

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 649 Session of
1989

INTRODUCED BY MUSTO, FISHER, MELLOW, LINCOLN, REIBMAN,
STAPLETON, SHAFFER, STOUT, ROSS, REGOLI, STEWART, JONES,
WILLIAMS, AFFLERBACH, BELAN, SALVATORE AND PORTERFIELD,
MARCH 6, 1989

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, MARCH 6, 1989

AN ACT

1 Establishing a Statewide hazardous material safety program;
2 creating the Hazardous Material Response Fund; providing for
3 the creation of Emergency Planning Fee Accounts in each
4 county; further providing for the powers and duties of the
5 Pennsylvania Emergency Management Agency, of the Pennsylvania
6 Emergency Management Council, and of the counties and local
7 governments; imposing obligations on certain handlers of
8 hazardous materials; imposing penalties; and making an
9 appropriation.

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18 The General Assembly of the Commonwealth of Pennsylvania
19 hereby enacts as follows:

20 CHAPTER 1
21 GENERAL PROVISIONS

22 Section 101. Short title.

23 This act shall be known and may be cited as the Hazardous
24 Materials Protection Act.

25 Section 102. Legislative findings and purpose.

26 (a) Findings.--The General Assembly hereby determines,
27 declares and finds that exposure to hazardous materials has the
28 potential for causing undesirable health and environmental
29 effects and poses a threat to the health, safety and welfare of
30 the citizens of this Commonwealth, and that the citizens of this

1 Commonwealth and emergency service personnel who respond to
2 emergency situations should be protected from the health hazards
3 and harmful exposure resulting from hazardous material releases
4 at facilities and from transportation related accidents.

5 (b) Purpose.--It is the purpose of this act to:

6 (1) Create a strong working relationship and partnership
7 between business and industry and the Commonwealth and its
8 municipalities in order to protect and safeguard the citizens
9 of this Commonwealth from the health hazards and other risks
10 of harm resulting from or incident to the use, storage,
11 distribution and transportation of hazardous materials.

12 (2) Designate the Pennsylvania Emergency Management
13 Council as the Commonwealth's emergency response commission
14 and establish an emergency planning district and a local
15 emergency planning committee in each county of this
16 Commonwealth to act in accordance with the provisions of the
17 Emergency Planning and Community Right-To-Know Act of 1986
18 (Title III of Public Law 99-499, 42 U.S.C. § 11001, et seq.),
19 also referred to in this act as SARA, Title III.

20 (3) Establish and maintain a comprehensive hazardous
21 material safety program for the Commonwealth and its
22 counties.

23 (4) Create the Hazardous Material Response Fund to
24 provide financial assistance to Commonwealth agencies and
25 counties to develop an effective and integrated response
26 capability to the health hazards, dangers and risks which
27 hazardous material releases pose to the general public.

28 (5) Establish an emergency notification system whereby
29 the release of any hazardous material occurring at a facility
30 or resulting from a transportation accident will be promptly

1 reported to the proper Commonwealth and county emergency
2 response officials.

3 (6) Assign responsibilities to various Commonwealth
4 agencies and local agencies to ensure the development and
5 furtherance of a comprehensive hazardous material safety
6 program.

7 (7) Provide civil liability protection to officials and
8 emergency response personnel of the Commonwealth and
9 municipalities who are properly carrying out their duties and
10 responsibilities under the Commonwealth's hazardous material
11 safety program.

12 (8) Require persons responsible for the release of
13 hazardous materials to pay the costs incurred by hazardous
14 material response teams for emergency response activities
15 necessitated by the hazardous material release.

16 Section 103. Definitions.

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

20 "Commonwealth agency." An executive agency or independent
21 agency.

22 "Council." The Pennsylvania Emergency Management Council.

23 "County." Includes, but is not limited to, a city of the
24 first class coterminous with a county of the first class.

25 "County commissioner." Includes, but is not limited to, the
26 mayor of a city of the first class coterminous with a county of
27 the first class, or the designee of such mayor, and the
28 equivalent county official designated under a home rule charter
29 or optional plan adopted under the act of April 13, 1972

30 (P.L.184, No. 62), known as the Home Rule Charter and Optional

1 Plans Law.

2 "Emergency management." The judicious planning, assignment
3 and coordination of all available resources in an integrated
4 program of prevention, mitigation, preparedness, response and
5 recovery for emergencies of any kind, whether from attack, man-
6 made or natural sources.

7 "Executive agency." The Governor and the departments,
8 boards, commissions, authorities and other non-legislative
9 officers and agencies of the Commonwealth, except any court or
10 other officer or agency of the unified judicial system or the
11 General Assembly and its officers and agencies or any
12 independent agency.

13 "Extremely hazardous substance." A substance appearing on
14 the list of extremely hazardous substances published by the
15 administrator of the Federal Environmental Protection Agency
16 under the authority of section 302 of the Federal Emergency
17 Planning and Community Right-To-Know Act of 1986, Title III of
18 the Superfund Amendments and Reauthorization Act of 1986 (Public
19 Law 99-499, 42 U.S.C. § 11002), as set forth at 40 CFR Part 355
20 ("Appendix A - The List of Extremely Hazardous Substances and
21 Their Threshold Planning Quantities"), or appearing on any
22 successor list of extremely hazardous substances published by
23 the Administrator of the Federal Environmental Protection Agency
24 under the authority of section 302 of SARA, Title III.

25 "Facility." All buildings, structures, and other stationary
26 items which are located on a single site or a contiguous or
27 adjacent site which are owned or operated by the same person and
28 which manufacture, produce, use, import, export, store, supply,
29 or distribute any hazardous material. This term includes
30 railroad yards and truck terminals but does not include

1 individual trucks, rolling stock, water vessels, airplanes, or
2 other transportation vehicles.

