
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, PORTERFIELD AND
ANDREZESKI, MARCH 6, 1989

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
NOVEMBER 13, 1990

AN ACT

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

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23 The General Assembly of the Commonwealth of Pennsylvania

24 hereby enacts as follows:

25 CHAPTER 1

26 GENERAL PROVISIONS

27 Section 101. Short title.

28 This act shall be known and may be cited as the Hazardous

29 Material Emergency Planning and Response Act.

30 Section 102. Legislative findings and purpose.

1 (a) Findings.--The General Assembly hereby determines,
2 declares and finds that exposure to hazardous materials has the
3 potential for causing undesirable health and environmental
4 effects and poses a threat to the health, safety and welfare of
5 the citizens of this Commonwealth, and that the citizens of this
6 Commonwealth and emergency service personnel who respond to
7 emergency situations should be protected from the health hazards
8 and harmful exposure resulting from hazardous material releases
9 at facilities and from transportation-related accidents.

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

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

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

25 (3) Establish and maintain a comprehensive hazardous
26 material safety program for the Commonwealth and its
27 counties.

28 (4) Create the Hazardous Material Response Fund to
29 provide financial assistance to Commonwealth agencies and
30 counties to develop an effective and integrated response

1 capability to the health hazards, dangers and risks which
2 hazardous material releases pose to the general public.

3 (5) Establish an emergency notification system whereby
4 the release of hazardous materials occurring at a facility or
5 resulting from a transportation accident will be promptly
6 reported to the proper Commonwealth and county emergency
7 response officials.

8 (6) Assign responsibilities to various Commonwealth
9 agencies and local agencies to ensure the development and
10 furtherance of a comprehensive hazardous material safety
11 program.

12 (7) Provide civil liability protection to officials and
13 emergency response personnel of the Commonwealth and
14 municipalities who are properly carrying out their duties and
15 responsibilities under the Commonwealth's hazardous material
16 safety program.

17 (8) Require persons responsible for the release of
18 hazardous materials to pay the costs incurred by CERTIFIED <—
19 hazardous material response teams OR SUPPORTING PAID AND <—
20 VOLUNTEER EMERGENCY SERVICE ORGANIZATIONS for emergency
21 response activities necessitated by the hazardous material
22 release.

23 Section 103. Definitions.

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

27 "Certified hazardous material response team." A team of
28 individuals who are certified and organized by a Commonwealth
29 agency, a local agency, a regional hazardous material
30 organization, a transporter, a manufacturer, supplier, or user

1 of hazardous materials, or a volunteer service organization, or
2 a private contractor, for the primary purpose of providing
3 emergency services to mitigate actual or potential immediate
4 threats to public health and the environment in response to the
5 release or threat of a release of a hazardous material, which is
6 certified, trained and equipped in accordance with this act or
7 regulations promulgated under this act. Hazardous material
8 response teams may also be certified to perform stabilization
9 actions needed to remove threats to public health and the
10 environment from hazardous material releases.

11 "Commonwealth agency." An executive agency or independent
12 agency.

13 "Council." The Pennsylvania Emergency Management Council.

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

16 "County commissioner." Includes, but is not limited to, the
17 mayor of a city of the first class coterminous with a county of
18 the first class, or the designee of such mayor, and the
19 equivalent county official designated under a home rule charter
20 or optional plan adopted under the act of April 13, 1972
21 (P.L.184, No. 62), known as the Home Rule Charter and Optional
22 Plans Law.

23 "County emergency management coordinator." The person
24 designated to perform emergency management functions by the
25 county under 35 Pa.C.S. Part V (relating to emergency management
26 services).

27 "Emergency management." The judicious planning, assignment
28 and coordination of all available resources in an integrated
29 program of prevention, mitigation, preparedness, response and
30 recovery for emergencies of any kind, whether from attack, man-

1 made or natural sources.

2 "EMERGENCY SERVICE ORGANIZATION." A TEAM OF INDIVIDUALS <—
3 ORGANIZED BY A COMMONWEALTH AGENCY, A LOCAL AGENCY OR ANY OTHER
4 ENTITY FOR THE PRIMARY PURPOSE OF PROVIDING EMERGENCY SERVICES
5 AS DEFINED IN 35 PA.C.S. § 7102 (RELATING TO DEFINITIONS).

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

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

24 "Facility." All buildings, structures and other stationary
25 items which are located on a single site or a contiguous or
26 adjacent site which are owned or operated by the same person and
27 which actually manufacture, produce, use, transfer, store,
28 supply or distribute any hazardous material. The term includes
29 railroad yards and truck terminals but does not include
30 individual trucks, rolling stock, water vessels, airplanes or

1 other transportation vehicles.

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

6 "Hazardous chemical." Substances as defined within the
7 meaning of 29 CFR 1910.1200(c), except that the term does not
8 include the following:

9 (1) Any food, food additive, color additive, drug or
10 cosmetic regulated by the Food and Drug Administration.

11 (2) Any substance present as a solid in any manufactured
12 item to the extent that exposure to the substance does not
13 occur under normal conditions of use.

14 (3) Any substance to the extent that it is used for
15 personal, family or household purposes or is present in the
16 same form and concentration as a product packaged for
17 distribution and use by the general public.

18 (4) Any substance to the extent that it is used in a
19 research laboratory or a hospital or other medical facility
20 under the direct supervision of a technically qualified
21 individual.

22 (5) Any substance to the extent that it is used in
23 routine agricultural operations or is a fertilizer held for
24 sale by a retailer to the ultimate consumer.

25 "Hazardous material." Any of the following, as defined in
26 this act:

27 (1) A hazardous substance.

28 (2) An extremely hazardous substance.

29 (3) A hazardous chemical.

30 (4) A toxic chemical.

1 Except as provided in section 206, the term does not include the
2 transportation, including the storage incident to such
3 transportation, of any substance or chemical subject to the
4 requirements of this act, including the transportation and
5 distribution of natural gas.

