 disposition offsite of hazardous substances or contaminants
17 or may otherwise be necessary to protect the public health or
18 welfare.

19 (4) Actions taken under section 104(b) of the Federal
20 Superfund Act, (42 U.S.C. § 9604(b)) and any emergency
21 assistance which may be provided under the Disaster Relief
22 Act of 1974 (Public Law 93-288, 88 Stat.43).

23 (5) Other actions necessary to assess, prevent,
24 minimize, or mitigate damage to the public health, safety or
25 welfare or the environment which may otherwise result from a
26 release or threatened release of hazardous substances or
27 contaminants.

28 ~~"Response." Interim response or remedial action. The term~~ <—
29 ~~includes~~

30 (6) INVESTIGATION, ENFORCEMENT, ABATEMENT OF NUISANCES, <—

1 AND OVERSIGHT AND ADMINISTRATIVE ACTIVITIES RELATED TO
2 INTERIM OR REMEDIAL RESPONSE enforcement, abatement of
3 nuisances, and oversight and administrative activities
4 related to interim ~~response~~ or remedial ~~action~~ RESPONSE. <—

5 "Responsible person." A person responsible for the release
6 or threatened release of a hazardous substance as described in
7 section 701.

8 "Secretary." The Secretary of Environmental Resources of the
9 Commonwealth.

10 "Site." Any building; structure; installation; equipment;
11 pipe or pipeline, including any pipe into a sewer or publicly-
12 owned treatment works; well; pit; pond; lagoon; impoundment;
13 ditch; landfill; storage container; tank; vehicle; rolling
14 stock; aircraft; vessel; or area where a contaminant or
15 hazardous substance has been deposited, stored, treated, ~~release~~ <—
16 RELEASED, disposed of, placed, or otherwise come to be located. <—
17 The term does not include a location where the hazardous
18 substance or contaminant is a consumer product in normal
19 consumer use or where pesticides and fertilizers are in normal
20 appropriate agricultural use.

21 "Transportation." ~~Includes movement by pipeline.~~ THE <—
22 CONVEYANCE OF A HAZARDOUS SUBSTANCE OR CONTAMINANT BY ANY MODE,
23 INCLUDING PIPELINE.

24 "Treatment." A method, technique or process, including
25 neutralization, designed to change the physical, chemical or
26 biological character or composition of a hazardous substance so
27 as to neutralize the hazardous substance or to render the
28 hazardous substance nonhazardous, safer for transport, suitable
29 for recovery, suitable for storage or reduced in volume. The
30 term includes activity or processing designed to change the

1 physical form or chemical composition of hazardous substance so
2 as to render it neutral or nonhazardous.

3 "Vessel." A watercraft or other artificial contrivance used,
4 or capable of being used, as a means of transportation on water.

5 Section 104. Construction.

6 Nothing in this act shall be construed to affect, impair or
7 repeal any provision of any other statute. No action by the
8 department under this act shall be understood or construed as
9 precluding the department from taking any action authorized by
10 this act or any other statute administered by the department.

11 CHAPTER 3

12 POWERS AND DUTIES

13 Section 301. Powers and duties of department.

14 The department has the following powers and duties:

15 (1) Develop, administer and enforce a program to provide
16 for the investigation, assessment and cleanup of hazardous
17 sites in this Commonwealth pursuant to the provisions of this
18 act and regulations adopted under this act.

19 (2) Undertake activities necessary or proper to
20 cooperate with and fully participate in the Federal Superfund
21 Program, including serving as the agency of the Commonwealth
22 for the receipt of moneys from the Federal Government or
23 other public or private agencies.

24 (3) Develop, administer and enforce an independent State
25 response program for the investigation, assessment and
26 cleanup of hazardous sites and replacement of water supplies
27 and the protection of the citizens and natural resources of
28 this Commonwealth from the dangers of hazardous substances
29 and contaminants that have been released or are threatened to
30 be released into the environment.

1 (4) Cooperate with appropriate Federal, State,
2 interstate and local government agencies in carrying out its
3 duties under this act by, among other things, accepting an
4 appropriate delegation or agency relationship from such an
5 agency to facilitate the cleanup of hazardous sites in this
6 Commonwealth.

7 (5) Administer the fund and any fund for hazardous waste
8 facilities siting and expend money from the funds in
9 accordance with this act.

10 (6) Administer and expend funds appropriated to the
11 department or granted to the Commonwealth under the Federal
12 Superfund Act or other authority for the protection of the
13 public and the natural resources of this Commonwealth from
14 releases of hazardous substances or contaminants.

15 (7) Promulgate the State standards and requirements
16 applicable, relevant or appropriate for the cleanup of
17 hazardous sites under this act and the Federal Superfund Act.

18 (8) Develop a program for public participation in the
19 assessment of sites and selection of appropriate remedial
20 responses.

21 (9) Issue orders to enforce provisions of this act and
22 regulations promulgated under it.

23 (10) Institute, in a court of competent jurisdiction,
24 proceedings to compel compliance with this act, regulations
25 promulgated under it or an order of the department.

26 (11) Institute prosecutions under this act.

27 (12) Appoint advisory committees as the secretary deems
28 necessary and proper to assist the department in carrying out
29 this act. The secretary is authorized to pay reasonable and
30 necessary expenses incurred by the members of advisory

committees in carrying out their functions.

(13) Acquire special scientific and technical staff resources to provide specialized expertise in areas related to the evaluation of sites and selection of responses to advise the department regarding standards, technologies, risk assessments and other matters related to the cleanup of hazardous sites; the regulation of hazardous substances and contaminants; and the enforcement of this act.

(14) Act as trustee of this Commonwealth's natural resources. The department may assess and collect damages to natural resources for the purposes of this act and the Federal Superfund Act for those natural resources under its trusteeship.

(15) Provide for emergency response capability for spills, accidents and other releases of hazardous substances and contaminants.

(16) Implement section 27 of Article 1 of the Constitution of Pennsylvania.

(17) Do any and all other acts and things not inconsistent with any provision of this act which it may deem necessary or proper for the effective enforcement of this act and the regulations promulgated under it.

Section 302. Special science and technology resources.

(a) Establishment.--The department shall establish an additional complement of individuals with expertise and advanced degrees in specialized fields of science and technology relevant to administration and enforcement of this act.

(b) Expertise.--The special science and technology staff shall have expertise in fields relating to the identification, analysis, assessment, prevention or abatement of hazards to the

1 public health or the environment resulting from the release of
2 hazardous substances or contaminants into the environment. The
3 special science and technology staff may include, without
4 limitation, individuals trained in toxicology, hydrogeology,
5 chemistry, biology, soil science, biochemistry, environmental
6 engineering, epidemiology, value engineering and risk assessment
7 sciences.

8 (c) Availability.--The special science and technology staff
9 shall be available to review consultants' contracts, reports and
10 feasibility studies; prepare and review environmental
11 assessments, serve as expert witnesses in department litigation;
12 provide scientific analysis or studies to support rulemaking
13 activities of the department; and perform other duties as
14 assigned by the secretary in furtherance of this act or other
15 environmental protection laws administered by the department.

16 (d) Civil service.--In order to obtain the most highly
17 qualified individuals for the special science and technology
18 staff, the secretary may hire the staff without regard to the
19 provisions of the act of August 5, 1941 (P.L.752, No.286), known
20 as the Civil Service Act.

21 Section 303. Powers and duties of ~~board~~ ENVIRONMENTAL QUALITY
22 BOARD.

23 The board, exercising its powers and duties under section
24 1920 of the act of April 9, 1929 (P.L. 177, No.175), known as
25 The Administrative Code of 1929, has the power and duty to
26 promulgate the regulations of the department to accomplish the
27 purposes and to carry out the provisions of this act, including
28 but not limited to regulations relating to the protection, from
29 the release of hazardous substances, of the safety, health,
30 welfare and property of the public and of the air, water, land

1 and other natural resources of this Commonwealth.

2 CHAPTER 5

3 RESPONSE AND INVESTIGATION

4 Section 501. Response authorities.

5 (a) General rule.--~~If~~ WHERE there is a release or threat of <—
6 release from a site of a contaminant which presents a hazard to
7 the public health or safety or the environment or ~~if~~ WHERE a <—
8 hazardous substance is released or threatened to be released,
9 the department shall investigate and may undertake ANY FURTHER <—
10 investigation, interim response or remedial ~~action~~ RESPONSE <—
11 relating to the contaminant or hazardous substance which the
12 department deems necessary OR APPROPRIATE to protect the public <—
13 health, safety or welfare or the environment.

14 (b) Effect on liability.--No response action taken by any
15 person shall be construed as an admission of liability for a
16 release or threatened release.

17 (c) Exclusion.--

18 (1) The department shall not provide for an interim
19 response or remedial ~~action~~ RESPONSE under this section in <—
20 response to a release or threat of release:

21 (i) of a naturally occurring substance in its
22 unaltered form, or altered solely through naturally
23 occurring processes or phenomena, from a location where
24 it is naturally found;

25 (ii) from products which are part of the structure
26 of, and result in exposure within, residential buildings
27 or business or community structures; or

28 (iii) into public or private drinking water supplies
29 due to deterioration of the system through ordinary use.

30 (2) Notwithstanding paragraph (1), to the extent

1 authorized by this section, the department may respond to a
2 release or threat of release ~~if~~ WHEN, in the department's <—
3 discretion, it determines that the release or threat of
4 release constitutes a public health, safety, or environmental
5 emergency and that no other person with the authority and
6 capability to respond to the emergency will do so in a timely
7 manner.

8 (d) Investigations.--The department shall undertake
9 investigations, monitoring, surveys, testing and other similar
10 activities necessary or appropriate to identify the existence
11 and extent of the release or threat of release, the source and
12 nature of the hazardous substances or contaminants and the
13 extent of danger to the public health or welfare or the
14 environment. The department may also undertake planning, legal,
15 fiscal, economic, engineering, architectural and other studies
16 or investigations necessary or appropriate to plan and direct a
17 response action, to recover the costs of the response action and
18 to enforce the provisions of this act. The department shall
19 undertake the activities described in this subsection in one or
20 more of the following circumstances:

21 (1) ~~If~~ WHEN the department is authorized to act under <—
22 subsection (a).

23 (2) ~~If~~ WHEN the department has reason to believe that a <—
24 release of a hazardous substance or a contaminant has
25 occurred or is about to occur.

26 (3) ~~If~~ WHEN the department determines that illness or <—
27 disease or complaints of illness or disease may be
28 attributable to exposure to a hazardous substance or
29 contaminant.

30 (E) BIDDING FOR REMEDIAL OR REMOVAL ACTIONS.-- <—

1 (1) THE DEPARTMENT MAY PREQUALIFY BIDDERS FOR REMEDIAL
2 OR REMOVAL ACTIONS TAKEN UNDER SUBSECTION (B). THE DEPARTMENT
3 MAY REJECT THE BID OF A PROSPECTIVE BIDDER WHO HAS NOT BEEN
4 PREQUALIFIED.

5 (2) TO PREQUALIFY BIDDERS, THE DEPARTMENT SHALL ADOPT,
6 BY REGULATION, AND APPLY A UNIFORM SYSTEM OF RATING BIDDERS.
7 IN ORDER TO OBTAIN INFORMATION FOR RATING, THE DEPARTMENT MAY
8 REQUIRE FROM PROSPECTIVE BIDDERS ANSWERS TO QUESTIONS,
9 INCLUDING, BUT NOT LIMITED TO, QUESTIONS ABOUT THE BIDDER'S
10 FINANCIAL ABILITY; THE BIDDER'S EXPERIENCE IN REMOVAL AND
11 REMEDIAL ACTION INVOLVING HAZARDOUS SUBSTANCES; THE BIDDER'S
12 PAST SAFETY RECORD; AND THE BIDDER'S PAST PERFORMANCE ON
13 FEDERAL, STATE OR LOCAL GOVERNMENT PROJECTS. THE DEPARTMENT
14 MAY ALSO REQUIRE PROSPECTIVE BIDDERS TO SUBMIT FINANCIAL
15 STATEMENTS.

16 (3) THE DEPARTMENT SHALL UTILIZE THE BUSINESS FINANCIAL
17 DATA AND INFORMATION SUBMITTED BY A BIDDER UNDER THIS SECTION
18 ONLY FOR THE PURPOSES OF PREQUALIFYING BIDDERS AND SHALL NOT
19 OTHERWISE DISCLOSE THIS DATA OR INFORMATION.

20 Section 502. Priorities.

21 (a) List.--The department shall establish a temporary list
22 of priorities among sites with releases or threatened releases
23 for the purpose of taking remedial ~~action~~ RESPONSE. The
24 temporary list, with necessary modifications, shall remain in
25 effect until the department promulgates regulations establishing
26 criteria for determining priorities among releases and
27 threatened releases. After regulations are promulgated, a
28 permanent priority list shall be established and may be modified
29 according to the criteria set forth in the regulations. Before a
30 list is established under this subsection, the department shall

<—

1 publish the list in the Pennsylvania Bulletin and allow 30 days
2 for comments on the list by the public. Remedial ~~actions~~ <—
3 RESPONSES may be on-going at more than one site at any given <—
4 time.

5 (b) Criteria.--The temporary list and the regulations
6 required by subsection (a) shall be based upon the relative risk
7 or danger to public health and welfare or the environment,
8 taking into account, to the extent possible, the population at
9 risk, the hazardous potential of the hazardous substances or
10 contaminants at the sites, the potential for contamination of
11 drinking water supplies, the potential for direct human contact,
12 the potential for destruction of sensitive ecosystems, the
13 administrative and financial capabilities of the department and
14 other appropriate factors.

15 (c) Status.--The placement of a site with a release or
16 threatened release upon either the temporary priority list or
17 the permanent priority list shall not be deemed to be a final
18 action subject to review under Title 2 of the Pennsylvania
19 Consolidated Statutes (relating to administrative law and
20 procedure) OR SECTION 1921-A OF THE ACT OF APRIL 9, 1929 <—
21 (P.L.177, NO.175), KNOWN AS THE ADMINISTRATIVE CODE OF 1929, nor
22 shall it confer a right or duty upon the department or any
23 person.

24 Section 503. Information gathering and access.

25 (a) Authority.--The authority of this section shall be
26 exercised when there is a reasonable basis to believe there may
27 be a release or threat of release of a hazardous substance or
28 contaminant. The authority of this section shall be exercised
29 for the purposes of determining the need for response, choosing
30 or taking a response action under this act or otherwise

1 enforcing the provisions of this act.