3 "Family farm enterprise." A natural person, family farm
4 corporation or family farm partnership engaged in farming which
5 processes and markets its agricultural commodities in either
6 intrastate or interstate commerce.

7 "Hazardous material." Any of the following:

8 (1) A hazardous substance.

9 (2) An extremely hazardous substance.

10 (3) A hazardous chemical within the meaning of 29 CFR
11 1910.1200(c) or its successor.

12 (4) A toxic chemical.

13 "Hazardous material response team." A team of individuals
14 who are organized by a Commonwealth agency, a local agency, a
15 regional hazardous materials organization, a transporter,
16 manufacturer, supplier, or user of hazardous materials, or a
17 volunteer service organization, for the primary purpose of
18 providing emergency services, including removal and remedial
19 actions, in response to the release of a hazardous material,
20 which is trained and equipped in accordance with this act or
21 regulations promulgated under this act.

22 "Hazardous substance." A substance appearing on the list of
23 hazardous substances prepared under section 102 of the
24 Comprehensive Environmental Response, Compensation, and
25 Liability Act of 1980 (P.L. 96-510, 94 Stat. 2767) as set forth
26 at 40 CFR Part 302 ("Table 302.4 - List of Hazardous Substances
27 and Reportable Quantities"), or appearing on any successor list
28 of hazardous substances prepared under section 102 of the
29 Comprehensive Environmental Response, Compensation, and
30 Liability Act of 1980.

1 "Independent agency." Boards, commissions, authorities and
2 other agencies and officers of the Commonwealth which are not
3 subject to the policy supervision and control of the Governor,
4 except any court or other officer or agency of the unified
5 judicial system or the General Assembly and its officers and
6 agencies.

7 "Local agency." A municipality or any officer or agency
8 thereof.

9 "Local Emergency Planning Committee" or "Local Committee."
10 The local committee within each emergency planning district
11 responsible for preparing hazardous material plans and
12 performing other functions under The Emergency Planning and
13 Community Right-To-Known Act of 1986 (Title III, Public Law 99-
14 499, 42 U.S.C. § 11001 et seq.).

15 "PEMA." The Pennsylvania Emergency Management Agency.

16 "Person." An individual, corporation, firm, association,
17 public utility, trust, estate, public or private institution,
18 group, agency, political subdivision, and any legal successor,
19 representative or agency of the foregoing.

20 "Regional hazardous materials organization." A non-profit
21 corporation, joint venture or authority formed under the laws of
22 this Commonwealth which either contracts with or is organized by
23 one or more Commonwealth agencies, local agencies or volunteer
24 service organizations for the purpose of creating, training,
25 equipping, maintaining and providing one or more hazardous
26 material response teams to serve any specific geographic area as
27 approved by the Pennsylvania Emergency Management Council
28 within, but not limited to, the Commonwealth under this act.

29 "Release." Any spilling, leaking, pumping, pouring,
30 emitting, emptying, discharging, injecting, escaping, leaching,

1 dumping or disposing into the environment of a hazardous
2 material, including, but not limited to, the abandonment or
3 discarding of barrels, containers and other receptacles
4 containing a hazardous material.

5 "Reportable quantity." The quantity of a hazardous material
6 stated on the various lists of hazardous substances and
7 extremely hazardous substances as defined in this section, the
8 release of which shall be reported under this act.

9 "Rolling stock." Any railroad tank car, railroad box car or
10 other railroad freight car as defined in 49 CFR § 215, or its
11 successor, that contains an extremely hazardous substance in
12 excess of the threshold planning quantity established for such
13 substance and is used as a storage site for such substance.

14 "SARA, Title III." The Emergency Planning and Community
15 Right-to-Know Act of 1986 (Title III, Public Law 99-499, 42
16 U.S.C. § 11001 et seq.).

17 "Toxic chemical." A substance appearing on the list of
18 chemicals described in section 313 of SARA (Title III, Public
19 Law 99-499, 42 U.S.C. § 11023) as set forth at 40 CFR Part 372,
20 or appearing on any successor list of chemicals set forth in the
21 Code of Federal Regulations under the authority of section 313
22 of SARA, Title III.

23 "Unified judicial system." The unified judicial system
24 existing under section 1 of Article V of the Constitution of
25 Pennsylvania.

26 "Vehicle." Any truck, railroad car, water vessel, airplane
27 or other transportation vehicle that ships, carries or
28 transports a hazardous material on any highway, rail line or
29 waterway within the jurisdictional boundaries of this
30 Commonwealth.

1 CHAPTER 2

2 HAZARDOUS MATERIALS PROTECTION

3 Section 201. Designation and functions of Pennsylvania

4 Emergency Management Council

5 (a) Council.--The Pennsylvania Emergency Management Council,
6 established and organized under the act of November 26, 1978
7 (P.L.1332, No.323), known as the Emergency Management Services
8 Code, is designated and shall constitute the Commonwealth's
9 emergency response commission to carry out the responsibilities
10 assigned to the Commonwealth by SARA, Title III, to develop
11 overall policy and direction for a statewide hazardous material
12 safety program and to supervise and coordinate the
13 responsibilities of the local emergency planning committees.

14 (b) Membership.--The council shall be composed of the
15 current members of the Pennsylvania Emergency Management Council
16 as now provided by law and the Secretary of Labor and Industry.

17 (c) Chairperson.--The Governor shall designate a member of
18 the council to serve as chairperson of the council. In the
19 absence of the chairperson, the director of PEMA shall serve as
20 chairperson. The chairperson shall have the authority to assign,
21 delegate or transfer tasks, duties and responsibilities to
22 members of the council. The chairperson shall approve the
23 appointment of members to the council who are designated through
24 a delegation of authority from their respective department or
25 office.

26 (d) Compensation and expenses.--Members shall serve without
27 compensation but shall be reimbursed for necessary and
28 reasonable actual expenses, such as travel expenses, incurred in
29 connection with attendance at council meetings.