6 "Hazardous substance." A substance appearing on the list of
7 hazardous substances prepared under section 102 of the
8 Comprehensive Environmental Response, Compensation, and
9 Liability Act of 1980 (P.L. 96-510, 94 Stat. 2767) as set forth
10 at 40 CFR Part 302 ("Table 302.4 - List of Hazardous Substances
11 and Reportable Quantities"), or appearing on any successor list
12 of hazardous substances prepared under section 102 of the
13 Comprehensive Environmental Response, Compensation, and
14 Liability Act of 1980.

15 "Independent agency." Boards, commissions, authorities and
16 other agencies and officers of the Commonwealth which are not
17 subject to the policy supervision and control of the Governor,
18 except any court or other officer or agency of the unified
19 judicial system or the General Assembly and its officers and
20 agencies.

21 "Local agency." A municipality or any officer or agency
22 thereof.

23 "Local emergency planning committee" or "local committee."
24 The local committee within each emergency planning district
25 responsible for preparing hazardous material plans and
26 performing other functions under The Emergency Planning and
27 Community Right-To-Known Act of 1986 (Title III, Public Law 99-
28 499, 42 U.S.C. § 11001 et seq.).

29 "PEMA." The Pennsylvania Emergency Management Agency.

30 "Person." An individual, corporation, firm, association,

1 public utility, trust, estate, public or private institution,
2 group, Commonwealth or local agency, political subdivision, and
3 any legal successor, representative or agency of the foregoing.

4 "Regional hazardous material organization." A nonprofit
5 corporation, joint venture or authority formed under the laws of
6 this Commonwealth which either contracts with or is organized by
7 one or more Commonwealth agencies, local agencies or volunteer
8 service organizations for the purpose of creating, training,
9 equipping, maintaining and providing one or more hazardous
10 material response teams to serve any specific geographic area as
11 approved by the Pennsylvania Emergency Management Council
12 within, but not limited to, the Commonwealth under this act.

13 "Release." Any spilling, leaking, pumping, pouring,
14 emitting, emptying, discharging, injecting, escaping, leaching,
15 dumping or disposing into the environment of a hazardous
16 material, including, but not limited to, the abandonment or
17 discarding of barrels, containers and other receptacles
18 containing a hazardous material.

19 "Reportable quantity." The quantity of a hazardous material
20 stated on the various lists of hazardous substances and
21 extremely hazardous substances as defined in this section, the
22 release of which shall be reported under this act.

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

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

1 "Service stations." A motor vehicle service station, filling
2 station, garage or similar operation engaged in the retail sale
3 of motor fuels that are regulated by the act of July 6, 1989
4 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
5 Act, OR A FACILITY WHOSE PRIMARY FUNCTION IS AUTO BODY REPAIR. <—

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

12 "Unified judicial system." The unified judicial system
13 existing under section 1 of Article V of the Constitution of
14 Pennsylvania.

15 "Vehicle." Any truck, railroad car, water vessel, airplane
16 or other transportation vehicle that ships, carries or
17 transports a hazardous material on any highway, rail line or
18 waterway within the jurisdictional boundaries of this
19 Commonwealth.

20 CHAPTER 2

21 HAZARDOUS MATERIAL PROTECTION

22 Section 201. Designation and functions of Pennsylvania

23 Emergency Management Council

24 (a) Council.--The Pennsylvania Emergency Management Council,
25 established and organized under the act of November 26, 1978
26 (P.L.1332, No.323), known as the Emergency Management Services
27 Code, is designated and shall constitute the Commonwealth's
28 emergency response commission to carry out the responsibilities
29 assigned to the Commonwealth by SARA, Title III, to develop
30 overall policy and direction for a Statewide hazardous material

1 safety program and to supervise and coordinate the
2 responsibilities of the local emergency planning committees.

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

6 (c) Chairperson.--The Governor shall designate a member of
7 the council to serve as chairperson of the council. In the
8 absence of the chairperson, the director of PEMA shall serve as
9 chairperson. The chairperson shall have the authority to assign,
10 delegate or transfer tasks, duties and responsibilities to
11 members of the council. The chairperson shall approve the
12 appointment of members to the council who are designated through <—
13 ~~a delegation of authority from their respective department or~~
14 ~~office.~~ BY THEIR RESPECTIVE DEPARTMENT OR OFFICE AND AUTHORIZED <—
15 TO FULFILL THE DUTIES AND RESPONSIBILITIES OF THE APPOINTED
16 MEMBER OF THE COUNCIL.

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

21 (e) Meetings.--For the conduct of routine or emergency
22 business, the council shall meet at the call of the chairperson.
23 Five members of the council shall constitute a quorum for the
24 purpose of conducting the business of the council and for all
25 other purposes. All actions of the council shall be taken by a
26 majority of the council members present. The council shall be
27 subject to the act of July 3, 1986 (P.L.388, No.212), known as
28 the Sunshine Act.

29 (f) Staff.--The council shall supervise PEMA as its primary
30 agent responsible for performing the functions and duties of the

1 council established under this act. For this purpose, PEMA shall
2 employ such professional, technical, administrative and other
3 staff personnel as may be deemed essential to carry out the
4 purposes of this act and the development and maintenance of a
5 comprehensive Commonwealth hazardous material safety program and
6 report directly to the council.

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

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

12 (2) Promulgate as provided by law any rules and
13 regulations necessary to carry out and implement this act and
14 SARA, Title III.

15 (3) Develop Commonwealth agency contingency plans
16 relating to the implementation of this act and SARA, Title
17 III.

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

20 (5) Supervise the operation of local committees and
21 ensure that local committees meet all Federal and
22 Commonwealth standards and requirements as provided by law.

23 (6) Develop a Commonwealth comprehensive hazardous
24 material safety program.

25 (7) Delegate authority and assign primary responsibility
26 to the Department of Labor and Industry for receiving,
27 processing and managing hazardous chemical information forms
28 and data, trade secrets, and public information requests
29 under this act and in coordination with the act of October 5,
30 1984 (P.L.734, No.159), known as the Worker and Community

1 Right-to-Know Act. Emphasis should be given to electronically
2 processing the information reported under this act to
3 maximize its use in emergency response and to enhance its
4 availability to the public.