2 (b) Information.--

3 (1) The department shall have access to information
4 relevant to any of the following:

5 (i) The identification, nature and quantity of
6 materials which have been or are generated, treated,
7 stored or disposed of at a site or transported to a site.

8 (ii) The nature or extent of a release or threatened
9 release of a hazardous substance or pollutant or
10 contaminant at or from a site.

11 (iii) Information relating to the ability of a
12 person to pay for or to perform a response action.

13 (2) A person who has or may have information under
14 paragraph (1) shall, upon reasonable notice, either:

15 (i) grant the department access at all reasonable
16 times to a site or other place or property to inspect and
17 copy all documents or records relating to the matter; or

18 (ii) copy and furnish to the department all the
19 documents or records.

20 (c) Right of entry.--The department may enter at reasonable
21 times a site or other place or property in one or more of the
22 following circumstances:

23 (1) A hazardous substance or contaminant may be or has
24 been generated at, stored at, treated at, disposed of at or
25 transported from the place.

26 (2) A hazardous substance or contaminant has been or is
27 being or threatens to be released.

28 (3) Entry is needed to determine the need for response
29 to hazardous substance or contaminant or the appropriate
30 response or to effectuate a response action under this act.

1 (4) A release of a hazardous substance or contaminant
2 has occurred on a nearby property, and entry is required to
3 determine the extent of the release.

4 (5) There is a container or impoundment which is typical
5 of those used to contain or impound hazardous substances and
6 entry is needed to determine the existence of a hazardous
7 substance.

8 (d) Inspection.--

9 (1) The department may inspect and obtain samples from a
10 site or other place or property referred to in subsection (c)
11 or from a location of a suspected hazardous substance or
12 contaminant. THE DEPARTMENT'S RIGHT OF INSPECTION SHALL <—
13 INCLUDE THE SAMPLING OF SOLIDS, LIQUIDS AND GASES;
14 EXCAVATIONS FOR SOIL SAMPLING; DRILLING AND MAINTENANCE OF
15 WELLS TO MONITOR GROUNDWATER; AND THE INSTALLATION AND
16 MAINTENANCE OF OTHER EQUIPMENT TO MONITOR THE NATURE OR
17 EXTENT OF A RELEASE OF A SUSPECTED HAZARDOUS SUBSTANCE OR
18 CONTAMINANT. The department may inspect and obtain samples of
19 containers or labeling for suspected hazardous substances or
20 contaminants. Each inspection shall be completed with
21 reasonable promptness.

22 (2) When the department obtains samples, before leaving
23 the premises, it shall give to the owner, operator, tenant or
24 other person in charge of the place from which the samples
25 were obtained a receipt describing the sample obtained and,
26 ~~if~~ WHEN requested, a portion of the sample. A copy of the <—
27 results of an analysis made of the samples shall be furnished
28 promptly to the owner, operator, tenant or other person in
29 charge ~~if~~ WHEN the person can be located. <—

30 (e) ~~Access~~ DUTY TO COOPERATE WITH RESPONSE ACTION.-- <—

1 (1) The following PERSONS shall allow the department
2 access or right of entry AND INSPECTION AS MAY BE reasonably
3 necessary to determine the nature and extent of a release of
4 a hazardous substance or contaminant:

5 (i) A person who owns or occupies land on which
6 there is a release or threat of a release of a hazardous
7 substance or contaminant.

8 (ii) A person who owns or occupies land which is
9 near the site of a release or threatened release.

10 (iii) A person who owns or occupies land on which
11 there is a container or impoundment typical of those used
12 to contain or impound hazardous substances.

13 (iv) A person who is a responsible person under
14 section 701.

15 (2) The following PERSONS shall allow the department
16 access or right of entry AND INSPECTION AS MAY BE reasonably
17 necessary to perform a response ~~action~~ under section 701 501:

18 (i) A person who owns or occupies land on which
19 there is a release or a threat of release of a hazardous
20 substance or contaminant.

21 (ii) A person who owns or occupies land which may be
22 affected by the release of a hazardous substance or
23 contaminant.

24 (iii) A person who is a responsible person under
25 section 701.

26 (f) Remedies.--

27 (1) In addition to any other remedy provided by this
28 act, the department may enforce the provisions of this
29 section by issuing orders requiring access to information,
30 requiring entry onto property and restraining interference

1 with any response action. An order issued under this section
2 may be appealed to the board under section 1921-A of the act
3 of April 9, 1929 (P.L.177, No.175), known as The
4 Administrative Code of 1929.

5 (2) The department may immediately apply to a court of
6 competent jurisdiction to enforce its order, unless the board
7 has issued a supersedeas. The court shall immediately enforce
8 the department's order upon finding all of the following:

9 (i) The order is authorized by this act.

10 (ii) There has not been full compliance with the
11 order.

12 (3) In lieu of issuing an order under paragraph (1), the
13 department may apply immediately to a court of competent
14 jurisdiction for the same relief.

15 (4) When the board reviews an order issued under
16 paragraph (1), or when a court reviews the department's
17 request for immediate relief under paragraph (3), the board
18 shall uphold the department's order and the court shall grant
19 the requested relief where all of the following are
20 established:

21 (i) The department has a reasonable basis to believe
22 that there may be a release or a threat of a release of a
23 hazardous substance or contaminant.

24 (ii) The order or relief requested is reasonably
25 related to determining the need for a response, to
26 choosing or taking any response or to otherwise enforcing
27 the provisions of this act.

28 (5) Except as provided in ~~paragraph (4)~~ THIS SUBSECTION, <—
29 there shall be no administrative or judicial review of action
30 by the department or its agents to obtain access to

1 information, to obtain entry onto property or to perform work
2 on the property in connection with a response action. Neither
3 the board nor any court may restrain action of the department
4 under this section unless all of the following apply:

5 (i) The person seeking to restrain the department
6 has given the department a 30-day written notice of his
7 intent to do so.

8 (ii) The department has failed to issue an order
9 within the 30-day period.

10 (6) The minimum civil penalty assessed under section
11 1104 for a violation of an order issued under this section
12 shall be \$5,000 for each day the order is violated.

13 (g) Other remedies.--Nothing in this subsection shall
14 preclude the department from securing access or obtaining
15 information in any other lawful manner.

16 (h) Public records.--

17 (1) Except as provided in this subsection, records,
18 reports or other information obtained under this act shall be
19 available to the public for inspection or copying during
20 regular business hours. The department may, upon request,
21 designate records, reports or information as confidential
22 when the person providing the information demonstrates all of
23 the following:

24 (i) The information contains the trade secrets,
25 processes, operations, style of work or apparatus of a
26 person or is otherwise confidential business information.

27 (ii) The information does not relate to health or
28 safety effects of a hazardous substance or contaminant.

29 (2) When submitting information to the department under
30 this act, a person shall designate the information which the

1 person believes is confidential or shall submit that
2 information separately from other information being
3 submitted.

4 (i) Use of force.--~~If~~ WHEN a person refuses to allow the <—
5 department to have access to information under subsection (c) or
6 entry onto property under subsection (d), the department shall
7 not use force to obtain the information or entry unless one of
8 the following applies:

9 (1) The department has obtained a search warrant or
10 initiated an action under subsection (f).

11 (2) Immediate action is needed to protect the public
12 health or safety or the environment.

13 Section 504. Cleanup standards.

14 (a) General rule.--Final remedial ~~actions~~ RESPONSES under <—
15 this act shall meet all standards, requirements, criteria or
16 limitations which are legally applicable or relevant and
17 appropriate under the circumstances presented by the release or
18 threatened release of the hazardous substance or contaminant.
19 Cleanup standards promulgated or ordered under this act shall be
20 at least as stringent as those promulgated under the Federal
21 Superfund Act.

22 (b) Rulemaking.--The department may promulgate the
23 standards, requirements, criteria or limitations that are
24 generally applicable to remedial responses to releases of
25 hazardous substances or contaminants by regulation, by policy
26 statement or by providing actual notice to a responsible person
27 of the applicable, OR relevant and appropriate, requirements. <—

28 (c) Form.--The department's standards for remedial responses
29 may include, but are not limited to, regulations, policies,
30 guidelines, design manuals, plans, executive orders, forms and

1 modules and other documents used in environmental programs
2 administered by the department.

3 (d) Special standards.--In addition to the promulgation of
4 State standards, requirements, criteria or limitations which are
5 generally applicable, the department may add special standards
6 on a case-by-case basis in order to assure protection of human
7 health and the environment.

8 (e) Modification.--The department may modify otherwise
9 applicable requirements ~~if~~ WHEN any of the following apply: <—

10 (1) Compliance with a requirement at a site will result
11 in greater risk to the public health and the environment than
12 alternative options.

13 (2) Compliance with a requirement at a site is
14 technically infeasible from an engineering perspective.

15 (3) The remedial ~~action~~ RESPONSE selected will attain a <—
16 standard of performance that is equivalent to that required
17 under the otherwise applicable requirement, through use of
18 another method or approach.

19 (f) Fund money.--In addition to the provisions of subsection
20 (e), ~~if~~ WHEN the response action is to be done using only fund <—
21 money, the department may waive requirements that might
22 otherwise be applicable to a response at the site undertaken by
23 a responsible person if it determines the waiver to be in the
24 public interest.

25 ~~(g) Permits. No State or local permits shall be required~~ <—
26 ~~for a response action conducted entirely on the site if prior~~
27 ~~written approval is obtained from the department.~~

28 (G) PERMITS.--WHEN PRIOR WRITTEN APPROVAL IS OBTAINED FROM <—
29 THE DEPARTMENT, NO STATE OR LOCAL PERMITS SHALL BE REQUIRED FOR
30 A RESPONSE ACTION CONDUCTED ENTIRELY ON THE SITE, PROVIDED THAT

1 THE RESPONSE ACTION COMPLIES WITH STANDARDS PURSUANT TO THIS
2 SECTION.

3 (h) Review.--Any action taken by the department under this
4 section shall be subject to judicial or administrative review
5 only as provided in section 508.

6 Section 505. Development and implementation of response
7 actions.

8 (a) Basis.--The selection of a remedial ~~action~~ RESPONSE <—
9 shall be based upon the administrative record developed under
10 section 506.

11 (b) Interim response.--An interim response may be taken
12 before the development of an administrative record ~~if~~ WHEN, upon <—
13 the basis of the information available to the department at the
14 time of the interim response, there is a reasonable basis to
15 believe that prompt action is required to protect the public
16 health or safety or the environment. ~~If~~ WHEN the department <—
17 takes an interim response before the development of an
18 administrative record, it shall provide the notice required by
19 section 506(b) within 30 days of initiating the response action.
20 In addition to the information required by section 506(b), the
21 notice shall describe the actions which have already been taken
22 and any additional actions to be taken prior to the close of the
23 public comment period under section 506(c).

24 (c) Implementation of action.--After the selection of an
25 interim response or a remedial ~~action~~ RESPONSE, the department <—
26 may implement all or any part of the selected action by doing
27 any of the following:

28 (1) Issuing an order to a responsible person. This
29 paragraph does not prohibit action under paragraph (2).

30 (2) Taking the action itself. This paragraph does not

1 prohibit action under paragraph (1).

2 (d) Orders.--Orders issued under this section include, but
3 are not limited to:

4 (1) Orders requiring a responsible person to take a
5 response action.

6 (2) Orders restraining a person from interfering with a
7 response action.

8 (3) Orders modifying a response action, including
9 response actions which had been previously approved by the
10 department.

11 (e) Judicial action.--The department may file an action to
12 enforce an order issued under this section in Commonwealth Court
13 or in any other court of competent jurisdiction. The department
14 may include in the same action a civil penalty assessment under
15 section 1104. ~~If~~ WHEN the department files such an action, its <—
16 order shall be enforced and its civil penalty assessment shall
17 be upheld unless the person subject to the order or the civil
18 penalty can demonstrate that the department acted arbitrarily
19 and capriciously on the basis of the administrative record
20 developed under section 506.

21 (f) Costs.--

22 (1) ~~If~~ WHEN the department issues an order under this <—
23 section, a person subject to the order may seek to recover
24 from the fund the cost of complying with the order by filing
25 an action with the board after completion of the response
26 action. The action must be filed within 60 days after the
27 completion of the required action. To recover costs, the
28 person must demonstrate by a preponderance of the evidence,
29 upon the basis of the administrative record developed under
30 section 506, all of the following:

1 (i) The person was not a responsible person under
2 this act.

3 (ii) The costs sought to be recovered are reasonable
4 in light of the action required by the order.

5 (2) A person subject to an order under this act may also
6 recover reasonable costs for that portion of the response
7 action ordered which the person can demonstrate to be
8 arbitrary and capricious on the basis of the administrative
9 record developed under section 506.

10 Section 506. Administrative record.

11 (a) Contents.--The administrative record upon which a
12 response action is based shall consist of all of the following:

13 (1) The notice issued under subsection (b).

14 (2) The department's description of the action and the
15 information which supports the action.

16 (3) Written comments submitted during the public comment
17 period under subsection (c).

18 (4) Transcripts of comments made at the public hearing
19 held under subsection (d).

20 (5) The department's statement of the basis and purpose
21 for its decision and its response to significant comments
22 made during the public comment period.

23 (6) The docket maintained under subsection (f), listing
24 the contents of the administrative record.

25 (b) Notice.--

26 (1) The department shall issue a notice setting forth
27 all of the following:

28 (i) A brief analysis of the response action and
29 alternative actions that were considered.

30 (ii) The time and place during which the information

1 listed on the docket maintained under subsection (f) may
2 be inspected and copied.

3 (iii) A specified time and place for providing
4 written comments on the response action.

5 (iv) The time and place at which a public hearing
6 will be held to receive oral comments on the response
7 action.

8 (2) The notice shall be mailed to responsible persons
9 whose identities and addresses are known to the department.
10 The notice shall also be published in a newspaper of general
11 circulation in the area in which the release has occurred and
12 in the Pennsylvania Bulletin. The failure to provide this
13 notice does not affect a responsible person's liability under
14 this act.

15 (c) Public comment.--

16 (1) The public comment period shall extend for at least
17 90 days from the date that notice is published in the
18 Pennsylvania Bulletin. During the public comment period the
19 department ~~will~~ SHALL make available for inspection during
20 normal business hours all of the following:

21 (i) The department's description of the response
22 action.