30 (e) Meetings.--For the conduct of routine or emergency

1 business, the council shall meet at the call of the chairperson.
2 Five members of the council shall constitute a quorum for the
3 purpose of conducting the business of the council and for all
4 other purposes. All actions of the council shall be taken by a
5 majority of the council members present. The council shall be
6 subject to the act of July 3, 1986 (P.L.388, No.212), known as
7 the Sunshine Act.

8 (f) Staff.--PEMA shall serve as the primary agent and have
9 the lead responsibility for performing the functions and duties
10 of the council. For this purpose, PEMA shall employ such
11 professional, technical, administrative and other staff
12 personnel as may be deemed essential to carry out the purposes
13 of this act and the development and maintenance of a
14 comprehensive Commonwealth hazardous materials safety program.

15 (g) Powers and duties.--The council shall have the duty and
16 power to:

17 (1) Carry out all of the duties and responsibilities of
18 a State emergency response commission as specified in SARA,
19 Title III.

20 (2) Make, amend, repeal and promulgate as provided by
21 law any rules and regulations necessary to carry out and
22 implement this act and SARA, Title III.

23 (3) Develop Commonwealth agency contingency plans
24 relating to the implementation of this act and SARA, Title
25 III.

26 (4) Provide guidance and direction to counties for the
27 implementation of this act and SARA, Title III.

28 (5) Supervise the operation of local committees and
29 ensure that local committees meet all Federal and
30 Commonwealth standards and requirements as provided by law.

1 (6) Develop a Commonwealth comprehensive hazardous
2 material safety program.

3 (7) Delegate authority and assign primary responsibility
4 to the Department of Labor and Industry for receiving,
5 processing and managing hazardous chemical information forms
6 and data, trade secrets, and public information requests.

7 (8) Delegate authority and assign responsibility to the
8 Department of Environmental Resources and the Department of
9 Health for providing technical advice and assistance
10 consistent with established departmental responsibilities in
11 the alleviation of public health and environmental hazards
12 associated with hazardous material releases, including,
13 without limitation, dispatching emergency response personnel
14 to accident sites during emergency situations when requested
15 by PEMA.

16 (9) Prescribe duties and responsibilities for
17 Commonwealth agencies and local emergency planning committees
18 to conduct comprehensive emergency management activities.

19 (10) Prescribe standards for hazardous material response
20 team training or certification, the equipping of hazardous
21 material response team units and other matters involving
22 hazardous material response activities.

23 (11) Do all other acts and things necessary for the
24 exercise of the powers and duties of the council and for the
25 implementation of this act and SARA, Title III.

26 (h) Council expenses.--The administrative and operational
27 expenses of the council shall be paid from the Hazardous
28 Material Response Fund.

29 Section 202. Establishment of emergency planning districts.

30 Each county is designated and constituted an emergency

1 planning district for the purposes of SARA, Title III.

2 Section 203. Establishment and functions of local emergency
3 planning committees.

4 (a) Local emergency planning committees.--In order to carry
5 out the provisions of Federal and Commonwealth law, a minimum of
6 one local emergency planning committee shall be established in
7 each county. The local committee shall be subject to the
8 supervision of the council and shall cooperate with the county
9 emergency management agency and SARA facilities to prepare the
10 emergency response plans required by section 303 of SARA, Title
11 III (Public Law 99-499, 42 U.S.C. § 11003).

12 (b) Membership.--A local committee shall be composed of the
13 county emergency management coordinator, one county commissioner
14 and at least one person selected from each of the following
15 groups:

16 (1) Elected officials of the Commonwealth and
17 municipalities.

18 (2) Law enforcement, civil defense, firefighting, first
19 aid, health, local environmental, hospital and transportation
20 personnel.

21 (3) Broadcast and print media.

22 (4) Community groups.

23 (5) Owners and operators of facilities subject to the
24 requirements of SARA, Title III.

25 (c) Coordinator.--The county emergency management
26 coordinator shall have the lead responsibility for ensuring that
27 the plans and activities of the local committee comply with
28 SARA, Title III, this act, and other applicable statutes and
29 laws.

30 (d) Appointment.--The members of a local committee shall be

1 appointed by the council from a list of nominees submitted by
2 the governing body of the county. The list of nominees shall
3 contain the names of at least one person from each of the groups
4 enumerated in subsection (b). Upon the failure of the governing
5 body of a county to submit a list of nominees to the council
6 within a time fixed by the council, the council may appoint
7 members at its pleasure.

8 (e) Vacancies.--Within 30 days of the occurrence of a
9 vacancy, the council shall appoint in the manner provided in
10 subsection (d) a successor member to a local committee for the
11 remainder of the unexpired term of the member for which the
12 vacancy exists. A vacancy shall occur upon the death,
13 resignation, disqualification or removal of a member of a local
14 committee.

15 (f) Meetings.--For the conduct of routine or emergency
16 business, the local committee shall meet at the call of the
17 chairperson. A majority of the members of the local committee,
18 or such other number of members of the local committee as set by
19 the local committee, shall constitute a quorum for the purpose
20 of conducting the business of the local committee and for all
21 other purposes. All actions of the local committee shall be
22 taken by a majority of the local committee members present. The
23 local committee shall be subject to the act of July 3, 1986
24 (P.L.388, No.212), known as the Sunshine Act.

25 (g) Duties.--A local committee shall have the duty and power
26 to:

27 (1) Make, amend and repeal bylaws and other procedures
28 in order to carry out the duties, requirements and
29 responsibilities of a local committee as set forth in SARA,
30 Title III, and as required by the council.

1 (2) Take all actions necessary to ensure the
2 implementation of the local emergency response plan and to
3 notify PEMA upon receipt of a notification of the release of
4 a hazardous material.

5 (3) Investigate alleged violations of this act.