5 (8) Delegate authority and assign responsibility to the
6 Department of Environmental Resources and the Department of
7 Health for providing technical advice and assistance
8 consistent with established departmental responsibilities in
9 the alleviation of public health and environmental hazards
10 associated with hazardous material releases or threatened
11 releases of hazardous materials, including, but not limited
12 to, dispatching emergency response personnel to accident
13 sites during emergency situations when requested by PEMA.
14 This act shall not affect any existing authority these
15 agencies have to respond to hazardous material releases.

16 (9) Prescribe duties and responsibilities for
17 Commonwealth agencies, counties and local emergency planning
18 committees to conduct comprehensive emergency management
19 activities consistent with this act.

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

24 (11) Develop a public information, education and
25 participation program for the public and facility owners
26 covering the requirements of this act and the Worker and
27 Community Right-to-Know Act and interpretation of the
28 chemical information collected under this act and the risks
29 those chemicals pose to the public health and environment.

30 (12) DEVELOP A MECHANISM OR GUIDELINES FOR THE USE OF

<—

1 LOCAL EMERGENCY PLANNING COMMITTEES TO ACT AS BOARDS OF
2 ARBITRATION FOR RESOLVING COST RECOVERY DISPUTES CONCERNING
3 THOSE COSTS DEFINED IN SECTION 210(C) THAT ARISE BETWEEN A
4 PERSON WHO CAUSES A RELEASE OF A HAZARDOUS MATERIAL AND THE
5 ORGANIZERS OF ANY CERTIFIED HAZARDOUS MATERIAL RESPONSE TEAMS
6 AND OR EMERGENCY SERVICE ORGANIZATIONS THAT RESPONDED TO THE
7 HAZARDOUS MATERIAL RELEASE.

8 ~~(12)~~ (13) Do all other acts and things necessary for the <—
9 exercise of the powers and duties of the council and for the
10 implementation of this act and SARA, Title III.

11 (h) Council expenses.--The council shall develop a specific
12 operating budget to implement the provisions of this act which
13 shall be submitted SEPARATELY by PEMA with its regular budget <—
14 each year, subject to the requirements of section 207.

15 ~~(i) Advisory committee.~~ <—

16 ~~(1) The council shall appoint a 19 member Hazardous~~
17 ~~Material Emergency Planning and Response Advisory Committee.~~
18 ~~Meetings of the committee shall be convened by PEMA for the~~
19 ~~purpose of reviewing guidelines, standards or regulations~~
20 ~~developed to implement this act. PEMA shall participate in~~
21 ~~all meetings of the committee and provide administrative~~
22 ~~support.~~

23 ~~(2) Four members shall be representatives of county~~
24 ~~government selected from a list of eight names submitted by~~
25 ~~the State Association of County Commissioners; three members,~~
26 ~~including one each from a city of the first, second and third~~
27 ~~class; one member from a local emergency planning committee;~~
28 ~~five members representing facility owners or operators~~
29 ~~affected by this act, including one small business~~
30 ~~representative; two members from fire protection services;~~

1 ~~three members of the general public, including~~
2 ~~representatives of environmental and public interest groups;~~
3 ~~and the State Fire Commissioner, or his designee. The~~
4 ~~Secretary of Environmental Resources, the Secretary of~~
5 ~~Health, the Secretary of Transportation and the Commissioner~~
6 ~~of the Pennsylvania State Police, or their designees, shall~~
7 ~~be ex officio members.~~

8 ~~(3) The committee shall select a chairman from among its~~
9 ~~members. A quorum shall consist of a majority of the~~
10 ~~appointed members present.~~

11 ~~(4) Committee members shall serve without compensation,~~
12 ~~but shall be reimbursed for all reasonable and necessary~~
13 ~~expenses from the Hazardous Material Response Fund, in~~
14 ~~accordance with the rules of the Executive Board.~~

15 ~~(5) Prior to the formalization of any guideline,~~
16 ~~standard or proposed or final regulation to implement this~~
17 ~~act, the council shall consult with the advisory committee~~
18 ~~and give the committee a reasonable opportunity to review and~~
19 ~~comment on the proposal. A written report, including the~~
20 ~~comments of the committee on any guideline, standard or~~
21 ~~proposed or final regulation, shall be provided to the~~
22 ~~council prior to any final actions. The chairman of the~~
23 ~~advisory committee shall be invited to participate in all~~
24 ~~council meetings and discussions concerning implementation of~~
25 ~~this act.~~

26 (I) ADVISORY COMMITTEE.--THE COUNCIL SHALL APPOINT A <—
27 HAZARDOUS MATERIAL EMERGENCY PLANNING AND RESPONSE ADVISORY
28 COMMITTEE FROM THE MEMBERS OF THE COUNCIL AND OTHER PERSONS
29 REPRESENTATIVE OF THOSE GROUPS AFFECTED BY THIS ACT AS THE
30 COUNCIL CHAIRMAN MAY DETERMINE. MEETINGS OF THE COMMITTEE SHALL

1 BE CONVENED BY PEMA FOR THE PURPOSE OF REVIEWING GUIDELINES,
2 STANDARDS OR REGULATIONS DEVELOPED TO IMPLEMENT THIS ACT. PEMA
3 SHALL PARTICIPATE IN ALL MEETINGS OF THE ADVISORY COMMITTEE AND
4 PROVIDE ADMINISTRATIVE SUPPORT. FOR THE PURPOSE OF CONVENING
5 MEETINGS, A MAJORITY OF THE ADVISORY COMMITTEE MEMBERS SHALL
6 CONSTITUTE A QUORUM.

7 Section 202. Establishment of emergency planning districts.

8 Each county is designated and constituted an emergency
9 planning district for the purposes of SARA, Title III.

10 Section 203. Establishment and functions of local emergency
11 planning committees.

12 (a) Local emergency planning committees.--In order to carry
13 out the provisions of Federal and Commonwealth law, a minimum of
14 one local emergency planning committee shall be established in
15 each county. The local committee shall elect a chairman from
16 among its members. The local committee shall be subject to the
17 supervision of the council and shall cooperate with the county
18 emergency management agency and SARA facilities to prepare the
19 emergency response plans required by section 303 of SARA, Title
20 III, for facilities where extremely hazardous chemicals are
21 present.