23 (ii) The information supporting the response action.

24 (iii) Written comments submitted during the public
25 comment period.

26 (iv) The docket maintained under subsection (f).

27 (2) The public comment period shall extend at least 30
28 days after the public hearing to provide an opportunity for
29 the submission of rebuttal and supplementary information.

30 (d) Public hearing.--~~A~~ AT LEAST ONE public hearing shall be

1 conducted near the site of the response action to allow
2 interested persons to give oral or written comments. A
3 transcript shall be kept of oral presentations. The hearing
4 shall be scheduled at least 30 days after the publication of the
5 notice in the Pennsylvania Bulletin.

6 (e) Decision.--At the close of the public comment period,
7 the department shall file a statement of the basis and purpose
8 for its decision. It shall include an explanation of any major
9 changes in the response action from that described in the
10 notice. The department shall also file a response to each of the
11 significant comments, criticisms and new data submitted in oral
12 or written presentations during the public comment period.

13 (f) Docket.--The department shall maintain a docket listing
14 of all the items which form the administrative record, and it
15 shall notify a person submitting a comment that it has been
16 entered on the docket. It shall be the responsibility of the
17 person submitting written comments to either verify that the
18 comments have been noted on the docket or to notify the
19 department, before the end of the public comment period, that
20 the docket does not note the submitted written comment.

21 (g) Closing.--The administrative record shall be closed,
22 once the department has filed its statement and response under
23 subsection (e). The department's decision may not be based, in
24 whole or in part, upon information which has not been noted on
25 the docket as of the date the administrative record is closed.
26 The administrative record may be reopened only for any of the
27 following reasons:

28 (1) Additional information which the department
29 determines to be of central relevance to the selected action
30 is obtained during the implementation of the response action.

1 (2) A person raising an objection to the response action
2 can demonstrate that it was impracticable to raise the
3 objection during the public comment period or that the
4 grounds for the objection arose after the public comment
5 period.

6 (3) The department wishes to document its response
7 costs.

8 (4) A case is remanded to the department under section
9 508.

10 (h) Reopening.--To reopen the administrative record, the
11 department shall provide a notice setting forth the purpose of
12 the reopening and the time and place for submitting written
13 comments during a 60-day public comment period. THE DEPARTMENT <—
14 MAY HOLD A PUBLIC HEARING IF A WRITTEN REQUEST IS RECEIVED
15 WITHIN 30 DAYS OF PUBLICATION OF THE NOTICE OF REOPENING. The
16 docket shall note additional information submitted by the
17 department, written comments, ORAL COMMENTS MADE AT THE PUBLIC <—
18 HEARING and the department's responses to the significant
19 comments. The department's decision not to reopen the
20 administrative record may only be reviewed as provided in
21 section 508.

22 Section 507. Recovery of response costs.

23 (a) General rule.--A responsible person under section 701 or
24 a person who causes a release or threat of a release of a
25 hazardous substance or causes a public nuisance shall be liable
26 for the response costs and for damages to natural resources. The
27 department, a Commonwealth agency, or a municipality which
28 undertakes to abate a public nuisance or take a response action
29 may recover those response costs and natural resource damages in
30 an action in equity brought before a court of competent

1 jurisdiction. In addition, the board is given jurisdiction over
2 actions by the department to recover response costs and damages
3 to natural resources.

4 (b) Amount.--In an action to recover response costs and
5 natural resource damages, the department shall include
6 administrative and legal costs incurred from its initial
7 investigation up to the time that it recovers its costs. The
8 amount attributable to administrative and legal costs shall be
9 10% of the amount paid for the response action or the actual
10 costs, whichever is greater.

11 (c) Punitive damages.--A person who fails to comply with an
12 order of the department requiring a response action or the
13 abatement of a public nuisance shall be liable for punitive
14 damages in an amount which is at least equal to but not more
15 than three times the costs recoverable under this section.

16 (d) Effect of damages assessment.--A determination or
17 assessment of damages to natural resources for the purposes of
18 this act, the Federal Superfund Act, or section 311 of the
19 Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. §
20 1321) made by the department or other trustee shall have the
21 force and effect of a rebuttable presumption on behalf of the
22 trustee in an administrative or judicial proceeding under this
23 act, the Federal Superfund Act or section 311 of the Federal
24 Water Pollution Act.

25 (e) Civil penalty.--~~If~~ WHEN the department files an action <—
26 to recover its response costs and natural resources damage
27 assessment, it may also seek civil penalties under section 1104.
28 The department's entitlement to recover its response costs, its
29 assessment of natural resources' damages and its assessment of
30 civil penalties shall be reviewed solely upon the basis of the

1 administrative record developed under section 506. Its right to
2 recover response costs, natural resources' damages and civil
3 penalties shall be upheld unless the liable person can
4 demonstrate that the department acted arbitrarily and
5 capriciously on the basis of the administrative record developed
6 under section 506.

7 Section 508. Administrative and judicial review of response
8 actions.

9 (a) General rule.--Notwithstanding any other provision of
10 law, the provisions of this section shall provide the exclusive
11 method of challenging either the administrative record developed
12 under section 506 or a decision of the department based upon the
13 administrative record.

14 (b) Timing of review.--Neither the board nor a court shall
15 have jurisdiction to review a response action taken by the
16 department or ordered by the department under section 505 until
17 the department files an action to enforce the order or to
18 recover its response costs.

19 (c) Grounds.--A challenge to a response action shall be
20 limited to the administrative record developed under section
21 506. In a challenge to a response action, an objection shall be
22 waived unless it was raised during the public comment period
23 provided under section 506(c). ~~THE~~ NOTWITHSTANDING ANY PROVISION <—
24 OF SECTION 1921-A OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175),
25 KNOWN AS THE ADMINISTRATIVE CODE OF 1929, THE record for
26 judicial or administrative review shall consist exclusively of
27 the material referred to in section 506(a).

28 (d) Procedural errors.--Procedural errors in the development
29 of the administrative record shall not be a basis for
30 challenging a response action unless the errors were so serious

1 and related to matters of such central relevance to the response
2 action that the action would have been significantly changed had
3 the errors not been made. The person asserting the significance
4 of the procedural errors shall have the burden of proving that
5 the action would have been significantly changed.

6 (e) Remand.--~~If~~ WHEN a response action is demonstrated to be <—
7 arbitrary and capricious on the basis of the administrative
8 record developed under section 506, or ~~if~~ WHEN a procedural <—
9 error occurred in the development of the administrative record
10 which (error) would have significantly changed the response
11 action, the following apply:

12 (1) ~~If~~ WHEN additional information could affect the <—
13 outcome of the case, the matter shall be remanded to the
14 department for reopening the administrative record.

15 (2) ~~If~~ WHEN additional information could not affect the <—
16 outcome of the case, the department's enforcement of its
17 order or its recovery of response costs shall be limited only
18 as to that portion of the response action found to be
19 arbitrary and capricious or the result of a procedural error
20 which would have significantly changed the action.

21 SECTION 509. PRIVATE CAUSE OF ACTION. <—

22 ANY PERSON RESPONSIBLE FOR A RELEASE OF A HAZARDOUS SUBSTANCE
23 UNDER THIS ACT SHALL ALSO BE STRICTLY LIABLE FOR ANY PERSONAL
24 INJURY OR PROPERTY DAMAGE RESULTING FROM THE RELEASE OR FOR ANY
25 RESPONSE COSTS INCURRED WHICH ARE NOT INCONSISTENT WITH A
26 DEPARTMENTAL ACTION PURSUANT TO SECTION 505.

27 Section ~~509~~ 510. Superlien. <—

28 (a) Establishment.--An award of response costs, assessment
29 of natural resources' damages or assessment of civil penalties
30 shall constitute a judgment against the ~~responsible person~~ PARTY <—

1 FOUND LIABLE. This judgment may be collected in any manner
2 provided by law. The department shall send a notice of lien to
3 the prothonotary or equivalent official of the county in which
4 the responsible party has real or personal property, setting
5 forth the amount of the award of costs, of the assessment of
6 damages and of the assessment of penalties. The prothonotary or
7 equivalent official shall promptly enter upon the civil judgment
8 or order docket the name and address of the responsible ~~person~~ <—
9 PARTY and the amount of the lien as set forth in the notice of <—
10 lien. Upon entry by the prothonotary, the lien shall attach to
11 the revenue and all real and personal property of the
12 responsible ~~person~~ PARTY, whether or not the responsible ~~person~~ <—
13 PARTY is insolvent. <—

14 (b) Registry.--There is established a central registry of
15 all liens filed under this act in the Department of State. The
16 Commonwealth shall file a notice of lien with the Secretary of
17 the Commonwealth in addition to filings with a prothonotary or
18 equivalent official.

19 (c) Priority FOR AFFECTED PROPERTY.--The notice of lien <—
20 filed under this section affecting property subject to a
21 response action shall create a lien with priority over all other
22 claims or liens filed against the property. If the property
23 comprises six dwelling units or less and is used exclusively for
24 residential purposes, this notice of lien shall not affect a
25 valid lien, right or interest in the property filed in
26 accordance with established procedure prior to the filing of
27 this notice of lien.

28 (d) ~~Time~~ PRIORITY FOR OTHER PROPERTY.--The notice of lien <—
29 filed under this section affecting property of a responsible
30 person which is not the subject of a response action shall have

1 priority from the day of the filing of the notice of the lien
2 over all other claims and liens filed against the property; but
3 it shall not affect any valid lien, right, or interest in the
4 property filed in accordance with established procedure prior to
5 the filing of a notice of lien under this subsection.

6 Section ~~510~~ 511. Evaluation grant. <—

7 The department may make available a reasonable sum as a grant
8 to the governing body of the host municipality of a site where
9 the department is considering a remedial ~~action~~ RESPONSE. The <—
10 host municipality shall use this sum solely to conduct an
11 independent technical evaluation of the proposed remedial ~~action~~ <—
12 RESPONSE. The grant shall not exceed \$50,000 unless the <—
13 department promulgates regulations establishing a schedule for
14 grants.

15 Section ~~511~~ 512. Acquisition of real property. <—

16 (a) General rule.--The department may acquire, by purchase,
17 lease, condemnation, donation or otherwise, real property or an
18 interest in real property that the department, in its
19 discretion, determines is needed to conduct a response action
20 under this act. The department has no duty to acquire any
21 interest in real property under this act.

22 (b) Sovereign immunity.--The Commonwealth shall not be
23 liable under this act as a result of acquiring an interest in
24 real estate under this section, nor shall anything in this act
25 be construed as a waiver of sovereign immunity OR A WAIVER UNDER <—
26 42 PA.C.S. § 8522 (RELATING TO EXCEPTIONS TO SOVEREIGN
27 IMMUNITY).

28 Section ~~512~~ 513. After closure and conveyance of property. <—

29 (a) General rule.--A site at which hazardous substances
30 remain after completion of a response action shall not be put to

1 a use which would disturb or be inconsistent with the response
2 action implemented. The department shall have the authority to
3 issue an order precluding or requiring cessation of activity at
4 a facility which the department finds would disturb or be
5 inconsistent with the response action implemented. A person
6 adversely affected by the order may file an appeal with the
7 board. The department shall require the recorder of deeds to
8 record an order under this subsection in a manner which will
9 assure its disclosure in the ordinary course of a title search
10 of the subject property. An order under this subsection, when
11 recorded, shall be binding upon subsequent purchasers.

12 (b) Acknowledgment.--The grantor, in every deed for the
13 conveyance of property on which A hazardous substance is EITHER <—
14 presently being disposed or has ever been disposed by the
15 grantor or to the grantor's actual knowledge, shall include in
16 the property description section of the deed an acknowledgment
17 of the hazardous substance disposal. The acknowledgment shall
18 include, but not be limited to, the extent the information is
19 available, ~~but~~ the surface area size and exact location of the <—
20 disposed substances and a description of the types of hazardous
21 substances contained. This property description shall be made a
22 part of the deed for all future conveyances or transfers of the
23 subject property.

24 Section ~~513~~ 514. Contracting. <—

25 (a) Authority.--The department shall have the authority to
26 enter into a contract with any person or firm to have them
27 provide assistance to the department for the implementation of
28 this act.

29 (b) ~~Bond~~ INDEMNIFICATION.--Any person who enters into a <—
30 contract with the department to assist the department in

1 implementing this ~~act~~ CHAPTER, shall not be required to <—
2 indemnify the Commonwealth or Commonwealth employees against
3 claims arising out of performance of the contract.

4 CHAPTER 7
5 LIABILITY AND COST RECOVERY

6 Section 701. Responsible person.

7 (a) General rule.--Except for releases of hazardous
8 substances expressly and specifically approved under a valid
9 Federal or State permit, a person ~~is~~ SHALL BE responsible for a <—
10 release or threatened release of a hazardous substance from a
11 site ~~if~~ WHEN any of the following apply: <—

12 (1) The person owns or operates the site:
13 (i) when a hazardous substance is placed or comes to
14 be located in or on a site;
15 (ii) when a hazardous substance is located in or on
16 the site, but before it is released; or
17 (iii) during the time of the release or threatened
18 release.

19 (2) The person GENERATES, owns or possesses a hazardous <—
20 substance and arranges by contract, agreement or otherwise
21 for the disposal, treatment or transport for disposal or
22 treatment of the hazardous substance.

23 (3) The person accepts hazardous substances for
24 transport to disposal or treatment facilities, incineration
25 vessels or sites selected by ~~the~~ SUCH person from which there <—
26 is a release or a threatened release of a hazardous substance
27 which causes the incurrence of response costs.

28 (b) Exception.--An owner of real property is not responsible
29 for the release or threatened release of a hazardous substance
30 from a site in or on the property ~~if~~ WHEN the owner demonstrates <—

1 to the department that all of the following are true:

2 (1) The real property on which the site concerned is
3 located was acquired by the owner after the disposal or
4 placement of a hazardous substance on, in or at the site.

5 (2) The owner has exercised due care with respect to the
6 hazardous substances concerned, taking into consideration the
7 characteristics of such hazardous substances, in light of all
8 relevant facts and circumstances.

9 (3) The owner took precautions against foreseeable acts
10 or omissions of any third party and the consequences that
11 could foreseeably result from such acts or omissions.