6 (4) Prepare reports, recommendations or other
7 information requested by the council.

8 (5) Meet with any Commonwealth agency or local agency
9 which is empowered to exercise the governmental functions of
10 planning and zoning, to regulate land use and land use
11 development, or to authorize the siting of a facility within
12 the county to discuss and review with the Commonwealth agency
13 and local agency all mitigation factors necessary to protect
14 the health, safety and welfare of the general public from a
15 potential release of hazardous materials from a proposed
16 facility. Mitigation factors include, but are not limited to,
17 environmental impacts, shelter and evacuation feasibility,
18 emergency warning and communications, availability of
19 response equipment and future population and economic growth
20 in the area of the proposed facility.

21 (h) Expenses.--The administrative and operational expenses
22 of a local committee shall be paid from the fees collected by
23 the county and from grants received from the council in
24 accordance with the provisions of sections 207 and 208,
25 respectively.

26 (i) Agency and compensation for injury.--A member of a local
27 committee shall be an agent of the council and shall be deemed a
28 duly enrolled emergency management volunteer for the purposes of
29 35 Pa.C.S. § 7706 (relating to compensation for accidental
30 injury).

(j) Advisory capacity.--The local committee may perform other emergency management advisory duties as requested by county elected officials.

Section 204. Hazardous material safety program.

(a) Components.--In conjunction with the Departments of Environmental Resources, Health, Transportation, Agriculture, Labor and Industry, Public Utility Commission, Fish Commission, Pennsylvania Turnpike Commission, and the Pennsylvania State Police, or any other Commonwealth agencies as determined by the council, PEPA shall develop a hazardous material safety program for incorporation into the Pennsylvania Emergency Management Plan developed by PEPA under 35 Pa.C.S. Pt. V (relating to emergency management services). The hazardous material safety program shall include an assessment of the potential dangers and risks that hazardous material releases occurring at facilities and from transportation related accidents pose to the general public. The Pennsylvania State Fire Academy shall be utilized as a primary training facility pursuant to its duties under 35 Pa.C.S. § 7316(c) (relating to Pennsylvania State Fire Academy). The program shall also consider the impacts, consequences and necessary protective measures required to respond to and mitigate the effects of such releases and accidents. The program shall include, but not be limited to:

(1) Development of comprehensive emergency management guidance for hazardous materials for the Commonwealth and Commonwealth agencies which sets forth the specific duties, responsibilities, roles and missions of Commonwealth agencies.

(2) Development of comprehensive emergency management guidance consistent with the Emergency Management Services

1 Code for hazardous materials that can be used by the local
2 committees to meet the requirements of Federal and
3 Commonwealth statutes and laws.

4 (3) Development of a notification system whereby the
5 owners and operators of a facility will report the occurrence
6 of any hazardous substance or extremely hazardous substance
7 release to the appropriate Commonwealth agencies, local
8 agencies, and Commonwealth and local officials designated in
9 the Commonwealth and local plans. The reporting requirements
10 for this notification system are set forth in section 206.

11 (4) Development of a notification system whereby the
12 transporters of any hazardous substance or extremely
13 hazardous substance will report the occurrence of any
14 hazardous material release to the Commonwealth agencies,
15 local agencies and Commonwealth and local officials
16 designated in the Commonwealth and local plans. The reporting
17 requirements for this notification system are set forth in
18 section 206.

19 (5) Training and equipping Commonwealth agency and local
20 agency public safety and emergency response personnel.

21 (6) Establishing training standards or a certification
22 program for the formation of Commonwealth agency, local
23 agency or regional hazardous material response teams. All
24 Commonwealth agency, local agency or other agencies and
25 committees that establish training standards for emergency
26 service, law enforcement, firefighting or other personnel
27 shall cooperate with the council in the implementation of
28 these training standards or certification program.

29 (7) Periodical exercise of hazardous material release
30 scenarios at facilities and transportation sites that are

1 designed to test the response capabilities of Commonwealth
2 agency, local agency and regional public safety and emergency
3 response personnel.

4 (8) Procurement of specialized hazardous material
5 response supplies and equipment to be used by Commonwealth
6 agency, local agency and regional public safety and emergency
7 response personnel.

8 (9) PEMA's staffing and operation of a 24-hour State
9 emergency operations center to provide effective emergency
10 response coordination for all types of natural and man-made
11 disaster emergencies, including the ability to receive and
12 monitor the emergency notification reports required under
13 sections 205 and 206 from all facilities and transporters
14 involved with hazardous material incidents.

15 (10) Provisions for financial assistance to counties and
16 Commonwealth agencies as provided in sections 207 and 208 and
17 for the payment of compensation benefits awarded to duly
18 enrolled emergency management volunteers under 35 Pa. C.S. §
19 7706 (relating to compensation for accidental injury).

20 Section 205. Emergency reporting requirements.

21 (a) Requirements.--The owner or operator of a facility in
22 this Commonwealth shall comply with the following requirements:

23 (1) The owner or operator of a facility in this
24 Commonwealth covered under section 302 of SARA, Title III,
25 shall comply with the emergency planning and notification
26 requirements under sections 302 and 303 of SARA, Title III.

27 (2) The owner or operator of a facility in this
28 Commonwealth covered under section 311 of SARA, Title III,
29 shall comply with the reporting requirements under sections
30 311 and 312 of SARA, Title III.

1 (3) The owner or operator of a facility in this
2 Commonwealth subject to section 313 of SARA, Title III, shall
3 comply with the toxic chemical release form requirements
4 under section 313 of SARA, Title III.

5 (4) The owner of a facility in this Commonwealth subject
6 to the requirements of paragraphs (2) and (3) shall comply
7 with the procedures for providing information under section
8 323 of SARA, Title III.