22 (b) Membership.--A local committee shall be composed of the
23 county emergency management coordinator, one county commissioner
24 and at least one person selected from each of the following
25 groups:

26 (1) Elected officials representing local governments
27 within the county.

28 (2) Law enforcement, first aid, health, local
29 environmental, hospital and transportation personnel.

30 (3) Firefighting personnel.

1 (4) Civil defense and emergency management personnel.

2 (5) Broadcast and print media.

3 (6) Community groups not affiliated with emergency
4 service groups.

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

7 (c) Coordinator.--The county emergency management
8 coordinator, as supervised by the county commissioners, shall
9 have the lead responsibility for ensuring that the plans and
10 activities of the local committee comply with SARA, Title III,
11 this act, and other applicable statutes and laws.

12 (d) Appointment.--The members of a local committee shall be
13 appointed by the council from a list of nominees submitted by
14 the governing body of the county. The list of nominees shall
15 contain the names of at least one person from each of the groups
16 enumerated in subsection (b). Upon the failure of the governing
17 body of a county to submit a list of nominees to the council
18 within a time fixed by the council, the council may appoint
19 members at its pleasure.

20 (e) Vacancies.--Within 60 days of the occurrence of a
21 vacancy, the council shall appoint in the manner provided in
22 subsection (d) a successor member to a local committee for the
23 remainder of the unexpired term of the member for which the
24 vacancy exists. A vacancy shall occur upon the death,
25 resignation, disqualification or removal of a member of a local
26 committee.

27 (f) Meetings.--For the conduct of routine or emergency
28 business, the local committee shall meet at the call of the
29 chairperson. A majority of the members of the local committee,
30 or such other number of members of the local committee as set by

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

7 (g) Duties.--A local committee shall have the duty and
8 authority to:

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

13 (2) Take appropriate actions to ensure the
14 implementation and updating of the local emergency response
15 plan required by this act.

16 (3) Report TO THE COUNCIL on alleged violations of this <—
17 act.

18 (4) Prepare reports, recommendations or other
19 information related to the implementation of this act, as
20 requested by the council.

21 (5) Meet, ~~if~~ WHEN appropriate, with any Commonwealth <—
22 agency or local or regional agency which is empowered to
23 exercise the governmental functions of planning and zoning,
24 to regulate land use and land use development, or to
25 authorize the siting of a facility within the county to
26 discuss and review with the Commonwealth agency and local
27 agency all mitigation factors necessary to protect the
28 health, safety and welfare of the general public from a
29 potential release of hazardous materials from a proposed
30 facility. Mitigation factors include, but are not limited to,

1 environmental impacts, shelter and evacuation feasibility,
2 emergency warning and communications, availability of
3 response equipment and future population and economic growth
4 in the area of the proposed facility.

5 (6) Accept and deposit into its county Hazardous
6 Material Emergency Response Account any grants, gifts or
7 other funds received ~~from a Federal, State or county agency~~ <—
8 ~~or any person, as defined in section 103,~~ which are intended
9 for the purpose of carrying out this act.

10 ~~(7) ACT AS A BOARD OF ARBITRATION, IN ACCORDANCE WITH~~ <—
11 ~~GUIDELINES DEVELOPED BY THE COUNCIL, TO RESOLVE COST RECOVERY~~
12 ~~DISPUTES CONCERNING THOSE COSTS DEFINED IN SECTION 210(C)~~
13 ~~THAT ARISE BETWEEN A PERSON WHO CAUSES A RELEASE OF A~~
14 ~~HAZARDOUS MATERIAL AND THE ORGANIZERS OF ANY CERTIFIED~~
15 ~~HAZARDOUS MATERIAL RESPONSE TEAMS AND OR EMERGENCY SERVICE~~
16 ~~ORGANIZATIONS THAT RESPONDED TO THE HAZARDOUS MATERIAL~~
17 ~~RELEASE, PROVIDED THAT THE RELEASE ORIGINATED WITHIN THE~~
18 ~~JURISDICTIONAL BOUNDARIES OF ITS EMERGENCY PLANNING DISTRICT.~~

19 (h) Expenses.--The administrative and operational expenses
20 of a local committee may be paid through a combination of
21 sources by the county from the fees collected by the county,
22 from grants received from the council in accordance with the
23 provisions of sections 207 and 208, respectively, or by
24 accepting private donations.

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

30 (j) Advisory capacity.--The local committee may perform

1 other emergency management advisory duties as requested by
2 county elected officials.

3 (k) Plan provisions.--Each emergency plan shall include, but
4 not be limited to, each of the following:

5 (1) Identification of ~~facilities~~ THE FACILITY subject to <—
6 the requirements of section 303 of SARA, Title III, within
7 the county, identification of routes likely to be used for
8 the transportation of substances on the list of extremely
9 hazardous substances and identification of additional
10 facilities contributing or subjected to additional risk due
11 to their proximity to ~~facilities~~ THE FACILITY subject to the <—
12 requirements of this section, such as hospitals or natural
13 gas facilities.

14 (2) Methods and procedures to be followed by facility
15 owners and operators and local emergency and medical
16 personnel to respond to any release of such substances.

17 (3) Designation of a county emergency management
18 coordinator and facility emergency coordinators, who shall
19 make determinations necessary to implement the plan.

20 (4) Procedures providing reliable, effective and timely
21 notification by the facility emergency coordinators and the
22 county emergency management coordinator to persons designated
23 in the emergency plan, and to the public, that a release has
24 occurred, consistent with the notification requirements of
25 section 304 of SARA, Title III.

26 (5) Methods for determining the occurrence of a release,
27 and the area or population likely to be affected by such
28 release.

29 (6) A description of emergency equipment and facilities
30 in the county and at each facility in the county subject to

1 the requirements of this section, and an identification of
2 the persons responsible for such equipment and facilities.

3 (7) Evacuation plans, including provisions for a
4 precautionary evacuation and alternative traffic routes.