12 (4) If WHEN the owner obtained actual knowledge of the <—
13 release or threatened release of a hazardous substance at the
14 site when the owner owned the real property, AND the owner <—
15 did not subsequently transfer ownership of the property to
16 another person without disclosing such knowledge.

17 (5) The owner has not, by act or omission, caused or
18 contributed to the release or threatened release of a
19 hazardous substance which is the subject of the action
20 relating to the site.

21 (6) The owner meets one of these requirements:

22 (i) At the time the owner acquired the site, the
23 owner did not know, and had no reason to know, that a
24 hazardous substance which is the subject of the release
25 or threatened release was disposed of on, in or at the
26 site. For purposes of this subparagraph, the owner must
27 have undertaken, at the time of acquisition, all
28 appropriate inquiries into the previous ownership and
29 uses of the property consistent with good commercial or
30 customary practice in an effort to minimize liability.

1 The department shall take into account specialized
2 knowledge or experience on the part of the ~~defendant~~ <—
3 OWNER, the relationship of the purchase price to the <—
4 value of the property if uncontaminated, commonly known
5 or reasonably ascertainable information about the
6 property, the obviousness of the presence or likely
7 presence of contamination at the property and the ability
8 to detect the contamination by appropriate inspection.

9 (ii) The owner is a government entity which acquired
10 the site by escheat, through any other involuntary
11 transfer or acquisition or through the exercise of
12 eminent domain authority by purchase or condemnation.

13 (iii) The owner acquired the site by inheritance or
14 bequest.

15 (7) The only basis of liability for the landowner is
16 ownership of the land.

17 (c) Employees.--When a person who is responsible for a
18 release or threatened release under subsection (a) is an
19 employee who is acting in the scope of employment:

20 (1) The employee is subject to liability under this
21 section only ~~if~~ WHEN the employee's conduct with respect to <—
22 the hazardous substance was negligent under circumstances in
23 which the employee knew that the substance was hazardous and
24 that the employee's conduct could result in serious harm.

25 (2) The employer shall be considered a person
26 responsible for the release or threatened release and is
27 subject to liability under this section regardless of the
28 degree of care exercised by the employee.

29 Section 702. Scope of liability.

30 (a) General rule.--A person who is responsible for a release

1 or threatened release of a hazardous substance from a site as
2 specified in section 701 is strictly liable for the following
3 response costs and damages which result from the release or
4 threatened release or to which the release or threatened release
5 significantly contributes:

6 (1) Costs of interim response which are reasonable in
7 light of the information available to the department at the
8 time the interim response action was taken.

9 (2) Reasonable and necessary OR APPROPRIATE costs of <—
10 remedial ~~action~~ RESPONSE incurred by the United States, the <—
11 Commonwealth or a political subdivision.

12 (3) Other reasonable, ~~necessary~~ AND NECESSARY OR <—
13 APPROPRIATE costs of response incurred by any other person.

14 (4) Damages for injury to, destruction of, or loss of
15 natural resources within this Commonwealth or belonging to,
16 managed by, controlled by or appertaining to the United
17 States, the Commonwealth or a political subdivision. This
18 paragraph includes the reasonable costs of assessing injury,
19 destruction or loss resulting from such a release.

20 (5) The cost of a health assessment or health effects
21 study.

22 (b) Interest.--

23 (1) The amounts recoverable in an action under sections
24 507 and 1101 include interest on the amounts recoverable
25 under subsection (a). Interest shall accrue from the later
26 of:

27 (i) the date payment of a specified amount is
28 demanded in writing; or

29 (ii) the date of the expenditure concerned.

30 (2) The rate of interest on the outstanding unpaid

1 balance of the amounts recoverable under sections 507 and
2 1101 shall be ~~the same rate as is specified for interest on~~ <—
3 ~~investments of the fund under section 901.~~ 6% ANNUALLY. <—

4 (c) Contractors.--A person or company whom has entered into
5 a contract with the department to assist the department in
6 implementing this act, shall not be held liable under this act
7 for a release of a hazardous substance arising out of
8 performance of the contract ~~if~~ WHEN the release is not caused by <—
9 the contractor's negligence.

10 (d) Commonwealth employees.--Persons employed by the
11 Commonwealth shall not be held liable for a release of a
12 hazardous substance or contaminant, or any other damages
13 incurred, as a result of actions or omissions occurring when
14 acting in their official capacity.

15 Section 703. Defenses to liability.

16 (a) Grounds.--There shall be no liability under section 701
17 for a person otherwise liable who can establish, that the
18 release or threat of release of a hazardous substance and the
19 damages resulting therefrom were caused solely by any of the
20 following:

21 (1) An act of God.

22 (2) An act of war.

23 (3) An act or omission of a third party other than an
24 employee, agent or contractor of the responsible person or
25 one whose act or omission occurs in connection with an
26 agreement or contractual relationship, if the responsible
27 person:

28 (i) exercised due care with respect to the hazardous
29 substance concerned, taking into consideration the
30 characteristics of such hazardous substance, in light of

1 all relevant facts and circumstances; and

2 (ii) took precautions against foreseeable acts or
3 omissions of any such third party and the consequences
4 that could foreseeably result from those acts or
5 omissions.

6 (b) Assistance.--Except as provided in subsection (c), no
7 person shall be liable under this act for costs or damages as a
8 result of actions taken or omitted in the course of rendering
9 care, assistance or advice in accordance with this act or at the
10 direction of the department with respect to an incident creating
11 a danger to public health, safety or welfare or the environment
12 as a result of a release of a hazardous substance or contaminant
13 or the threat thereof. This subsection does not preclude
14 liability for costs or damages as the result of negligence on
15 the part of the person.

16 (c) Government action.--No State agency or political
17 subdivision shall be liable under this act for costs or damages
18 as a result of actions taken by the State agency or political
19 subdivision in response to a release or threatened release of a
20 hazardous substance generated by or from a site.

21 (d) Burden of proof.--A person claiming a defense provided
22 in this section has the burden to prove all elements of the
23 defense by a preponderance of the evidence.

24 Section 704. Subrogation and insurance.

25 (a) General rule.--An owner or operator of a facility or any
26 other person who may be liable under section 701 may not avoid
27 that liability by means of a conveyance of a right, title or
28 interest in real property, or by an indemnification, a hold
29 harmless agreement, or a similar agreement.

30 (b) Construction.--Nothing in this section shall be

1 construed to do any of the following:

2 (1) Prohibit a party who may be liable under section 701
3 from entering into an agreement by which that party is
4 insured, held harmless or indemnified for part or all of that
5 liability.

6 (2) Prohibit the enforcement of an insurance, a hold
7 harmless or an indemnification agreement.

8 (3) Bar a cause of action brought by a party who may be
9 liable under section 701 or by an insurer or guarantor,
10 whether by right of subrogation or otherwise.

11 Section 705. Contribution.

12 (a) General rule.--A person may seek contribution from a
13 responsible person under section 701, during or following a
14 civil action under sections 507 or 1101. Claims for contribution
15 shall be brought in accordance with this section and the
16 Pennsylvania Rules of Civil Procedure. Nothing in this section
17 shall diminish the right of a person to bring an action for
18 contribution in the absence of a civil action under sections 507
19 or 1101. A liable party's right to contribution shall be limited
20 to the excess of consideration paid to the department over that
21 party's allocated share of liability as determined under this
22 section.

23 (b) Allocation.--~~After liability to the department is~~ <—
24 ~~determined under section 702, the court or the board shall enter~~
25 ~~judgment allocating liability among the liable parties in a~~
26 ~~civil action under sections 507 or 1101 in which a liable party~~
27 ~~seeks a contribution claim.~~ IN A CIVIL ACTION IN WHICH A LIABLE <—
28 PARTY SEEKS A CONTRIBUTION CLAIM, THE COURT, OR THE BOARD IN AN
29 ACTION BROUGHT UNDER SECTION 507 OR 1101, SHALL ENTER JUDGMENT
30 ALLOCATING LIABILITY AMONG THE LIABLE PARTIES. Allocation shall

1 not affect the parties' liability to the department. The burden
2 is on each party to show how liability should be allocated. In
3 determining allocation under this section, the court or the
4 board may use such equitable factors as it deems appropriate.

5 The trier of fact shall consider the following factors:

6 (1) The extent to which each party's contribution to the
7 release of a hazardous substance can be distinguished.

8 (2) The amount of hazardous substance involved.

9 (3) The degree of toxicity of the hazardous substance
10 involved.

11 (4) The degree of involvement of and care exercised by
12 each party in manufacturing, treating, transporting, and
13 disposing of the hazardous substance.

14 (5) The degree of cooperation by each party with
15 Federal, State, or local officials to prevent harm to the
16 public health or the environment.

17 (6) Knowledge by each party of the hazardous nature of
18 the substance.

19 (c) Settlements.--

20 (1) ~~If~~ WHEN the department enters into an administrative ~~or~~
21 or judicially approved settlement of a civil action brought ~~or~~
22 under sections 507 or 1101, the amount of the department's
23 claim under that civil action shall be reduced by the amount
24 of the consideration paid to the department or the allocated
25 amount of the settling party's liability, whichever is less.
26 A settlement shall not otherwise affect the department's
27 claim under sections 507 or 1101.

28 (2) A person who has resolved its liability to the
29 department in an administrative or judicially approved
30 settlement shall not be liable for claims for contribution

1 regarding matters addressed in the settlement unless the
2 terms of the settlement provide otherwise. The settling party
3 may seek contribution from a nonsettling party to recover the
4 consideration paid in excess of its allocated share of
5 liability as determined by the court or the board.

6 (3) If WHEN the department has obtained less than <—
7 complete relief from a person who has resolved its liability
8 to the department in an administrative or judicially approved
9 settlement, the department may bring an action against a
10 person who has not so resolved its liability. A nonsettling
11 party may seek contribution from any other nonsettling party
12 or any settling party as allowed under this section.

13 (D) FEDERAL FUNDS; COOPERATIVE AGREEMENTS.--THE COMMONWEALTH <—
14 SHALL ACTIVELY SEEK TO OBTAIN FEDERAL FUNDS TO WHICH IT IS
15 ENTITLED UNDER THE FEDERAL SUPERFUND ACT AND MAY TAKE ACTIONS
16 NECESSARY TO ENTER INTO CONTRACTUAL OR COOPERATIVE AGREEMENTS
17 UNDER SECTION 104(C)(3) AND (D)(1) OF THE FEDERAL SUPERFUND ACT
18 (42 U.S.C. § 9604(C)(3) AND (D)(A)).

19 CHAPTER 9

20 FUND

21 ~~Section 901. Fund.~~ <—

22 ~~(a) Establishment. There is established a separate account~~
23 ~~in the State Treasury to be known as the Hazardous Sites Cleanup~~
24 ~~Fund, which shall be a special fund administered by the~~
25 ~~department.~~

26 ~~(b) Appropriation. Money placed in the fund is appropriated~~
27 ~~to the department for the purposes set forth in this section.~~
28 ~~The department shall submit to the Governor for approval~~
29 ~~estimates of amounts to be expended under this act.~~

30 ~~(c) Funds. Money from the following sources shall be~~

1 ~~deposited in the fund:~~

2 ~~(1) Proceeds from hazardous waste transportation and~~
3 ~~management fees imposed by section 903, including interest~~
4 ~~and penalties.~~

5 ~~(2) Money recovered by the Commonwealth under sections~~
6 ~~507 and 1101.~~

7 ~~(3) Interest attributable to investment of money~~
8 ~~deposited in the fund.~~

9 ~~(4) Money appropriated by the General Assembly for~~
10 ~~implementation of this act.~~

11 ~~(5) Money recovered by the Commonwealth pursuant to a~~
12 ~~cost recovery action under the Federal Superfund Act.~~

13 ~~(6) Money received from the Federal Government under the~~
14 ~~Federal Superfund Act.~~

15 ~~Section 902. Expenditures from fund.~~

16 ~~The department may spend money in the fund for the following~~
17 ~~purposes:~~

18 ~~(1) Preparation by the department or its agents for~~
19 ~~taking response actions, which include emergency actions,~~
20 ~~investigations, testing activities, contracting, excavation,~~
21 ~~administrative costs and enforcement efforts relating to the~~
22 ~~release or threatened release of hazardous substances or~~
23 ~~contaminants.~~

24 ~~(2) Response actions taken or authorized by the~~
25 ~~department, including related enforcement and compliance~~
26 ~~efforts and the payment of the State share of the cost of~~
27 ~~remedial actions which may be carried out under an agreement~~
28 ~~or contract with the Federal Government pursuant to the~~
29 ~~Federal Superfund Act.~~

30 ~~(3) Participation in response activities to the extent~~

1 ~~the department, in its discretion, finds necessary or~~
2 ~~appropriate, to carry out the purposes of this act. The~~
3 ~~department may also use the fund to promote voluntary~~
4 ~~cleanups by participating in mixed funding settlements with~~
5 ~~potentially responsible persons.~~

6 ~~(4) Emergency actions, including response to spills and~~
7 ~~other uncontrolled releases and their cleanup.~~

8 ~~(5) Reimbursement to a private party for expenditures~~
9 ~~made from the effective date of this act to provide~~
10 ~~alternative water supplies deemed necessary by the department~~
11 ~~to protect the public health from contamination resulting~~
12 ~~from the release of a hazardous substance or contaminant.~~

13 ~~(6) Replacement of public or private water supplies~~
14 ~~deemed necessary by the department to protect the public~~
15 ~~health from contamination resulting from the release of a~~
16 ~~hazardous substance or contaminant.~~

17 ~~(7) Rehabilitation, restoration or acquisition of~~
18 ~~natural resources to remedy injuries or losses to natural~~
19 ~~resources resulting from the release of a hazardous substance~~
20 ~~or contaminant.~~

21 ~~(8) Providing grants to local governments for purchase~~
22 ~~of emergency response equipment and for emergency response~~
23 ~~training.~~

24 ~~(9) Developing and revising a State hazardous waste plan~~
25 ~~that includes all of the following:~~

26 ~~(i) An inventory and evaluation of the sources of~~
27 ~~hazardous wastes in this Commonwealth, including type and~~
28 ~~quantities.~~

29 ~~(ii) An inventory and evaluation of current~~
30 ~~hazardous waste management practices in this~~

Commonwealth.