9 (5) The owner or operator of a facility in this
10 Commonwealth covered under section 304 of SARA, Title III,
11 shall comply with the notification requirements of section
12 304 of SARA, Title III, and section 206 of this act.

13 (b) Document repository.--For the purposes of complying with
14 the reporting requirements set forth in sections 311, 312 and
15 313 of SARA, Title III, the owner or operator of any facility
16 shall submit its material safety data sheets or chemical lists,
17 emergency and hazardous chemical inventory forms and toxic
18 chemical release forms to the Department of Labor and Industry,
19 which is the council's repository for those documents.

20 (c) Rolling stock.--The owner or operator of a property that
21 has one or more rolling stock located within its property
22 boundaries for any period of time in excess of 30 continuous
23 days shall notify the council and the appropriate local
24 committee of that fact and shall prepare an emergency response
25 plan, which contains those provisions that either the council or
26 the appropriate local committee directs, in order to deal with
27 any potential release of an extremely hazardous substance from
28 that rolling stock.

29 Section 206. Emergency notification requirements.

30 (a) Facility or transportation accident or incident.--Except

1 as provided in subsection (e), the owner or operator of a
2 facility that manufactures, produces, uses, imports, exports,
3 stores, supplies or distributes any hazardous substance or
4 extremely hazardous substance, and the owner or operator of a
5 vehicle that ships, transports or carries any hazardous
6 substance or extremely hazardous substance to, within, through
7 or across this Commonwealth shall immediately report the release
8 of the substance which exceeds the reportable quantity and which
9 occurs outside the property boundaries of the facility or which
10 results from a transportation accident or incident to the
11 appropriate Commonwealth and county emergency response office as
12 follows:

13 (1) Initial notification shall be made by the owner or
14 operator of a facility by calling the 24-hour response
15 telephone number of the county office designated and acting
16 as the emergency response coordinator for the local
17 committee, which may be known as the county emergency
18 management office 24-hour response number.

19 (2) Initial notification shall be made by the owner or
20 operator of a vehicle by dialing 911 or, in the absence of a
21 911 emergency telephone number, calling the operator in order
22 to notify the county emergency management office 24-hour
23 response number within whose jurisdiction the transportation
24 accident or incident has occurred, and reporting that a
25 hazardous substance or an extremely hazardous substance
26 release has occurred.

27 (b) Contents.--The notification shall include each of the
28 following to the extent known at the time of the notice and so
29 long as no delay in responding to the emergency results:

30 (1) The name and telephone number of the person making

1 the notification.

2 (2) The name of the person employed by the owner or
3 operator of the facility or vehicle who has the authority or
4 responsibility to supervise, conduct or perform any cleanup
5 activities required at the facility or transportation
6 accident site or to contract for the performance of any
7 cleanup activities at the facility or transportation accident
8 site.

9 (3) The chemical name or identity of any substance
10 involved in the release.

11 (4) An indication of whether the substance is an
12 extremely hazardous substance or other hazardous material or
13 appears on a Federal or Commonwealth list of hazardous
14 materials as periodically amended.

15 (5) An estimate of the quantity of the substance that
16 was released into the environment.

17 (6) The time, location and duration of the release.

18 (7) The medium or media into which the release occurred.

19 (8) Any known or anticipated acute or chronic health
20 risks associated with the emergency and, where appropriate,
21 advice regarding medical attention necessary for exposed
22 individuals.

23 (9) Proper precautions to take as a result of the
24 release, including evacuation, unless the information is
25 readily available to the community emergency coordinator
26 under an emergency plan, and any other relevant information
27 which may be requested.

28 (10) The name and telephone number of the person or
29 persons to be contacted for further information.

30 (11) Additional information required by Federal or

Commonwealth law.

(c) Second notice.--A second notification shall be made to the PEMA 24-hour response number. This notification shall contain the information required by subsection (b) and shall be made within one hour of the occurrence of the accident or incident.

(d) Written report.--Within 14 calendar days after a release which required notice under this section, the owner or operator of a facility and the owner or operator of a vehicle shall provide a written follow-up emergency notice, or notices if more information becomes available, to PEMA and the county emergency management office setting forth and updating the information required under subsection (b), and including additional information with respect to:

(1) Actions taken to respond to and contain the release.

(2) Any known or anticipated acute or chronic health risks associated with the release.

(3) Advice regarding medical attention necessary for exposed individuals, where appropriate.

(4) Actions to be taken to mitigate potential future incidents.

(e) Exception.--The provisions of this section shall not apply to a release of a hazardous substance or an extremely hazardous substance if the release of such substance is exempted, excluded or permitted by Federal or Commonwealth statute, law, rule or regulation.

Section 207. Establishment of funds.

(a) Hazardous Material Response Fund.--There is hereby created in the General Fund a nonlapsing restricted account to be known as the Hazardous Material Response Fund. The fund shall

1 consist of the fees collected under subsection (d). Expenditures
2 from the fund shall be authorized by the Governor and
3 administered by PEMA and shall be used to carry out the
4 purposes, goals and objectives of SARA, Title III, and the
5 Commonwealth's hazardous material safety program.

6 (b) Emergency Planning Fee Account.--The treasurer of each
7 county shall establish a nonlapsing restricted account, to be
8 known as the Emergency Planning Fee Account. The fund shall
9 consist of the fees collected under subsection (c). Expenditures
10 from the fund shall be authorized by the council and shall be
11 used only to fund the administrative and operational expenses of
12 local committees in accordance with guidelines or regulations
13 promulgated by the council.

14 (c) Emergency planning fee.--Each owner or operator of a
15 facility shall pay to the treasurer of the county where the
16 facility is located, for deposit into the Emergency Planning Fee
17 Account, an annual fee to be known as an emergency planning fee,
18 for each facility owned or operated according to the following
19 schedule:

20 (1) Payable on or before July 1, 1989, \$100 for each
21 facility at which four or less persons are employed.