5 (8) Training programs, including schedules for training
6 of local emergency response and medical personnel.

7 (9) Methods and schedules for exercising the emergency
8 plan.

9 Section 204. Hazardous material safety program.

10 (a) Program components.--In conjunction with the Departments
11 of Environmental Resources, Health, Transportation, Agriculture,
12 Labor and Industry and Commerce, Pennsylvania Public Utility
13 Commission, Fish Commission, Pennsylvania Turnpike Commission
14 and the Pennsylvania State Police, or any other Commonwealth
15 agencies as determined by the council, PEMA shall develop a
16 hazardous material safety program for incorporation into the
17 Pennsylvania Emergency Management Plan developed by PEMA under
18 35 Pa.C.S. Pt. V (relating to emergency management services).

19 The hazardous material safety program shall include an
20 assessment of the potential dangers and risks that hazardous
21 material releases occurring at facilities and from
22 transportation-related accidents pose to the general public and
23 the environment. The Pennsylvania State Fire Academy shall be
24 utilized as a primary training facility pursuant to its duties
25 under 35 Pa.C.S. § 7316(c) (relating to Pennsylvania State Fire
26 Academy). The council may also utilize other institutions that
27 have in place appropriate training resources, such as the Center
28 for Hazardous Materials Research at the University of
29 Pittsburgh's Applied Research Center, to fulfill its training
30 responsibilities. The program shall also consider the impacts,

1 consequences and necessary protective measures required to
2 respond to and mitigate the effects of such releases and
3 accidents. The program shall include, but not be limited to:

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

9 (2) Development of comprehensive emergency management
10 guidance consistent with the Emergency Management Services
11 Code for hazardous materials that can be used by the local
12 committees to meet the requirements of Federal and
13 Commonwealth statutes and laws.

14 (3) Development of specific procedures for counties to
15 complete the Hazardous Material Emergency Response
16 Preparedness Assessment within 30 days of the effective date
17 of this act.

18 (4) Development of a notification system whereby the
19 owners and operators of a facility will report the occurrence
20 of any hazardous substance or extremely hazardous substance
21 release to the appropriate Commonwealth agencies, local
22 agencies, and Commonwealth and local officials designated in
23 the Commonwealth and local emergency plans. The reporting
24 requirements for this notification system are set forth in
25 section 206.

26 (5) Development of a notification system whereby the
27 transporters of any hazardous substance or extremely
28 hazardous substance will report the occurrence of any
29 hazardous material release to the Commonwealth agencies,
30 local agencies and Commonwealth and local officials

1 designated in the Commonwealth and local plans. The reporting
2 requirements for this notification system are set forth in
3 section 206.

4 (6) Training and equipping local agency public safety
5 and emergency response personnel.

6 (7) Establishing training standards and a certification
7 program for the formation of Commonwealth agency, local
8 agency or regional hazardous material response teams. All
9 Commonwealth agency, SUPPORTING PAID AND VOLUNTEER EMERGENCY <—
10 SERVICE ORGANIZATIONS, local agency or other agencies and
11 committees that establish training standards for emergency
12 service, law enforcement, firefighting or other personnel
13 shall cooperate with the council in the implementation of
14 these training standards and certification program.

15 (8) Periodical exercise of hazardous material release
16 scenarios at facilities and transportation sites that are
17 designed to test the response capabilities of Commonwealth
18 agency, local agency and regional public safety and emergency
19 response personnel.

20 (9) ~~Finance the procurement~~ ASSISTANCE IN PROCURING of <—
21 specialized hazardous material response supplies and
22 equipment to be used by local and regional public safety and
23 emergency response personnel.

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

1 (11) Provisions for financial assistance to counties as
2 provided in sections 207 and 208 and for the payment of
3 compensation benefits awarded to duly enrolled emergency
4 management volunteers under 35 Pa. C.S. § 7706 (relating to
5 compensation for accidental injury).

6 (b) County preparedness assessment.--

7 (1) Within one year of the completion of procedures
8 called for in subsection (a)(3), counties shall develop and
9 submit to the council a Hazardous Material Emergency Response
10 Preparedness Assessment. The assessment shall be updated
11 annually.

12 (2) The county shall assess the potential dangers and
13 risks that hazardous material releases from facilities and
14 transportation accidents pose to public health and the
15 environment, identify the county's needs AND RESOURCES for <—
16 hazardous material response teams to deal with those dangers
17 and risks and outline its plan for implementing county and
18 local emergency planning functions under this act.

19 (3) The assessment shall include the following:

20 (i) Potential threats posed by facilities requiring
21 emergency response plans under section 303 of SARA, Title
22 III, and other concentrations of hazardous materials in
23 the county or in areas immediately adjacent to the county
24 that may pose a threat.

25 (ii) Potential threats posed by hazardous material
26 transported by highway and railroad in the county.

27 (iii) Identification of existing capabilities to
28 respond to hazardous material releases, including
29 personnel, equipment, training, planning and
30 identification of existing hazardous material response

1 zones.

2 (iv) Selection of an option to comply with this act
3 under section 209(e) and identification of the need for
4 personnel, equipment, training and planning needed to
5 respond to the potential threats, including the
6 designation of proposed levels of preparedness for local
7 or regional response teams and proposed local or regional
8 response zones.

9 (v) Identification of other resources needed to
10 implement the provisions of this act and to support the
11 local emergency planning committee.

12 (vi) An audit of the Hazardous Material Emergency
13 Response Account.

14 (4) The local emergency planning committee shall assist
15 the county in the preparation of the Hazardous Material
16 Emergency Response Preparedness Assessment.

17 (5) The council shall review and approve the assessment
18 if it determines the assessment is complete and fulfills the
19 county's obligations under this act to respond to releases of
20 hazardous materials.

21 (6) If an assessment is not approved by the council, it
22 shall be returned to the county with an explanation of its
23 deficiencies. The county shall have 90 days to return the
24 assessment to the council with either changes or further
25 explanation or justification. The council shall then review
26 the assessment.