~~(iii) A determination of future hazardous waste facility needs, including the existing and projected generation of hazardous wastes in this Commonwealth and, when the department, in its discretion, finds such information to be available, the projected generation outside this Commonwealth of hazardous wastes expected to be transported into this Commonwealth for storage, treatment or disposal.~~

~~(iv) An analysis of methods, incentives or technologies for source reduction, detoxification reuse and recovery of hazardous waste and a strategy for implementing such methods, incentives and technologies.~~

~~(10) Grants by the department to demonstrate alternatives to land disposal of hazardous waste, including reduction, separation, pretreatment, processing and resource recovery for education of persons involved in regulating and handling hazardous substances.~~

~~(11) Intervention and environmental mediation to facilitate cleanup of hazardous sites.~~

~~(12) State matching funds required under the Federal Superfund Act for the response of a site on the National Priority List established under the Federal Superfund Act.~~

~~(13) Studies of potential or actual human health effects of the release or potential release of hazardous substances at individual sites, including but not limited to studies of potential pathways of human exposure, the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected health effects associated with identified hazardous substances and available~~

1 ~~recommended exposure or tolerance limits for the hazardous~~
2 ~~substances, the comparison of existing morbidity and~~
3 ~~mortality data on diseases that may be associated with the~~
4 ~~observed levels of exposure and epidemiological and clinical~~
5 ~~studies.~~

6 ~~(14) Grants provided to municipalities under section~~
7 ~~510.~~

8 ~~(15) Reimbursement of expenses under section 505(f).~~
9 ~~Section 903. Hazardous waste transportation and management~~
10 ~~fees.~~

11 ~~(a) Assessment. Fees shall be assessed for the~~
12 ~~transportation and management of hazardous waste in accordance~~
13 ~~with this section.~~

14 ~~(b) General rule. A transporter of hazardous waste shall be~~
15 ~~assessed a transportation fee for hazardous waste transported~~
16 ~~within this Commonwealth, whether originating in State or out of~~
17 ~~State. For purposes of computing the fee, each shipment to or~~
18 ~~from a hazardous waste facility, or between two hazardous waste~~
19 ~~facilities, shall be considered a discrete transportation~~
20 ~~activity and shall be subject to the fee.~~

21 ~~(c) Types.~~

22 ~~(1) The operator of a hazardous waste management~~
23 ~~facility shall be assessed a management fee for hazardous~~
24 ~~waste stored, treated or disposed of at a facility. For~~
25 ~~purposes of this paragraph, incineration shall be considered~~
26 ~~a form of treatment rather than disposal.~~

27 ~~(2) A generator who disposes of hazardous waste at the~~
28 ~~site at which it was generated or at a captive disposal~~
29 ~~facility shall be assessed a fee for all hazardous waste~~
30 ~~disposed.~~

~~(3) No management fee shall be assessed for hazardous waste storage or treatment at the site at which it was generated or at a captive facility.~~

~~(d) Rates. The following rates shall apply unless the secretary adjusts the fee schedule in accordance with subsection (f):~~

~~(1) Transportation of hazardous waste — \$3 per ton.~~

~~(2) Storage of hazardous waste at a hazardous waste management facility — \$2 per ton.~~

~~(3) Treatment or incineration of hazardous waste at a hazardous waste management facility — \$5 per ton.~~

~~(4) Disposal of hazardous waste at a commercial disposal facility — \$12 per ton.~~

~~(5) Disposal of hazardous waste on the site at which it was generated or at a captive facility — \$8 per ton.~~

~~(e) Cumulative nature. —~~

~~(1) The transportation and management fees are cumulative.~~

~~(2) If several management activities occur at the same facility, the operator shall be assessed only one management fee, which shall be the highest rate of the management activities involved. The following are examples:~~

~~(i) A transporter who delivers hazardous waste to a disposal facility which treats the waste prior to disposal will be assessed a \$3 transportation fee, and the operator will be assessed for disposal at \$12 a ton.~~

~~(ii) If treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator shall be assessed the disposal management fee of \$12 for the waste requiring disposal~~

1 ~~after treatment or incineration and the treatment~~
2 ~~management fee of \$5 for the rest of the waste which~~
3 ~~underwent treatment.~~

4 ~~(f) Adjustments. The secretary may, by regulation, adjust~~
5 ~~the rates as appropriate in accordance with the following~~
6 ~~formula:~~

7 ~~(1) The fees shall be calculated and rates adjusted to~~
8 ~~collect projected annual revenues of \$5,000,000 plus the~~
9 ~~reasonably projected administrative cost of collecting the~~
10 ~~fee.~~

11 ~~(2) Management fee rates shall encourage preferred~~
12 ~~hazardous waste management practices by establishing four fee~~
13 ~~categories with graduated fee schedule. The fee categories~~
14 ~~from lowest rate per ton to highest rate per ton shall be:~~

15 ~~(i) Hazardous waste stored at a hazardous waste~~
16 ~~management facility.~~

17 ~~(ii) Hazardous waste treated or incinerated at a~~
18 ~~hazardous waste management facility.~~

19 ~~(iii) Hazardous waste disposed of at a hazardous~~
20 ~~waste disposal facility at the site where the waste was~~
21 ~~generated or at a captive disposal facility.~~

22 ~~(iv) Hazardous waste disposed of at a commercial~~
23 ~~hazardous waste disposal facility.~~

24 ~~(3) No fee shall be charged for hazardous wastes which~~
25 ~~are recycled or reused in accordance with the department's~~
26 ~~regulations.~~

27 ~~(4) The department may exclude small quantity generators~~
28 ~~from the fees.~~

29 SECTION 901. FUND.

30 (A) ESTABLISHMENT.--THE HAZARDOUS SITES CLEANUP FUND, AS

1 ESTABLISHED IN SECTION 602.3 OF THE ACT OF MARCH 4, 1971 (P.L.6,
2 NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, SHALL BE A SPECIAL
3 FUND ADMINISTERED BY THE DEPARTMENT AND SHALL NOT BE SUBJECT TO
4 THE ACT OF JULY 13, 1987 (P.L.340, NO.64), ENTITLED "AN ACT
5 PROVIDING FOR THE ESTABLISHMENT, FUNDING AND OPERATION OF A
6 SPECIAL RESTRICTED RECEIPT ACCOUNT WITHIN THE GENERAL FUND TO
7 SUPPORT THE ESTABLISHMENT AND OPERATION OF A STATEWIDE JUDICIAL
8 COMPUTER SYSTEM; PROVIDING FOR ANNUAL APPROPRIATIONS FROM THE
9 RESTRICTED FUNDS; AND PROVIDING FOR THE PAYMENT OF A PORTION OF
10 ALL FINES, FEES AND COSTS COLLECTED BY THE JUDICIARY INTO THE
11 RESTRICTED RECEIPT ACCOUNT."

12 (B) APPROPRIATION.--MONEY PLACED IN THE FUND IS APPROPRIATED
13 TO THE DEPARTMENT FOR THE PURPOSES SET FORTH IN THIS SECTION.
14 THE DEPARTMENT SHALL ANNUALLY SUBMIT TO THE GOVERNOR FOR
15 APPROVAL ESTIMATES OF AMOUNTS TO BE EXPENDED UNDER THIS ACT.

16 (C) FUNDS.--MONEY FROM THE FOLLOWING SOURCES SHALL BE
17 DEPOSITED IN THE FUND:

18 (1) PROCEEDS FROM HAZARDOUS WASTE TRANSPORTATION AND
19 MANAGEMENT FEES IMPOSED BY SECTION 903, INCLUDING INTEREST
20 AND PENALTIES.

21 (2) MONEY RECOVERED BY THE COMMONWEALTH UNDER SECTIONS
22 507 AND 1101.

23 (3) INTEREST ATTRIBUTABLE TO INVESTMENT OF MONEY
24 DEPOSITED IN THE FUND.

25 (4) MONEY APPROPRIATED BY THE GENERAL ASSEMBLY FOR
26 IMPLEMENTATION OF THIS ACT.

27 (5) MONEY RECOVERED BY THE COMMONWEALTH PURSUANT TO A
28 COST RECOVERY ACTION UNDER THE FEDERAL SUPERFUND ACT.

29 (6) MONEY RECEIVED FROM THE FEDERAL GOVERNMENT UNDER THE
30 FEDERAL SUPERFUND ACT.

(7) ALL REVENUES COLLECTED PURSUANT TO SECTION 602.3 OF
THE TAX REFORM CODE OF 1971.

(8) ALL FEES COLLECTED UNDER SECTIONS 903 AND 904.

(9) FUNDS AVAILABLE FROM APPROPRIATIONS FOR THE SAME AND
SIMILAR PURPOSES.

SECTION 902. EXPENDITURES FROM FUND.

(A) PURPOSES.--THE DEPARTMENT SHALL EXPEND MONEY IN THE FUND
FOR PURPOSES INCLUDING, BUT NOT LIMITED TO:

(1) PREPARATION BY THE DEPARTMENT OR ITS AGENTS FOR
TAKING RESPONSE ACTIONS, WHICH INCLUDE EMERGENCY ACTIONS,
INVESTIGATIONS, TESTING ACTIVITIES, CONTRACTING, EXCAVATION,
ADMINISTRATIVE COSTS AND ENFORCEMENT EFFORTS RELATING TO THE
RELEASE OR THREATENED RELEASE OF HAZARDOUS SUBSTANCES OR
CONTAMINANTS.

(2) RESPONSE ACTIONS TAKEN OR AUTHORIZED BY THE
DEPARTMENT, INCLUDING RELATED ENFORCEMENT AND COMPLIANCE
EFFORTS AND THE PAYMENT OF THE STATE SHARE OF THE COST OF
REMEDIAL ACTIONS WHICH MAY BE CARRIED OUT UNDER AN AGREEMENT
OR CONTRACT WITH THE FEDERAL GOVERNMENT PURSUANT TO THE
FEDERAL SUPERFUND ACT.

(3) PARTICIPATION IN RESPONSE ACTIVITIES TO THE EXTENT
THE DEPARTMENT, IN ITS DISCRETION, FINDS NECESSARY OR
APPROPRIATE, TO CARRY OUT THE PURPOSES OF THIS ACT. THE
DEPARTMENT MAY ALSO USE THE FUND TO PROMOTE VOLUNTARY
CLEANUPS BY PARTICIPATING IN MIXED FUNDING SETTLEMENTS WITH
POTENTIALLY RESPONSIBLE PERSONS.

(4) EMERGENCY ACTIONS, INCLUDING RESPONSE TO SPILLS AND
OTHER UNCONTROLLED RELEASES AND THEIR CLEANUP.

(5) REIMBURSEMENT TO A PRIVATE PARTY FOR EXPENDITURES
MADE FROM THE EFFECTIVE DATE OF THIS ACT TO PROVIDE

1 ALTERNATIVE WATER SUPPLIES DEEMED NECESSARY BY THE DEPARTMENT
2 TO PROTECT THE PUBLIC HEALTH FROM CONTAMINATION RESULTING
3 FROM THE RELEASE OF A HAZARDOUS SUBSTANCE OR CONTAMINANT.

4 (6) REPLACEMENT OF PUBLIC OR PRIVATE WATER SUPPLIES
5 DEEMED NECESSARY BY THE DEPARTMENT TO PROTECT THE PUBLIC
6 HEALTH FROM CONTAMINATION RESULTING FROM THE RELEASE OF A
7 HAZARDOUS SUBSTANCE OR CONTAMINANT.

8 (7) REHABILITATION, RESTORATION OR ACQUISITION OF
9 NATURAL RESOURCES TO REMEDY INJURIES OR LOSSES TO NATURAL
10 RESOURCES RESULTING FROM THE RELEASE OF A HAZARDOUS SUBSTANCE
11 OR CONTAMINANT.

12 (8) GRANTS BY THE DEPARTMENT TO DEMONSTRATE ALTERNATIVES
13 TO LAND DISPOSAL OF HAZARDOUS WASTE, INCLUDING REDUCTION,
14 SEPARATION, PRETREATMENT, PROCESSING AND RESOURCE RECOVERY
15 FOR EDUCATION OF PERSONS INVOLVED IN REGULATING AND HANDLING
16 HAZARDOUS SUBSTANCES.

17 (9) INTERVENTION AND ENVIRONMENTAL MEDIATION TO
18 FACILITATE CLEANUP OF HAZARDOUS SITES.

19 (10) STATE MATCHING FUNDS REQUIRED UNDER THE FEDERAL
20 SUPERFUND ACT FOR THE RESPONSE OF A SITE ON THE NATIONAL
21 PRIORITY LIST ESTABLISHED UNDER THE FEDERAL SUPERFUND ACT.

22 (11) STUDIES OF POTENTIAL OR ACTUAL HUMAN HEALTH EFFECTS
23 FROM THE RELEASE OR POTENTIAL RELEASE OF HAZARDOUS SUBSTANCES
24 AT INDIVIDUAL SITES, INCLUDING, BUT NOT LIMITED TO, STUDIES
25 OF POTENTIAL PATHWAYS OF HUMAN EXPOSURE, THE SIZE AND
26 POTENTIAL SUSCEPTIBILITY OF THE COMMUNITY WITHIN THE LIKELY
27 PATHWAYS OF EXPOSURE, THE COMPARISON OF EXPECTED HEALTH
28 EFFECTS ASSOCIATED WITH IDENTIFIED HAZARDOUS SUBSTANCES AND
29 AVAILABLE RECOMMENDED EXPOSURE OR TOLERANCE LIMITS FOR THE
30 HAZARDOUS SUBSTANCES, THE COMPARISON OF EXISTING MORBIDITY

1 AND MORTALITY DATA ON DISEASES THAT MAY BE ASSOCIATED WITH
2 THE OBSERVED LEVELS OF EXPOSURE AND EPIDEMIOLOGICAL AND
3 CLINICAL STUDIES.

4 (12) GRANTS PROVIDED TO MUNICIPALITIES UNDER SECTION
5 510.

6 (13) REIMBURSEMENT OF EXPENSES UNDER SECTION 505(F).