22 (2) Payable on or before July 1, 1989, \$500 for each
23 facility at which more than four but not more than nine
24 persons are employed.

25 (3) Payable on or before July 1, 1989, \$800 for each
26 facility at which more than nine but not more than 19 persons
27 are employed.

28 (4) Payable on or before July 1, 1989, \$1,000 for each
29 facility at which more than 19 persons are employed.

30 (5) Payable on or before July 1, 1990, and the first day

of July of every year thereafter, \$100 for each facility.

(d) Hazardous chemical fee.--Each owner or operator of a facility shall pay a fee, to be known as a hazardous chemical fee, of \$10 by March 1 of each year to the council for each hazardous chemical within the meaning of 29 CFR 1912.1200(c) or its successor which is required by section 312 of SARA, Title III, to be listed on the hazardous chemical inventory form (Tier II) which the owner or operator of the facility submits to the council. The fees collected under this subsection shall be deposited by the council into the Hazardous Material Response Fund.

(e) Exemptions.--The owners or operators of family farm enterprises shall be exempt from payment of the fees required under subsections (c) and (d).

(f) Federal funds, grants or other gifts.--The council is authorized to accept and may deposit into the Hazardous Materials Response Fund grants, gifts and Federal funds, for the purpose of carrying out the provisions of this act.

Section 208. Emergency management grants.

(a) General.--Each county shall participate in the hazardous material safety program and may be eligible to receive an emergency management grant from the Hazardous Material Response Fund in order to comply with the requirements of SARA, Title III, and the Commonwealth's hazardous material safety program.

(b) Applications.--A county or Commonwealth agency may apply annually to the council for an emergency management grant. Applications shall be made in the manner specified by the council in regulations promulgated under section 201(g).

(c) Eligible Costs.--Eligible costs for emergency management grants are limited to the cost of:

1 (1) Developing, updating and exercising emergency
2 response plans required under section 303 of SARA, Title III.

3 (2) Performing public information functions as required
4 by section 324 of SARA, Title III.

5 (3) Collecting, documenting and processing chemical
6 inventory forms and other documents required by SARA, Title
7 III.

8 (4) Developing an emergency planning and response
9 capability for responding to hazardous material releases and
10 meeting the requirements of the Commonwealth's hazardous
11 material safety program.

12 (5) Supporting the operation and administration of local
13 committees.

14 (d) Grant amount.--The amount of the annual grant from the
15 Hazardous Material Response Fund shall not exceed the amount of
16 the funds of local revenues made available by the county for the
17 purpose of complying with the requirements and provisions of
18 SARA, Title III, and this act.

19 (e) Payment of grants.--The council shall review annually
20 all applications received under this section and may make grants
21 to the counties and Commonwealth agencies from the Hazardous
22 Material Response Fund. The council shall prioritize the
23 available funds among the eligible applicants based upon the
24 following criteria:

25 (1) Compliance with the requirements of SARA, Title III,
26 and the Commonwealth's hazardous material safety program and
27 emergency management services program.

28 (2) The number of facilities located within the county,
29 or the existence of unique or special circumstances that pose
30 a threat to the health and safety of the general public, or

1 both.

2 (3) Availability of financial, technical or other
3 assistance to the applicant from other governmental, business
4 or private sources.

5 Section 209. Hazardous material response teams.

6 (a) Hazardous material response zones.--The council or its
7 designated agent may establish hazardous material response zones
8 consisting of portions of counties or multiple counties that may
9 be served by hazardous material response teams that are
10 certified by the council.

11 (b) Grants.--Each certified hazardous material response team
12 may be eligible to receive, through an application submitted by
13 either a Commonwealth agency or county, an emergency management
14 grant from the Hazardous Material Response Fund.

15 (c) Compliance with guidelines and regulations.--Hazardous
16 material response teams shall comply with any guidelines,
17 regulations, directives or other documents developed by the
18 council for incorporation into the Commonwealth's hazardous
19 material safety program.

20 (d) Compliance with act.--Each county shall comply with its
21 duty to respond to hazardous material releases or incidents
22 under the provisions of this act and the emergency management
23 services code by doing any of the following:

24 (1) Individually organizing and operating a certified
25 hazardous materials response team.

26 (2) Contracting with a certified hazardous material
27 response team, such as those formed by a regional hazardous
28 materials organization.

29 (3) Participating as a member of a regional hazardous
30 materials organization for the purpose of creating and

organizing a certified hazardous material response team.

(e) Regional hazardous materials organizations.--Regional hazardous materials organizations formed solely by a county or counties may be funded fully or in part by proportional contributions from the political subdivisions included within the hazardous material response zone serviced by the regional hazardous materials organization or as otherwise agreed to by contract between the regional hazardous materials organization and those political subdivisions.

(f) Insurance.--Each Commonwealth agency, local agency, regional hazardous materials organization, volunteer service organization, hazardous material transporter, manufacturer, supplier or user, or other entity that organizes a hazardous material response team shall be responsible for providing workers' compensation and liability insurance for its hazardous material response team. A hazardous material response team that meets the training standards or certification requirements established under the Commonwealth's hazardous material safety program shall receive a discount from the applicable insurance company as that insurance company's loss experience justifies.

(g) Emergency response.--A certified hazardous materials response team may enter onto any private or public property on which a release of a hazardous material has occurred or the occurrence or the threat of a hazardous material release is imminent. A certified hazardous materials response team may enter any adjacent or surrounding property to which the hazardous material release has entered or threatens to enter. A certified hazardous materials response team may enter any private or public property in order to respond to the release or threatened release of a hazardous material, to monitor and

1 contain the hazardous material release, to perform cleanup,
2 removal and remedial actions, and to perform any other emergency
3 response activities deemed necessary by the certified hazardous
4 material response team or by the representatives of PEMA, the
5 county emergency management office as established under 35
6 Pa.C.S. Pt. V (relating to emergency management services), or
7 the local committee.