27 Section 205. Emergency reporting requirements.

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

30 (1) The owner or operator of a facility in this

1 Commonwealth covered under section 302 of SARA, Title III,
2 shall comply with the emergency planning and notification
3 requirements under sections 302 and 303 of SARA, Title III.

4 (2) The owner or operator of a facility in this
5 Commonwealth covered under section 311 of SARA, Title III,
6 shall comply with the reporting requirements under sections
7 311 and 312 of SARA, Title III.

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

12 (4) The owner of a facility in this Commonwealth subject
13 to the requirements of paragraphs (2) and (3) shall comply
14 with the procedures for providing information under section
15 323 of SARA, Title III.

16 (5) The owner or operator of a facility in this
17 Commonwealth covered under section 304 of SARA, Title III,
18 shall comply with the notification requirements of section
19 304 of SARA, Title III, and section 206 of this act.

20 (b) Document repository.--For the purposes of complying with
21 the reporting requirements set forth in sections 311, 312 and
22 313 of SARA, Title III, the owner or operator of any facility
23 shall submit its material safety data sheets or chemical lists,
24 emergency and hazardous chemical inventory forms and toxic
25 chemical release forms to the Department of Labor and Industry,
26 which is the council's repository for those documents at the
27 State level.

28 (c) Rolling stock.--The owner or operator of a property that
29 has one or more rolling stock, whether owned or leased, located
30 within its property boundaries for any period of time in excess

1 of 30 continuous days and containing an extremely hazardous
2 substance in excess of the threshold planning quantity shall
3 notify the council and the appropriate local committee of that
4 fact and shall prepare an emergency response plan, which
5 contains those provisions that either the council or the
6 appropriate local committee directs, in order to deal with any
7 potential release of an extremely hazardous substance from that
8 rolling stock.

9 Section 206. Emergency notification requirements.

10 (a) Facility or transportation accident or incident.--Except
11 as provided in subsection (e), the owner or operator of a
12 facility that manufactures, produces, uses, imports, exports,
13 stores, supplies or distributes any hazardous substance or
14 extremely hazardous substance, and the owner or operator of a
15 vehicle that ships, transports or carries any hazardous
16 substance or extremely hazardous substance to, within, through
17 or across this Commonwealth shall immediately report the release
18 of the substance which exceeds the reportable quantity and which
19 extends beyond the property boundaries of the facility or which
20 results from a transportation accident or incident to the
21 appropriate Commonwealth and county emergency response office as
22 follows:

23 (1) Two notifications shall be made by the owner or
24 operator of a facility. The first call shall be to the 24-
25 hour response telephone number of the county office
26 designated and acting as the emergency response coordinator
27 for the local committee, which may be known as the county
28 emergency management office 24-hour response number. The
29 second call shall be made to the PEMA 24-hour response
30 number.

1 (2) Notification shall be made by the owner or operator
2 of a vehicle by dialing 911 or, in the absence of a 911
3 emergency telephone number, calling the operator in order to
4 notify the county emergency management office 24-hour
5 response number within whose jurisdiction the transportation
6 accident or incident has occurred, and reporting that a
7 hazardous substance or an extremely hazardous substance
8 release has occurred. The county emergency management office
9 shall report any notification made under this subsection to
10 the PEMA 24-hour response number within one hour of its
11 receipt.

12 (b) Contents.--The notification required by this section
13 shall include each of the following to the extent known at the
14 time of the notice and so long as no delay in responding to the
15 emergency results:

16 (1) The name and telephone number of the person making
17 the notification.

18 (2) The name of the person employed by the owner or
19 operator of the facility or vehicle who has the authority or
20 responsibility to supervise, conduct or perform any cleanup
21 activities required at the facility or transportation
22 accident site or to contract for the performance of any
23 cleanup activities at the facility or transportation accident
24 site.

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

27 (4) An indication of whether the substance is an
28 extremely hazardous substance or other hazardous material or
29 appears on a Federal or Commonwealth list of hazardous
30 materials as periodically amended.

1 (5) An estimate of the quantity of the substance that
2 was released into the environment.

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

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

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

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

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

16 (11) Additional information required by Federal or
17 Commonwealth law or regulation.

18 (c) PEMA notice.--The notification to PEMA shall be made to
19 the PEMA 24-hour response number. This notification shall

20 contain the information required by subsection (b). The notice

21 to PEMA shall fulfill the requirements in SARA, Title III, to

22 notify the council. ~~and any requirements in other State laws to~~ <—

23 ~~notify the Department of Environmental Resources or any other~~

24 ~~State agency of the spill or release of hazardous chemicals~~

25 ~~requiring notification under section 206. PEMA shall immediately~~

26 ~~notify the Department of Environmental Resources or any other~~

27 ~~appropriate State agency of the occurrence or accident. NOTICE~~ <—

28 UNDER THIS SECTION SHALL NOT FULFILL ANY REQUIREMENTS IN OTHER

29 STATE LAWS TO NOTIFY THE DEPARTMENT OF ENVIRONMENTAL RESOURCES

30 OR ANY OTHER STATE AGENCY OF A SPILL OR RELEASE OF A HAZARDOUS

1 CHEMICAL.

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

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

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

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

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

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

22 ~~(f) Council study. The council shall conduct a study to~~ <—
23 ~~determine the feasibility of establishing a single notification~~
24 ~~center in this Commonwealth to receive all hazardous material,~~
25 ~~hazardous substance, hazardous waste, as defined in the act of~~
26 ~~October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites~~
27 ~~Cleanup Act, or other toxic chemical release reports that are~~
28 ~~currently required to be reported to all Commonwealth agencies~~
29 ~~and departments by Federal and State law. THE COUNCIL SHALL~~ <—
30 ~~CONSIDER ANY IMPACT THIS SINGLE NOTIFICATION CENTER MAY HAVE ON~~