7 (B) ANNUAL REPORT.--BEGINNING OCTOBER 1, 1988, AND ANNUALLY
8 THEREAFTER, THE SECRETARY SHALL TRANSMIT TO THE GENERAL ASSEMBLY
9 A REPORT CONCERNING ACTIVITIES AND EXPENDITURES MADE PURSUANT TO
10 THIS CHAPTER FOR THE PRECEDING STATE FISCAL YEAR. INCLUDED IN
11 THIS REPORT SHALL BE INFORMATION CONCERNING ALL REVENUES AND
12 RECEIPTS DEPOSITED INTO THE HAZARDOUS SITE CLEANUP FUND, ALL
13 EXPENDITURES, INCLUDING, BUT NOT LIMITED TO, EXPENDITURES FOR
14 PERSONNEL, OPERATING EXPENSES, THE PURCHASE OF FIXED ASSETS,
15 GRANTS AND SUBSIDIES, OTHER MAJOR OBJECTS OF EXPENDITURES WHERE
16 APPROPRIATE, AND INFORMATION DETAILING THE DEPARTMENT'S EFFORTS
17 TO OBTAIN CONTRIBUTIONS FOR RESPONSE ACTIONS FROM POTENTIALLY
18 RESPONSIBLE PARTIES. THE SECRETARY SHALL ALSO SUPPLY INFORMATION
19 ON BOTH AUTHORIZED AND FILLED COMPLEMENT AND INFORMATION
20 CONCERNING PROGRAM ACTIVITIES, INCLUDING, BUT NOT LIMITED TO:

21 (1) THE NUMBER OF RESPONSE ACTIONS INITIATED AND
22 COMPLETED, AND THE COSTS INCURRED, IN THE AGGREGATE AND FOR
23 EACH ACTION.

24 (2) THE NUMBER OF PUBLIC OR PRIVATE WATER SUPPLY
25 REPLACEMENTS, AND THE COSTS INCURRED.

26 (3) EXPENDITURES FOR THE REHABILITATION, RESTORATIONS OR
27 ACQUISITION OF NATURAL RESOURCES.

28 (4) EXPENDITURES FOR INTERVENTION AND ENVIRONMENTAL
29 MEDIATION.

30 (5) THE NUMBER OF FEDERAL SUPERFUND SITES IN WHICH THE

COMMONWEALTH PARTICIPATES IN RESPONSE ACTIVITIES, AND THE
STATE MATCHING COSTS INCURRED.

(6) THE NUMBER OF HEALTH EFFECT STUDIES UNDERTAKEN, AND
THE COSTS INCURRED.

(7) THE NUMBER OF GRANTS PROVIDED TO MUNICIPALITIES
UNDER SECTION 510, AND THE AMOUNTS GRANTED.

(8) THE NUMBER OF REIMBURSEMENTS OF EXPENSES UNDER
SECTION 505(F), AND THE AMOUNTS REIMBURSED.

(C) HEALTH STUDY REPORT.--UPON COMPLETION OF HEALTH EFFECT
STUDIES PERFORMED PURSUANT TO SUBSECTION (A)(11), COPIES OF THE
FINDINGS AND ANY RECOMMENDATIONS OF SUCH STUDIES SHALL BE
TRANSMITTED TO THE GENERAL ASSEMBLY AND THE GOVERNING BODIES OF
THE AFFECTED COMMUNITIES. EXCEPT FOR PERSONAL HEALTH RECORDS OF
INDIVIDUALS, SUCH STUDIES SHALL BE PUBLIC INFORMATION, AND THE
DEPARTMENT SHALL PROVIDE COPIES TO ANY PERSON UPON REQUEST.
SECTION 903. HAZARDOUS WASTE TRANSPORTATION AND MANAGEMENT FEES.

(A) ASSESSMENT.--FEES SHALL BE ASSESSED FOR THE
TRANSPORTATION AND MANAGEMENT OF HAZARDOUS WASTE IN ACCORDANCE
WITH THIS SECTION.

(B) TRANSPORTATION FEE.--A TRANSPORTER OF HAZARDOUS WASTE
SHALL BE ASSESSED A TRANSPORTATION FEE FOR HAZARDOUS WASTE
TRANSPORTED WITHIN THIS COMMONWEALTH, WHETHER ORIGINATING IN-
STATE OR OUT-OF-STATE. FOR PURPOSES OF COMPUTING THE FEE, EACH
SHIPMENT, REQUIRING THE USE OF A HAZARDOUS WASTE MANIFEST, TO OR
FROM A HAZARDOUS WASTE FACILITY, OR BETWEEN TWO HAZARDOUS WASTE
FACILITIES, SHALL BE CONSIDERED A DISCRETE TRANSPORTATION
ACTIVITY AND SHALL BE SUBJECT TO THE FEE.

(C) MANAGEMENT FEE.--

(1) THE OPERATOR OF A HAZARDOUS WASTE MANAGEMENT
FACILITY SHALL BE ASSESSED A MANAGEMENT FEE FOR HAZARDOUS

1 WASTE STORED, TREATED OR DISPOSED OF AT A FACILITY. NO
2 MANAGEMENT FEE SHALL BE CHARGED FOR HAZARDOUS WASTES WHICH
3 ARE REUSED OR RECYCLED IN ACCORDANCE WITH DEPARTMENT
4 REGULATIONS. FOR PURPOSES OF THIS PARAGRAPH, INCINERATION
5 SHALL BE CONSIDERED A FORM OF TREATMENT RATHER THAN DISPOSAL.

6 (2) A GENERATOR WHO DISPOSES OF HAZARDOUS WASTE AT THE
7 SITE AT WHICH IT WAS GENERATED OR AT A CAPTIVE DISPOSAL
8 FACILITY SHALL BE ASSESSED A FEE FOR ALL HAZARDOUS WASTE
9 DISPOSED.

10 (3) NO MANAGEMENT FEE SHALL BE ASSESSED FOR HAZARDOUS
11 WASTE STORAGE OR TREATMENT AT THE SITE AT WHICH IT WAS
12 GENERATED OR AT A CAPTIVE FACILITY.

13 (4) NO MANAGEMENT FEE SHALL BE CHARGED FOR WASTE STORED
14 PRIOR TO RECYCLING AT A LEGITIMATE COMMERCIAL RECYCLING
15 FACILITY.

16 (D) RATES.--THE FOLLOWING RATES SHALL APPLY UNLESS THE
17 SECRETARY ADJUSTS THE FEE SCHEDULE IN ACCORDANCE WITH SUBSECTION
18 (G):

19 (1) TRANSPORTATION OF HAZARDOUS WASTE - \$3 PER TON.

20 (2) STORAGE OF HAZARDOUS WASTE AT A COMMERCIAL HAZARDOUS
21 WASTE MANAGEMENT FACILITY - \$2 PER TON.

22 (3) TREATMENT OR INCINERATION OF HAZARDOUS WASTE AT A
23 COMMERCIAL HAZARDOUS WASTE MANAGEMENT FACILITY - \$5 PER TON.

24 (4) DISPOSAL OF HAZARDOUS WASTE AT A COMMERCIAL DISPOSAL
25 FACILITY - \$12 PER TON.

26 (5) DISPOSAL OF HAZARDOUS WASTE ON THE SITE AT WHICH IT
27 WAS GENERATED OR AT A CAPTIVE FACILITY - \$8 PER TON.

28 (E) CONVERSION.--IN THE EVENT THAT ANY HAZARDOUS WASTE IS
29 MEASURED IN UNITS OTHER THAN TONNAGE, THE FEE SHALL BE LEVIED ON
30 A CONVERSION TO TONNAGE DETERMINED BY THE DEPARTMENT.

(F) CUMULATIVE NATURE.--

(1) THE TRANSPORTATION AND MANAGEMENT FEES ARE CUMULATIVE.

(2) WHEN SEVERAL MANAGEMENT ACTIVITIES OCCUR AT THE SAME FACILITY, THE OPERATOR SHALL BE ASSESSED ONLY ONE MANAGEMENT FEE, WHICH SHALL BE THE HIGHEST RATE OF THE MANAGEMENT ACTIVITIES INVOLVED.

(3) HOWEVER, WHEN TREATMENT OR INCINERATION PRIOR TO DISPOSAL RESULTS IN A REDUCTION IN THE TONNAGE OF WASTE REQUIRING DISPOSAL, THE OPERATOR SHALL BE ASSESSED THE DISPOSAL MANAGEMENT FEE FOR THE WASTE REQUIRING DISPOSAL AFTER TREATMENT OR INCINERATION AND THE TREATMENT MANAGEMENT FEE FOR THE REST OF THE WASTE WHICH UNDERWENT TREATMENT.

(G) ADJUSTMENTS.--THE SECRETARY MAY, BY REGULATION, ADJUST THE RATES AS APPROPRIATE IN ACCORDANCE WITH THE FOLLOWING FORMULA:

(1) THE FEES SHALL BE CALCULATED AND RATES ADJUSTED TO COLLECT PROJECTED ANNUAL REVENUES OF \$5,000,000 PLUS THE REASONABLY PROJECTED ADMINISTRATIVE COST OF COLLECTING THE FEE.

(2) MANAGEMENT FEE RATES SHALL ENCOURAGE PREFERRED HAZARDOUS WASTE MANAGEMENT PRACTICES BY ESTABLISHING FOUR FEE CATEGORIES WITH GRADUATED FEE SCHEDULE. THE FEE CATEGORIES FROM LOWEST RATE PER TON TO HIGHEST RATE PER TON SHALL BE:

(I) HAZARDOUS WASTE STORED AT A HAZARDOUS WASTE MANAGEMENT FACILITY.

(II) HAZARDOUS WASTE TREATED OR INCINERATED AT A HAZARDOUS WASTE MANAGEMENT FACILITY.

(III) HAZARDOUS WASTE DISPOSED OF AT A HAZARDOUS WASTE DISPOSAL FACILITY AT THE SITE WHERE THE WASTE WAS

1 GENERATED OR AT A CAPTIVE DISPOSAL FACILITY.

2 (IV) HAZARDOUS WASTE DISPOSED OF AT A COMMERCIAL
3 HAZARDOUS WASTE DISPOSAL FACILITY.

4 (3) NO FEE SHALL BE CHARGED FOR HAZARDOUS WASTES WHICH
5 ARE RECYCLED OR REUSED IN ACCORDANCE WITH THE DEPARTMENT'S
6 REGULATIONS.

7 (4) THE DEPARTMENT MAY EXCLUDE SMALL QUANTITY GENERATORS
8 FROM THE FEES.

9 (H) ANNUAL DISPOSAL REPORT.--

10 (1) BY MARCH 1, 1989, AND BY MARCH 1 OF EACH YEAR
11 THEREAFTER, A PERSON WHO SUBMITTED FOR OFF-SITE DISPOSAL OR
12 WHO DISPOSED OF ON SITE MORE THAN 500 POUNDS OF HAZARDOUS
13 WASTE IN THIS COMMONWEALTH DURING THE PRECEDING CALENDAR YEAR
14 SHALL REPORT TO THE DEPARTMENT THE TOTAL AMOUNT OF HAZARDOUS
15 WASTE WHICH THAT PERSON HAS SUBMITTED FOR DISPOSAL OR
16 DISPOSED OF IN THIS COMMONWEALTH DURING THE PRECEDING
17 CALENDAR YEAR. THIS SUBSECTION DOES NOT APPLY TO A PERSON WHO
18 IS ALREADY PROVIDING THIS INFORMATION TO THE DEPARTMENT.

19 (2) THE TOTAL AMOUNT OF HAZARDOUS WASTE REPORTED UNDER
20 THIS SUBSECTION SHALL BE THE TOTAL WEIGHT, MEASURED IN TONS,
21 OF ALL COMPONENTS OF THE WASTE IN THE FORM IN WHICH THE WASTE
22 EXISTED AT THE TIME OF SUBMISSION FOR DISPOSAL OR AT THE TIME
23 OF DISPOSAL.

24 (3) A PERSON WHO FAILS TO FILE THE REPORT REQUIRED BY
25 THIS SUBSECTION SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO
26 EXCEED \$500 FOR EACH DAY THE VIOLATION CONTINUES. A PERSON
27 WHO KNOWINGLY FAILS TO FILE THE REPORT COMMITS A MISDEMEANOR
28 OF THE THIRD DEGREE AND SHALL, UPON CONVICTION, BE SENTENCED
29 TO PAY A FINE OF NOT MORE THAN \$25,000 OR TO IMPRISONMENT FOR
30 NOT MORE THAN ONE YEAR, OR BOTH.

1 SECTION 904. CONTINUING CLEANUP COSTS.

2 (A) LEVY.--BEGINNING IN THE 1991-1992 STATE FISCAL YEAR, THE
3 SECRETARY SHALL LEVY A FEE ON EVERY TON OF HAZARDOUS WASTE
4 GENERATED WITHIN THIS COMMONWEALTH. FOR THE 1991-1992 STATE
5 FISCAL YEAR, THE SECRETARY SHALL DEVELOP A FEE STRUCTURE
6 DESIGNED TO PRODUCE TOTAL REVENUE EQUAL TO ONE-HALF OF THE
7 AMOUNT COLLECTED DURING THE 1990-1991 STATE FISCAL YEAR UNDER
8 SECTION 602.3 OF THE ACT OF MARCH 4, 1971 (P.L.6, NO.2), KNOWN
9 AS THE TAX REFORM CODE OF 1971. BEGINNING IN THE 1992-1993 STATE
10 FISCAL YEAR, THE SECRETARY SHALL DEVELOP A FEE STRUCTURE
11 DESIGNED TO PRODUCE TOTAL REVENUE EQUAL TO 100% OF THE AMOUNT
12 COLLECTED DURING 1990-1991 STATE FISCAL YEAR UNDER SECTION 602.3
13 OF THE TAX REFORM CODE OF 1971. IN THE EVENT THAT ANY HAZARDOUS
14 WASTE IS MEASURED IN UNITS OTHER THAN TONNAGE, THE FEE SHALL BE
15 LEVIED ON A CONVERSION TO TONNAGE DETERMINED BY THE DEPARTMENT.
16 EACH GENERATOR OF HAZARDOUS WASTE SHALL, ON OR BEFORE THE 20TH
17 DAY OF THE MONTH FOLLOWING THE CLOSE OF EACH TAX PERIOD, RENDER
18 AN ACCOUNTING AND RECORD OF THE TOTAL WASTE GENERATED IN THAT
19 PERIOD ON SUCH FORMS AS THE DEPARTMENT MAY REQUIRE AND MAKE FULL
20 PAYMENT OF THE FEE IN A MANNER TO BE PRESCRIBED BY THE
21 DEPARTMENT. MONEYS COLLECTED PURSUANT TO THIS FEE SHALL BE
22 DEPOSITED INTO THE HAZARDOUS SITE CLEANUP FUND.