8 Section 210. Recovery of response costs.

9 (a) General rule.--A person who causes a release of a
10 hazardous material shall be liable for the response costs
11 incurred by a hazardous material response team. The Commonwealth
12 agency, local agency, regional hazardous materials organization,
13 volunteer emergency service organization, or hazardous material
14 transporter, manufacturer, supplier or user that organized the
15 hazardous material response team that undertakes a response
16 action may recover those response costs in an action in equity
17 brought before a court of competent jurisdiction. Should more
18 than one hazardous material response team incur response costs
19 for the same hazardous material release or incident, the
20 organizing entities of those hazardous material response teams
21 may file a joint action in equity and may designate one entity
22 to represent the others in the law suit.

23 (b) Amount.--In an action to recover response costs, a
24 Commonwealth agency, local agency, regional hazardous materials
25 organization, or a hazardous material transporter, manufacturer,
26 supplier or user may include operational, administrative
27 personnel and legal costs incurred from its initial response
28 action up to the time that it recovers its costs. The amount
29 attributable to administrative and legal costs shall be 10% of
30 the amount paid for the response action or the actual costs,

1 whichever is greater. Volunteer emergency service organizations
2 may include only operational, administrative and legal costs
3 incurred from its initial response action up to the time that it
4 recovers its costs.

5 (c) Civil penalty.--If a Commonwealth agency or local agency
6 files an action to recover the response costs incurred by its
7 hazardous material response team, it may also seek civil
8 penalties under section 302.

9 (d) Definitions.--When used in this section, the term
10 "response cost" includes the following:

11 (1) Disposable materials and supplies acquired, consumed
12 and expended specifically for the purpose of the response to
13 the hazardous material release.

14 (2) Rental or leasing of equipment used specifically for
15 the response, for example, protective equipment or clothing
16 and scientific and technical equipment.

17 (3) Replacement costs for equipment that is contaminated
18 beyond reuse or repair during the response, for example,
19 self-contained breathing apparatus irretrievably contaminated
20 during the response.

21 (4) Decontamination of equipment contaminated during the
22 response.

23 (5) Compensation of employees or members of the
24 hazardous material response team, to include regular and
25 overtime pay for permanent full-time and other than full-time
26 employees or members.

27 (6) Special technical services specifically required for
28 the response, for example, costs associated with the time and
29 efforts of technical experts or specialists.

30 (7) Laboratory and testing costs for purposes of

1 analyzing samples or specimens taken during the response.

2 (8) Other special services specifically required for the
3 response, for example, utility costs.

4 (9) Costs associated with the services, supplies and
5 equipment used to conduct an evacuation during the response.

6 Section 211. Facility and vehicle inspection and testing.

7 (a) Inspection.--In order to determine compliance with this
8 act and SARA, Title III, either PEMA or a local committee may
9 send representatives to a facility or vehicle site, during
10 normal business hours, to inspect the facility or vehicle and to
11 request information or reports from the facility or vehicle
12 owner or operator concerning the chemical name, identity,
13 amount, or any other information necessary for emergency
14 planning and response purposes for any substance, liquid,
15 mixture, compound, material or product manufactured, produced,
16 used, stored, supplied, imported, exported or distributed at, to
17 or from the facility or vehicle.

18 (b) Testing.--Should a representative of PEMA or the local
19 committee determine during the course of a facility or vehicle
20 inspection that the chemical name, identity, amount or any other
21 requested information for any substance, liquid, mixture,
22 compound, material or product present at the facility or vehicle
23 cannot be identified or determined to his satisfaction, due to
24 the lack of proper labeling, placarding, record keeping or for
25 any other reason, the representative shall have the authority to
26 take a sample or specimen of the substance, liquid, mixture,
27 compound, material or product, in those amounts deemed
28 necessary, in order to have the sample or specimen tested and
29 analyzed either at the time of the inspection or subsequent to
30 the inspection at a Commonwealth, county or private laboratory.

1 The purpose of the test or analysis shall be to identify the
2 chemical properties of the sample or specimen or to determine
3 the amount of the substance, liquid, mixture, compound, material
4 or product manufactured, produced, used, stored, supplied,
5 imported, exported or distributed at, to or from the facility or
6 vehicle. The owner or operator of a facility or vehicle shall
7 pay any testing and laboratory analysis costs incurred by PEMA
8 or a local committee as performed under this section.

9 (c) Emergency situations.--Should a release or threatened
10 release of a known or unknown substance, liquid, mixture,
11 compound, material or product occur or appear to be imminent at
12 a facility or vehicle site, which endangers or has the potential
13 to endanger the health, safety and welfare of the public,
14 employees of the facility, or the vehicle's owner or operator,
15 or the employees of the owner or operator of the vehicle, PEMA
16 or the local committee may send representatives to the facility
17 or vehicle site at any time in order to inspect the facility or
18 vehicle and to assess the danger posed by the release or
19 threatened release and to obtain samples or specimens of the
20 substance, liquid, mixture, compound, material or product
21 involved in the release or threatened release and to perform any
22 other emergency response activities deemed necessary by the
23 representatives of PEMA or the local committee.

24 (d) Trade secrets.--A person shall provide the
25 representative of PEMA or the local committee with the chemical
26 name, identity or any other information requested concerning any
27 substance, liquid, mixture, compound, material or product
28 present at the facility or vehicle, whether or not the chemical
29 name, identity or other information requested is entitled to
30 protection as a trade secret under section 322 of SARA, Title

1 III. For that information which has received trade secret
2 protection under section 322 of SARA, Title III, prior to the
3 date of the inspection or request, the representative shall give
4 a written assurance to the person that reasonable measures will
5 be taken to protect the confidentiality of any information
6 provided to the representative.