~~THE REGULATED COMMUNITY AND ANY ENFORCEMENT PROGRAMS WITHIN THE
DEPARTMENT OF ENVIRONMENTAL RESOURCES.~~

(F) COORDINATED NOTIFICATION SYSTEM.--

<—

(1) THE COUNCIL SHALL WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ACT COMPLETE A STUDY OF CURRENT NOTIFICATION PROCEDURES TO DETERMINE THE FEASIBILITY OF ESTABLISHING A SINGLE NOTIFICATION CENTER AND SIMPLIFIED ALTERNATIVE NOTIFICATION PROCESSES FOR STATE AGENCIES TO RECEIVE NOTIFICATION OF ALL EMERGENCIES INVOLVING HAZARDOUS OR POTENTIALLY HAZARDOUS SUBSTANCES OR RELEASES INTO THE AIR, WATER OR ON THE LAND. THE COUNCIL SHALL STUDY THE FEASIBILITY OF REPLACING NOTIFICATION OF INDIVIDUAL STATE AGENCIES WITH A SINGLE POINT OF CONTACT AND SIMPLIFIED ALTERNATIVE NOTIFICATION PROCEDURES COVERING SUBSTANCES REGULATED BY THIS ACT, BY THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN STREAMS LAW, THE ACT OF JANUARY 8, 1960 (1959 P.L.2119, NO.787), KNOWN AS THE AIR POLLUTION CONTROL ACT, THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN AS THE SOLID WASTE MANAGEMENT ACT, THE ACT OF OCTOBER 18, 1988 (P.L.756, NO.108), KNOWN AS THE HAZARDOUS SITES CLEANUP ACT, THE ACT OF JULY 6, 1989 (P.L.169, NO.32), KNOWN AS THE STORAGE TANK AND SPILL PREVENTION ACT OR BY ANY OTHER STATE STATUTE REQUIRING NOTIFICATION OF ANY STATE AGENCY OF SPILLS AND RELEASES INTO THE ENVIRONMENT. THE STUDY SHALL CONSIDER ANY IMPACT A SINGLE POINT OF CONTACT AND ALTERNATIVE NOTIFICATION PROCEDURES MAY HAVE ON THE REGULATED COMMUNITY, ANY ENFORCEMENT PROGRAMS WITHIN THE DEPARTMENT OF ENVIRONMENTAL RESOURCES OR OTHER AGENCIES AND ON NOTIFICATION REQUIREMENTS ESTABLISHED IN FEDERAL LAW AND MAKE SPECIFIC RECOMMENDATIONS FOR IMPLEMENTING ITS FINDINGS, INCLUDING RECOMMENDED CHANGES TO

1 STATE LAW. THE HAZARDOUS MATERIAL EMERGENCY PLANNING AND
2 RESPONSE ADVISORY COMMITTEE SHALL BE INVOLVED IN THE
3 DEVELOPMENT OF THE STUDY.

4 (2) THE COUNCIL SHALL FORWARD A COPY OF THE FINAL STUDY,
5 INCLUDING A RECOMMENDED TIMETABLE FOR IMPLEMENTING ANY
6 RECOMMENDATIONS TO THE HOUSE CONSERVATION COMMITTEE AND THE
7 SENATE ENVIRONMENTAL RESOURCES AND ENERGY COMMITTEE.

8 Section 207. Establishment of funds.

9 (a) Hazardous Material Response Fund.--

10 (1) There is hereby created in the State Treasury a
11 nonlapsing restricted account to be known as the Hazardous
12 Material Response Fund. The fund shall consist of the fees
13 collected under ~~subsection (c)~~ SUBSECTIONS (C), (D) AND (E), <—
14 civil penalties, and fines and funds appropriated by the
15 General Assembly. Moneys in the fund AND THE INTEREST IT <—
16 ACCRUES shall be appropriated annually to PEMA to be
17 disbursed by the council through PEMA and shall be used to
18 carry out the purposes, goals and objectives of SARA, Title
19 III, and the Commonwealth's hazardous material safety
20 program.

21 (2) The council, through PEMA, shall administer and
22 allocate moneys in the fund, including all interest generated
23 therein, in the following manner:

24 (i) Up to ~~5%~~ 10% shall be expended on training <—
25 programs for hazardous material response teams.

26 (ii) Up to ~~5%~~ 10% shall be expended for public and <—
27 facility owner education, information and participation
28 programs.

29 (iii) No more than ~~5%~~ 10% shall be used for the <—
30 general administrative and operational expenses of this

act, excluding the expenses of the Hazardous Material
Emergency Planning and Response Advisory Committee.

(iv) The remaining revenue in the fund shall be used
as grants to support the activities of counties under
this act, as described in section 208.

(b) County emergency response financing.--

(1) The treasurer of each county shall establish a
nonlapsing restricted account, to be known as the Hazardous
Material Emergency Response Account. The account shall
consist of revenue from fees authorized by this section,
county, Federal or State funds, grants, loans or penalties
and any private donations provided to finance the hazardous
material safety program. Expenditures from the account shall
be authorized by the county consistent with the needs
identified in the county Hazardous Material Emergency
Response Preparedness Assessment approved by the council. THE
HAZARDOUS MATERIAL EMERGENCY RESPONSE ACCOUNT SHALL ALSO BE
UTILIZED BY THE LOCAL EMERGENCY PLANNING COMMITTEE TO RESOLVE
COST RECOVERY DISPUTES THAT ARISE BETWEEN A PERSON WHO CAUSES
A RELEASE OF A HAZARDOUS MATERIAL AND A VOLUNTEER EMERGENCY
SERVICES ORGANIZATION WHEN ACTING AS PART OF A CERTIFIED
HAZARDOUS MATERIAL RESPONSE TEAM IN ACCORDANCE WITH THIS ACT.
EACH VOLUNTEER SERVICES ORGANIZATION SHALL BE ELIGIBLE TO
RECEIVE NO MORE THAN ~~\$250~~ \$300 PER RESPONSE TO COVER EXPENSES
RELATED TO A RESPONSE FROM THE HAZARDOUS MATERIAL EMERGENCY
RESPONSE ACCOUNT, IF THE PERSON WHO CAUSES A RELEASE OF A
HAZARDOUS MATERIAL IS FINANCIALLY UNABLE TO PAY COSTS AS
DEFINED IN SECTION 210(B).