23 (B) APPLICABILITY.--THE FEE LEVIED UNDER SUBSECTION (A)
24 SHALL NOT APPLY TO WASTE SPECIFICALLY EXCLUDED AS A HAZARDOUS
25 WASTE UNDER 25 PA. CODE § 75.261(C) (RELATING TO CRITERIA,
26 IDENTIFICATION, AND LISTING OF HAZARDOUS WASTE) OF THE
27 DEPARTMENT'S REGULATIONS AND TO WASTE FOR WHICH DISPOSAL IS
28 CARRIED ON AS A POINT SOURCE DISCHARGE PURSUANT TO AND IN
29 COMPLIANCE WITH A VALID PERMIT ISSUED UNDER THE ACT OF JUNE 22,
30 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN STREAMS LAW, AND

1 UNDER SECTION 402 OF THE FEDERAL WATER POLLUTION CONTROL ACT, AS
2 AMENDED (62 STAT. 1155, 33 U.S.C. § 402 ET SEQ.), NOR SHALL THE
3 FEE APPLY TO HAZARDOUS WASTES WHICH ARE RECYCLED OR REUSED IN
4 ACCORDANCE WITH THE DEPARTMENT'S REGULATION. THE DEPARTMENT MAY
5 ALSO EXCLUDE SMALL QUANTITY GENERATORS FROM THE FEES.

6 (C) EXCEPTION.--THE FEE LEVIED UNDER SUBSECTION (A) SHALL
7 NOT APPLY TO HAZARDOUS WASTE RETRIEVED OR CREATED AND WHICH MUST
8 BE DISPOSED OF DUE TO THE REMEDIATION OF AN ABANDONED HAZARDOUS
9 WASTE SITE.

10 SECTION 905. PROOF OF PAYMENT REQUIRED.

11 IT SHALL BE UNLAWFUL FOR ANY OWNER OR OPERATOR OF A HAZARDOUS
12 WASTE TREATMENT OR DISPOSAL FACILITY TO ACCEPT HAZARDOUS WASTE
13 FROM A GENERATOR OF HAZARDOUS WASTE WHOSE GENERATION OCCURS
14 OUTSIDE THE BORDERS OF THIS COMMONWEALTH, UNLESS SUCH GENERATOR
15 CAN SHOW PROOF OF PAYMENT OF THE FEE LEVIED IN SECTION 904(A).
16 THE DEPARTMENT SHALL BY REGULATION DETERMINE SUCH PROOF OF
17 PAYMENT. ANY OWNER OR OPERATOR OF A HAZARDOUS WASTE TREATMENT OR
18 DISPOSAL FACILITY WHO ACCEPTS HAZARDOUS WASTE FROM SUCH
19 GENERATOR WITHOUT PROPER PROOF OF PAYMENT COMMITS A MISDEMEANOR
20 OF THE FIRST DEGREE.

21 SECTION 906. LOAN FUND.

22 (A) ESTABLISHMENT.--THERE IS ESTABLISHED A SEPARATE ACCOUNT
23 IN THE STATE TREASURY TO BE KNOWN AS THE HAZARDOUS SITES LOAN
24 FUND, WHICH SHALL BE A SPECIAL FUND ADMINISTERED BY THE ECONOMIC
25 DEVELOPMENT PARTNERSHIP.

26 (B) PURPOSE.--IN THE CASE OF A RELEASE OR THREATENED RELEASE
27 OF HAZARDOUS SUBSTANCES FROM A SITE FOR WHICH THE DEPARTMENT HAS
28 IDENTIFIED NO MORE THAN TWO PERSONS AS POTENTIALLY LIABLE UNDER
29 SECTION 702, SUCH PERSONS MAY BE ELIGIBLE, UPON WRITTEN
30 APPLICATION TO THE ECONOMIC DEVELOPMENT PARTNERSHIP, TO RECEIVE

1 LONG-TERM, LOW-INTEREST LOANS IN AN AMOUNT SUFFICIENT TO FUND
2 ALL OR A PORTION OF THE RESPONSE COSTS AT THE SITE. THE ECONOMIC
3 DEVELOPMENT PARTNERSHIP SHALL PROMULGATE REGULATIONS
4 ESTABLISHING ELIGIBILITY CRITERIA FOR THE LOANS. AS PART OF THIS
5 EFFORT, THE ECONOMIC DEVELOPMENT PARTNERSHIP BOARD SHALL INCLUDE
6 A DETERMINATION OF THE AVAILABILITY OF OTHER SOURCES OF FUNDS AT
7 REASONABLE RATES TO FINANCE ALL OR A PORTION OF THE RESPONSE
8 ACTION AND THE NEED FOR BOARD ASSISTANCE TO FINANCE THE RESPONSE
9 ACTION.

10 (C) FUNDS.--IN ADDITION TO ANY FUNDS AS MAY BE APPROPRIATED
11 BY THE GENERAL ASSEMBLY, AT LEAST 2% OF THE FUNDS RAISED
12 ANNUALLY BY THE ASSESSMENTS IMPOSED BY SECTION 903 SHALL BE
13 DEPOSITED INTO THE LOAN FUND.

14 (D) ANNUAL REPORT.--BEGINNING OCTOBER 1, 1988, AND ANNUALLY
15 THEREAFTER, THE ECONOMIC DEVELOPMENT PARTNERSHIP SHALL TRANSMIT
16 TO THE GENERAL ASSEMBLY A REPORT CONCERNING ACTIVITIES AND
17 EXPENDITURES MADE PURSUANT TO THIS SECTION FOR THE PRECEDING
18 STATE FISCAL YEAR. INCLUDED IN THIS REPORT SHALL BE INFORMATION
19 CONCERNING ALL REVENUES AND RECEIPTS DEPOSITS INTO THE LOAN FUND
20 AND ALL LOANS EXTENDED TO ELIGIBLE APPLICANTS.

21 (E) SUNSET.--THE LOAN FUND SHALL CEASE TO EXIST ON JUNE 30,
22 1992, UNLESS IT IS REESTABLISHED BY ACTION OF THE GENERAL
23 ASSEMBLY. ANY FUNDS REMAINING IN THE LOAN FUND ON JUNE 30, 1992,
24 SHALL LAPSE TO THE HAZARDOUS SITES CLEANUP FUND. MONEY RECEIVED
25 BY THE ECONOMIC DEVELOPMENT PARTNERSHIP AS REPAYMENT OF
26 OUTSTANDING LOANS AFTER JUNE 30, 1992, SHALL LAPSE TO THE
27 HAZARDOUS SITES CLEANUP FUND.

28 CHAPTER 11

29 ENFORCEMENT AND REMEDIES

30 Section 1101. Public nuisances.

1 A release of a hazardous substance ~~and~~ OR a violation of any <—
2 provision of this act, a regulation of the department, an order
3 of the department or a response approved by the department shall
4 constitute a public nuisance. Any person allowing such a release
5 or committing such a violation shall be liable for the response
6 costs caused by the release or the violation. The board and any
7 court of competent jurisdiction is hereby given jurisdiction
8 over actions to recover the response costs.

9 Section 1102. Enforcement orders.

10 (a) General rule.--The department ~~may~~ SHALL issue orders to <—
11 persons as it deems necessary to aid in the enforcement of the
12 provisions of this act. Orders shall include but shall not be
13 limited to orders requiring response actions, studies and access
14 and orders modifying, suspending or ceasing a response action by
15 a responsible party even though the response may have been
16 initially approved by the department. An order issued under this
17 section shall take effect upon notice unless the order specifies
18 otherwise. ~~An appeal to the board shall not act as a~~ <—
19 ~~supersedeas.~~ The power of the department to issue an order under
20 this section is in addition to any other remedy which may be
21 afforded to the department under this act or any other statute.

22 (b) Types.--The department, ~~if~~ WHEN it deems necessary for <—
23 the response to a release or for the protection of ~~human health~~ <—
24 PUBLIC HEALTH, SAFETY or welfare or the environment, ~~may~~ SHALL <—
25 order, orally or in writing, a person to immediately initiate,
26 continue, suspend or modify a response action; conduct
27 investigations; or provide access to property or information.
28 The order shall be effective upon issuance and may only be
29 superseded by further department action or, after an appeal has
30 been perfected, by the board after notice and hearing. The order

1 may require whatever alternative response actions are necessary
2 for the abatement of the release. Within two business days after
3 the issuance of the oral order, the department shall issue a
4 written order reciting and modifying, where appropriate, the
5 terms and conditions contained in the oral order.

6 (c) Compliance.--It shall be the duty of any person ~~or~~ <—
7 ~~municipality~~ to proceed diligently to comply with an order
8 issued under this section. ~~If~~ WHEN the person ~~or municipality~~ <—
9 fails to proceed diligently or fails to comply with the order
10 within the time specified, the person ~~or municipality~~ shall be <—
11 guilty of contempt and shall be punished by the court in an
12 appropriate manner. For this purpose, application may be made by
13 the department to the Commonwealth Court.

14 (d) Appeal.--An order issued under this section may be
15 appealed to the board under section 1921-A of the act of April
16 9, 1929 (P.L.177, No.175), known as The Administrative Code of
17 1929. AN APPEAL TO THE BOARD SHALL NOT ACT AS A SUPERSEDEAS. <—
18 Section 1103. Restraining violations.

19 (a) Department.--In addition to any other remedy provided in
20 this act, the department may institute a suit in equity in the
21 name of the Commonwealth, where a violation of law or nuisance
22 exists, for an injunction to restrain a violation of this act or
23 the regulations, standards or orders promulgated or issued
24 hereunder and to restrain the maintenance or threat of a public
25 nuisance. In a proceeding under this subsection, the court
26 shall, upon motion of the Commonwealth, issue a prohibitory or
27 mandatory preliminary injunction ~~if~~ WHEN it finds that the <—
28 defendant is engaging in unlawful conduct as defined by this act
29 or is engaged in conduct which is causing immediate and
30 irreparable harm to the public. The Commonwealth shall not be

1 required to furnish bond or other security in connection with
2 the proceedings. In addition to an injunction, the court may
3 levy civil penalties under section 1104.

4 (b) Local government.--In addition to any other remedies
5 provided for in this act, upon relation of a district attorney
6 of an affected county or upon relation of the solicitor of an
7 affected municipality, an action in equity may be brought in a
8 court of competent jurisdiction for an injunction to restrain
9 ANY AND ALL violations of this act or regulations promulgated <—
10 under it or to restrain a public nuisance or detriment to public
11 health, SAFETY or welfare or the environment. <—

12 (c) Concurrent remedies.--The penalties and remedies
13 prescribed by this act shall be deemed concurrent. The existence
14 of or exercise of one remedy shall not prevent the department
15 from exercising any other remedy under this act, at law or in
16 equity.

17 (d) Jurisdiction.--Actions instituted under this section may
18 be filed in the appropriate court of common pleas or in the
19 Commonwealth Court. Actions may also be filed in a Federal Court
20 or administrative tribunal having jurisdiction over the matter.
21 Section 1104. Civil penalties.

22 (a) General rule.--In addition to proceeding with any other
23 remedy available at law or in equity for a violation of a
24 provision of this act, a regulation or order of the department
25 or a term or condition of A response approved by the department, <—
26 the department may assess a civil penalty upon a person for the
27 violation. A penalty may be assessed whether or not the
28 violation was willful or negligent. In determining the amount of
29 the penalty, the department shall consider the willfulness of
30 the violation; damage to air, water, land or other natural

1 resources of this Commonwealth or their uses; cost ~~of~~ OF <—
2 restoration and abatement; savings resulting to the person in
3 consequence of such violation; and other relevant factors.

4 (b) Procedure.--~~If~~ WHEN the department proposes to assess a <—
5 civil penalty, it shall inform the person of the proposed amount
6 of the penalty. The person charged with the penalty shall then
7 have 30 days to pay the proposed penalty in full. ~~If~~ WHEN the <—
8 person wishes to contest either the amount of the penalty or the
9 fact of the violation, the person must, within the 30-day
10 period, file an appeal of the action with the board. Failure to
11 appeal within 30 days shall result in a waiver of all legal
12 rights to contest the violation or the amount of the penalty.

13 (c) Amount.--The maximum civil penalty which may be assessed
14 under this section is \$25,000 per offense. Each violation for
15 each separate day and each violation of a provision of this act,
16 a regulation under this act, an order of the department or any
17 term or condition of an approved response shall constitute a
18 separate and distinct offense under this section.

19 (d) Minimum.--A person who fails to comply with an order
20 issued under section 503 shall be subject to a minimum penalty
21 of \$5,000 for each day the order is violated.

22 (E) ADDITIONAL PENALTIES.--THE ENVIRONMENTAL QUALITY BOARD <—
23 SHALL HAVE THE AUTHORITY TO ESTABLISH, BY REGULATION, SPECIFIC
24 MAJOR VIOLATIONS AND ADDITIONAL MANDATORY MINIMUM CIVIL
25 PENALTIES.

26 Section 1105. Criminal penalties.

27 (a) Falsity.--

28 (1) A person may not knowingly make a false statement or
29 representation in an application, record, report, plan,
30 proposal or other document which:

1 (i) relates to the actual or threatened release of a
2 hazardous substance or to a response to the actual or
3 threatened release of a hazardous substance; or

4 (ii) is filed, submitted, maintained or used for
5 purposes of compliance with this act.

6 (2) A person who violates paragraph (1) commits a
7 misdemeanor of the third degree and shall, upon conviction,
8 be sentenced to pay a fine of not less than \$1,000 and not
9 more than \$25,000 per day for each violation or to
10 imprisonment for a period of not more than one year, or both.

11 (b) Altering response action.--A person who, without written
12 authorization from the department, alters or modifies a response
13 action approved or undertaken by the department commits a
14 summary offense and shall, upon conviction, be sentenced to pay
15 a fine of not less than \$100 and not more than \$1,000 for each
16 day on which the offense occurs or, in default of payment of the
17 fine, to imprisonment for not more than 90 days.

18 (c) Obstruction.--A person who refuses, hinders, obstructs,
19 delays or threatens any agent or employee of the department in
20 the course of performance of a duty under this act, including
21 but not limited to entry and inspection under any circumstances,
22 commits a summary offense and shall, upon conviction, be
23 sentenced to pay a fine of not less than \$100 and not more than
24 \$1,000 for each day on which the offense occurs or, in default
25 of payment of the fine, to undergo imprisonment for not more
26 than 90 days.