7 CHAPTER 3

8 MISCELLANEOUS PROVISIONS

9 Section 301. Immunity from civil liability.

10 (a) General.--No Commonwealth agency, local agency, regional
11 hazardous materials organization, volunteer emergency service
12 organization or hazardous material transporter, manufacturer,
13 supplier or user that organized the hazardous material response
14 team nor their elected officers, officials, directors and
15 employees, and no hazardous material response team member,
16 member of an industrial hazardous material response team, law
17 enforcement officer, ambulance service or rescue squad member,
18 firefighter or other emergency response personnel engaged in any
19 emergency service or response activities involving a hazardous
20 material release at a facility or transportation accident site
21 shall be liable for the death of or any injury to persons or
22 loss or damage to property resulting from that hazardous
23 material release, except for any acts or omissions which
24 constitute willful misconduct.

25 (b) Council and local committees.--No member of the council
26 or a local committee shall be liable for any civil damages
27 resulting from any act or omission arising out of the
28 performance of the functions, duties and responsibilities of the
29 council or local committee, except for acts or omissions which
30 constitute willful misconduct.

1 (c) Other.--No employee, representative or agent of a
2 Commonwealth agency or local agency engaged in any emergency
3 service or response activities involving a hazardous material
4 release at a facility or transportation accident site shall be
5 liable for the death of or any injury to persons or loss or
6 damage to property resulting from that hazardous material
7 release, except for any acts or omissions which constitute
8 willful misconduct.

9 Section 302. Penalties and fines.

10 (a) Civil penalty.--A person who violates any of the
11 emergency reporting, planning or notification requirements of
12 sections 201 through 206 or any regulations promulgated under
13 those sections shall be subject to a civil penalty of not less
14 than \$1,000 and not more than \$25,000, plus \$5,000 for each day
15 of continued violation.

16 (b) Misdemeanor.--A person who:

17 (1) Knowingly and willfully fails to report the release
18 of a hazardous substance or extremely hazardous substance as
19 required by sections 205 and 206 commits a misdemeanor of the
20 third degree and shall, upon conviction, be sentenced to pay
21 a fine of not less than \$1,000 and not more than \$25,000 for
22 each separate offense or imprisonment in the county jail for
23 a period of not more than one year, or both. For the purposes
24 of this paragraph, each day of continued violation
25 constitutes a separate offense.

26 (2) Intentionally obstructs or impairs, by force,
27 violence, physical interference or obstacle, a representative
28 of PEMA or the local committee attempting to perform the
29 duties and functions set forth in section 211, commits a
30 misdemeanor of the second degree and shall, upon conviction,

1 be sentenced to pay a fine of not less than \$1,000 and not
2 more than \$5,000 for each separate offense or imprisonment in
3 the county jail for a period of not more than two years, or
4 both.

5 (c) Disposition.--One half of all civil penalties and fines
6 collected under this section shall be deposited into the
7 Hazardous Material Response Fund and one half shall be deposited
8 into the appropriate county Emergency Planning Fee Account.

9 Section 303. Enforcement.

10 (a) Civil actions.--The Office of Attorney General, or the
11 Office of General Counsel may commence a civil action against
12 any person for failure to comply with this act or its
13 regulations. The council, a county or a municipality may
14 commence a civil action against any person for failure to comply
15 with this act or its regulations if the Office of Attorney
16 General or the Office of General Counsel has not commenced such
17 action and more than 60 days have elapsed since the plaintiff
18 gave notice of the alleged violation to the alleged violator.

19 (b) Criminal actions.--The Office of Attorney General under
20 the act of October 15, 1980 (P.L.950, No.164), known as the
21 Commonwealth Attorneys Act, or the district attorney for the
22 county in which the violation is alleged to have occurred, may
23 commence criminal proceedings for the enforcement of this act
24 and its regulations.

25 (c) Venue.--A proceeding under subsection (a) or (b) may be
26 brought in the court of common pleas for the county in which the
27 defendant is located or for the county in which the violation is
28 alleged to have occurred.

29 Section 304. Relationship to other laws.

30 (a) Federal law.--This law shall be read in conjunction with

1 Federal acts, laws or regulations providing for the
2 identification, labeling or reporting of information concerning
3 hazardous material releases, and any other health and safety
4 matters related to hazardous materials, and is intended to
5 supplement Federal acts, laws and regulations in the interests
6 of protecting the health and safety of the citizens of this
7 Commonwealth. In those instances where the provisions of this
8 act are more comprehensive or stringent than the provisions of
9 an applicable Federal act, law or regulation, the provision of
10 this act shall be controlling.

11 (b) State law.--Nothing in this act shall affect or modify
12 in any way the obligations or liabilities of any person under
13 other statutes of this Commonwealth.

14 (c) Local law.--This act shall preempt any ordinances or
15 resolutions passed or adopted by any political subdivision that
16 is effective on or before the effective date of this act to the
17 extent that such ordinance or resolution conflicts or is
18 inconsistent with the provisions of this act.

19 Section 305. Facility insurance.

20 A facility that complies with the emergency reporting
21 requirements of section 205(a), (b), (c), (e) and (g) of this
22 act, as applicable to that facility, may receive a discount from
23 that facility's insurance company as that insurance company loss
24 experience justifies.

25 Section 306. Appropriation.

26 The sum of \$650,000 is appropriated to the Pennsylvania
27 Emergency Management Agency for fiscal year July 1, 1989, to
28 June 30, 1990, and shall likewise be appropriated each fiscal
29 year thereafter in order to carry out the various provisions of
30 SARA, Title III, and this act.

1 Section 307. Severability.

2 The provisions of this act are severable. If any provision of
3 this act or its application to any person or circumstance is
4 held invalid, the invalidity shall not affect other provisions
5 or applications of this act which can be given effect without
6 the invalid provision or application.

7 Section 308. Effective date.

8 This act shall take effect immediately.