27 (d) Intentional or negligent.--A person who intentionally or
28 negligently commits an offense under subsection (b) or (c)
29 commits a misdemeanor of the third degree and shall, upon
30 conviction, be sentenced to pay a fine of not less than \$1,000

1 and not more than \$25,000 for each day on which the offense
2 occurred or to undergo imprisonment for not more than one year,
3 or both.

4 Section 1106. Search warrants.

5 An employee of the department may apply for a search warrant
6 to a Commonwealth official authorized to issue a search warrant
7 for the purposes of inspecting or examining any property,
8 building, premise, place, book, record or other physical
9 evidence relating to the release or threatened release of a
10 hazardous substance and for the purpose of conducting tests or
11 of taking samples of any hazardous substance. The warrant shall
12 be issued upon probable cause. It shall be sufficient probable
13 cause to show any of the following:

14 (1) The inspection, examination, test or sampling is
15 pursuant to a general administrative plan to determine
16 compliance with this act.

17 (2) The employee has reason to believe that a violation
18 of this act has occurred or may occur.

19 (3) The employee has been refused access to the
20 property, building, premise, place, book, record or physical
21 evidence or has been prevented from conducting tests or
22 taking samples.

23 (4) The employee has reason to believe that a release or
24 a threat of a release of a hazardous substance or contaminant
25 exists on the property or on a nearby property and that
26 testing and sampling are needed for determining the NATURE OR <—
27 extent of the release.

28 (5) The employee has reason to believe that there are
29 containers or impoundments on the property which are typical
30 of those used for containing or impounding hazardous

substances and that testing, sampling or the review of records is necessary to determine whether hazardous substances are present.

Section 1107. Existing and cumulative rights and remedies.

Nothing in this act shall be construed as estopping the Commonwealth, a district attorney or solicitor or a municipality from proceeding in courts of law or equity to abate releases forbidden under this act, or to abate nuisances under existing law. It is declared to be the purpose of this act to provide additional and cumulative remedies to control the release of hazardous substances within this Commonwealth. Nothing contained in this act shall abridge or alter rights of action or remedies in law or equity. No provision of this act, the granting of approval under this act, nor an act done by virtue of this act shall be construed as estopping the Commonwealth, persons or municipalities in the exercise of their rights in law or in equity; from proceeding in courts of law or equity to suppress nuisances or to abate a pollution; or from enforcing common law or statutory rights. No courts of this Commonwealth having jurisdiction to abate public or private nuisances shall be deprived of jurisdiction in an action to abate any private or public nuisance because the nuisance constitutes pollution of air or water or soil.

Section 1108. Unlawful conduct.

~~A person may not~~ IT SHALL BE UNLAWFUL FOR A PERSON TO do any of the following:

- (1) Cause or allow a release of a hazardous substance.
- (2) Alter or modify any response action which has been approved by the department unless authorized in writing by the department.

1 (3) Refuse, hinder, obstruct, delay or threaten an agent
2 or employee of the department in the course of performance of
3 a duty under this act, including, but not limited to, entry
4 and inspection under any circumstances.

5 (4) Cause or assist in the violation of any provision of
6 this act, a regulation of the department or an order of the
7 department.

8 (5) Fail to make a timely payment of the hazardous waste
9 transportation and management fee.

10 (6) Hinder, obstruct, prevent or interfere with host
11 municipalities or their personnel in the performance of any
12 duty related to the collection of the hazardous waste
13 transportation and management fees.

14 (7) CAUSE OR ALLOW RELEASE OF A CONTAMINANT IN A MANNER <—
15 THAT CREATES A PUBLIC NUISANCE.

16 Section 1109. Presumption of law for civil and administrative
17 proceedings.

18 It shall be presumed as a rebuttable presumption of law that
19 a person who causes or allows the release of a hazardous
20 substance shall be liable, without proof of fault, negligence,
21 or causation, for all damages, contamination or pollution within
22 2,500 feet of the perimeter of the area where the release has
23 occurred. This presumption may be overcome by clear and
24 convincing evidence that the person so charged did not
25 contribute to the damage, contamination or pollution.

26 Section 1110. Collection of fines and penalties.

27 Fines and penalties under this act shall be collectible in
28 the manner provided by section ~~509~~ 510. Upon collection they <—
29 shall be paid into the fund.

30 Section 1111. Right of citizen to intervene in proceedings.

1 A citizen of this Commonwealth having an interest which is or
2 may be adversely affected shall have the right, on his own
3 behalf, without posting bond, to intervene in any proceeding
4 brought under this act.

5 SECTION 1112. WHISTLEBLOWER PROVISIONS. <—

6 (A) ADVERSE ACTION PROHIBITED.--NO EMPLOYER MAY DISCHARGE,
7 THREATEN OR OTHERWISE DISCRIMINATE OR RETALIATE AGAINST AN
8 EMPLOYEE REGARDING THE EMPLOYEE'S COMPENSATION OR TERMS,
9 CONDITIONS, LOCATION OR PRIVILEGES OF EMPLOYMENT BECAUSE THE
10 EMPLOYEE MAKES OR IS ABOUT TO MAKE A GOOD FAITH REPORT, VERBALLY
11 OR IN WRITING, TO THE EMPLOYER OR APPROPRIATE AUTHORITY AN
12 INSTANCE OF WRONG DOING UNDER THIS ACT.

13 (B) REMEDIES.--THE REMEDIES, PENALTIES AND ENFORCEMENT
14 PROCEDURES FOR VIOLATIONS OF THIS SECTION SHALL BE AS PROVIDED
15 IN THE ACT OF DECEMBER 12, 1986 (P.L.1559, NO.169), KNOWN AS THE
16 WHISTLEBLOWER LAW.

17 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
18 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
19 SUBSECTION:

20 "APPROPRIATE AUTHORITY." A FEDERAL, STATE OR LOCAL
21 GOVERNMENT BODY, AGENCY OR ORGANIZATION HAVING JURISDICTION OVER
22 CRIMINAL LAW ENFORCEMENT, REGULATORY VIOLATIONS, PROFESSIONAL
23 CONDUCT OR ETHICS, OR WASTE; OR A MEMBER, OFFICER, AGENT,
24 REPRESENTATIVE OR SUPERVISORY EMPLOYEE OF THE BODY, AGENCY OR
25 ORGANIZATION. THE TERM INCLUDES, BUT IS NOT LIMITED TO, THE
26 OFFICE OF ATTORNEY GENERAL, THE DEPARTMENT OF THE AUDITOR
27 GENERAL, THE TREASURY DEPARTMENT, THE GENERAL ASSEMBLY AND
28 COMMITTEES OF THE GENERAL ASSEMBLY HAVING THE POWER AND DUTY TO
29 INVESTIGATE CRIMINAL LAW ENFORCEMENT, REGULATORY VIOLATIONS,
30 PROFESSIONAL CONDUCT OR ETHICS OR WASTE.

1 "EMPLOYEE." A PERSON WHO PERFORMS A SERVICE FOR WAGES OR
2 OTHER RENUMERATION UNDER A CONTRACT OF HIRE, WRITTEN OR ORAL,
3 EXPRESS OR IMPLIED, FOR AN EMPLOYER, WHETHER OR NOT THE EMPLOYER
4 IS A PUBLIC BODY.

5 "EMPLOYER." A PERSON SUPERVISING ONE OR MORE EMPLOYEES,
6 INCLUDING THE EMPLOYEE IN QUESTION; A SUPERIOR OF THAT
7 SUPERVISOR; OR AN AGENT OF A PUBLIC BODY.

8 "GOOD FAITH REPORT." A REPORT OF CONDUCT DEFINED IN THIS ACT
9 AS WRONGDOING OR WASTE WHICH IS MADE WITHOUT MALICE OR
10 CONSIDERATION OF PERSONAL BENEFIT AND WHICH THE PERSON MAKING
11 THE REPORT HAS REASONABLE CAUSE TO BELIEVE IS TRUE.

12 "PUBLIC BODY." ALL OF THE FOLLOWING:

13 (1) A STATE OFFICER, AGENCY, DEPARTMENT, DIVISION,
14 BUREAU, BOARD, COMMISSION, COUNCIL, AUTHORITY OR OTHER BODY
15 IN THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

16 (2) A COUNTY, CITY, TOWNSHIP, REGIONAL GOVERNING BODY,
17 COUNCIL, SCHOOL DISTRICT, SPECIAL DISTRICT OR MUNICIPAL
18 CORPORATION, OR A BOARD, DEPARTMENT, COMMISSION, COUNCIL OR
19 AGENCY.

20 (3) ANY OTHER BODY WHICH IS CREATED BY COMMONWEALTH OR
21 POLITICAL SUBDIVISION AUTHORITY OR WHICH IS FUNDED IN ANY
22 AMOUNT BY OR THROUGH COMMONWEALTH OR POLITICAL SUBDIVISION
23 AUTHORITY OR A MEMBER OR EMPLOYEE OF THAT BODY.

24 "WASTE." AN EMPLOYER'S CONDUCT OR OMISSIONS WHICH RESULT IN
25 SUBSTANTIAL ABUSE, MISUSE, DESTRUCTION OR LOSS OF FUNDS OR
26 RESOURCES BELONGING TO OR DERIVED FROM COMMONWEALTH OR POLITICAL
27 SUBDIVISION SOURCES.

28 "WHISTLEBLOWER." A PERSON WHO WITNESSES OR HAS EVIDENCE OF
29 WRONGDOING OR WASTE WHILE EMPLOYED AND WHO MAKES A GOOD FAITH
30 REPORT OF THE WRONGDOING OR WASTE, VERBALLY OR IN WRITING, TO

1 ONE OF THE PERSON'S SUPERIORS, TO AN AGENT OF THE EMPLOYER OR TO
2 AN APPROPRIATE AUTHORITY.

3 "WRONGDOING." A VIOLATION WHICH IS NOT OF A MERELY TECHNICAL
4 OR MINIMAL NATURE OF A FEDERAL OR STATE STATUTE OR REGULATION,
5 OF A POLITICAL SUBDIVISION, ORDINANCE OR REGULATION OR OF A CODE
6 OF CONDUCT OR ETHICS DESIGNED TO PROTECT THE INTEREST OF THE
7 PUBLIC OR THE EMPLOYER.

8 Section ~~1112~~ 1113. Notice of proposed settlement. <—

9 ~~If~~ WHEN a settlement is proposed in any proceeding brought <—
10 under this act, notice of the proposed settlement shall be sent
11 to all known responsible persons and published in the
12 Pennsylvania Bulletin and in a newspaper of general circulation
13 in the area of the release. The notice shall include the terms
14 of the settlement and the manner of submitting written comments
15 during a 60-day public comment period. The settlement shall
16 become final upon the filing of the department's response to the
17 significant written comments. The notice, the written comments
18 and the department's response shall constitute the written
19 record upon which the settlement will be reviewed. A person
20 adversely affected by the settlement may file an appeal to the
21 board. The settlement shall be upheld unless it is found to be
22 arbitrary and capricious on the basis of the administrative
23 record.

24 Section ~~1113~~ 1114. Limitation on action. <—

25 Notwithstanding the provisions of any other statute to the
26 contrary, actions for civil or criminal penalties under this act
27 may be commenced at any time within a period of 20 years from
28 the date the ~~offense is~~ UNLAWFUL CONDUCT or release is <—
29 discovered. Actions to recover response costs may be commenced
30 within six years of the date those costs are incurred. The

1 initial action to recover response costs shall be controlling as
2 to liability in all subsequent actions.

3 SECTION 1115. CITIZEN SUITS. <—

4 (A) GENERAL RULE.--A PERSON WHO HAS EXPERIENCED OR IS
5 THREATENED WITH PERSONAL INJURY OR PROPERTY DAMAGE AS A RESULT
6 OF A RELEASE OF A HAZARDOUS SUBSTANCE MAY FILE A CIVIL ACTION
7 AGAINST ANY PERSON TO PREVENT OR ABATE A VIOLATION OF THIS ACT
8 OR OF ANY ORDER, REGULATION, STANDARD OR APPROVAL ISSUED UNDER
9 THIS ACT.

10 (B) JURISDICTION.--THE COURTS OF COMMON PLEAS SHALL HAVE
11 JURISDICTION OVER ANY ACTIONS AUTHORIZED UNDER THIS SECTION. NO
12 ACTION MAY BE COMMENCED UNDER THIS SECTION PRIOR TO 60 DAYS
13 AFTER THE PLAINTIFF HAS GIVEN NOTICE TO THE DEPARTMENT, TO THE
14 HOST MUNICIPALITY AND TO THE ALLEGED VIOLATOR OF THIS ACT, OR OF
15 ANY REGULATIONS OR ORDERS OF THE DEPARTMENT UNDER THIS ACT; NOR
16 MAY SUCH ACTION BE COMMENCED WHEN THE DEPARTMENT HAS COMMENCED
17 AND IS DILIGENTLY PROSECUTING A CIVIL OR CRIMINAL ACTION IN A
18 COURT OF THE UNITED STATES OR A STATE TO REQUIRE COMPLIANCE WITH
19 THE STATUTE, PERMIT, STANDARD, REGULATION, CONDITION,
20 REQUIREMENT, PROHIBITION OR ORDER. IN ANY SUCH CIVIL ACTION
21 COMMENCED BY THE DEPARTMENT, ANY PERSON MAY INTERVENE AS A
22 PLAINTIFF AS A MATTER OF RIGHT. THE COURT MAY GRANT ANY
23 EQUITABLE RELIEF; MAY IMPOSE A CIVIL PENALTY UNDER SECTION 1104;
24 AND MAY AWARD LITIGATION COSTS, INCLUDING REASONABLE ATTORNEY
25 AND WITNESS FEES, TO THE PREVAILING OR SUBSTANTIALLY PREVAILING
26 PARTY WHENEVER THE COURT DETERMINES SUCH AN AWARD IS
27 APPROPRIATE.

28 (C) DEPARTMENTAL INTERVENTION.--THE DEPARTMENT MAY INTERVENE
29 AS A MATTER OF RIGHT IN ANY ACTION AUTHORIZED UNDER THIS
30 SECTION.

1 CHAPTER 13

2 MISCELLANEOUS

3 Section 1301. Effective date.

4 This act shall take effect in 60 days.