(2) By March 1 of each year, each owner or operator of a
facility shall pay to the county treasurer where the facility

1 is located a local hazardous chemical fee of from \$35 to \$75,
2 as established by the county by ordinance, for each hazardous
3 chemical within the meaning of 29 CFR 1910.1200(c) or its
4 successor which is required by section 312 of SARA, Title
5 III, to be listed on the hazardous chemical inventory form
6 (Tier II) which the owner or operator of the facility submits
7 to the local emergency planning committee. ~~Counties may grant~~ <—
8 ~~facility owners up to a 50% credit toward their chemical fee~~
9 ~~obligation if the facility owner voluntarily donates~~
10 ~~training, equipment or other in-kind services to support the~~
11 ~~county hazardous material safety program.~~ COUNTIES SHALL <—
12 GRANT FACILITY OWNERS UP TO 100% CREDIT TOWARD THEIR CHEMICAL
13 FEE OBLIGATION UNDER THIS SECTION FOR TRAINING, EQUIPMENT OR
14 OTHER IN-KIND SERVICES DONATED TO THE COUNTY TO SUPPORT THE
15 HAZARDOUS MATERIALS SAFETY PROGRAM IF SUCH TRAINING,
16 EQUIPMENT OR IN-KIND SERVICES ARE ACCEPTED BY THE COUNTY. THE
17 CREDIT SHALL BE BASED ON THE FAIR MARKET VALUE OF EQUIPMENT
18 DONATED AND THE AGREED-UPON VALUE OF TRAINING OR IN-KIND
19 SERVICES DONATED.

20 (3) Counties may establish a program to provide funding
21 through the Hazardous Material Emergency Response Account for
22 certified hazardous material response teams within the county
23 consistent with the Hazardous Material Emergency Response
24 Preparedness Assessment. This grant program shall not be
25 bound by any dollar limits on assistance to local fire
26 protection services imposed by other statutes.

27 (c) Hazardous chemical fee.--Each owner or operator of a
28 facility shall pay a fee, to be known as a hazardous chemical
29 fee, of \$10 by March 1 of each year to the council for each
30 hazardous chemical within the meaning of 29 CFR 1910.1200(c) or

1 its successor which is required by section 312 of SARA, Title
2 III, to be listed on the hazardous chemical inventory form (Tier
3 II) which the owner or operator of the facility submits to the
4 council. The fees collected under this subsection shall be
5 deposited by the council into the Hazardous Material Response
6 Fund.

7 (D) TOXIC CHEMICAL REGISTRATION FEE.--EACH OWNER OR OPERATOR <—
8 OF A FACILITY ~~IN A COUNTY WHOSE HAZARDOUS MATERIAL EMERGENCY~~ <—
9 ~~RESPONSE ACCOUNT RECEIVES MORE THAN \$80,000 PER YEAR FROM FEES~~
10 ~~UNDER SUBSECTION (B)(2)~~ THAT SUBMITS A TOXIC CHEMICAL RELEASE
11 FORM TO THE DEPARTMENT OF LABOR AND INDUSTRY ON OR BEFORE JULY
12 1, 1990, AS REQUIRED BY SECTION 313 OF SARA, TITLE III, SHALL
13 PAY A \$1,000 REGISTRATION FEE TO THE DEPARTMENT OF LABOR AND
14 INDUSTRY. THE REGISTRATION FEES COLLECTED UNDER THIS SUBSECTION
15 SHALL BE DEPOSITED BY THE DEPARTMENT OF LABOR AND INDUSTRY INTO
16 THE HAZARDOUS MATERIAL RESPONSE FUND. THE DEPARTMENT OF LABOR
17 AND INDUSTRY MAY RETAIN UP TO 10% OF THE FEES COLLECTED FOR
18 ADMINISTRATION OF THE PROGRAM AND MANAGEMENT OF THE DATA
19 COLLECTED.

20 (E) TOXIC CHEMICAL RELEASE FORM FEE.--EACH OWNER OR OPERATOR
21 OF A FACILITY ~~IN A COUNTY WHOSE HAZARDOUS MATERIAL EMERGENCY~~ <—
22 ~~RESPONSE ACCOUNT RECEIVES MORE THAN \$80,000 PER YEAR FROM FEES~~
23 ~~UNDER SUBSECTION (B)(2)~~ SHALL PAY A FEE OF \$250 ON OR BEFORE
24 JULY 1, 1991, AND THE FIRST DAY OF JULY OF EVERY YEAR
25 THEREAFTER, TO THE DEPARTMENT OF LABOR AND INDUSTRY FOR EACH
26 TOXIC CHEMICAL WHICH IS REQUIRED BY SECTION 313 OF SARA, TITLE
27 III, TO BE LISTED ON THE TOXIC CHEMICAL RELEASE FORM WHICH THE
28 OWNER OR OPERATOR OF THE FACILITY SUBMITS TO THE DEPARTMENT OF
29 LABOR AND INDUSTRY. THE CUMULATIVE AMOUNT OF THIS FEE SHALL NOT
30 EXCEED \$5,000 PER FACILITY. THE FEES COLLECTED UNDER THIS

1 SUBSECTION SHALL BE DEPOSITED BY THE DEPARTMENT OF LABOR AND
2 INDUSTRY INTO THE HAZARDOUS MATERIAL RESPONSE FUND. THE
3 DEPARTMENT OF LABOR AND INDUSTRY MAY RETAIN UP TO 10% OF THE
4 FEES COLLECTED FOR ADMINISTRATION OF THE PROGRAM AND MANAGEMENT
5 OF THE DATA COLLECTED.

6 ~~(F) EMERGENCY PLANNING FEE. EACH OWNER OR OPERATOR OF A~~ <—
7 ~~FACILITY IN A COUNTY WHOSE HAZARDOUS MATERIAL EMERGENCY RESPONSE~~
8 ~~ACCOUNT RECEIVES MORE THAN \$80,000 PER YEAR FROM FEES UNDER~~
9 ~~SUBSECTION (B)(2) THAT MANUFACTURES, PRODUCES, USES, STORES,~~
10 ~~SUPPLIES OR DISTRIBUTES ANY EXTREMELY HAZARDOUS SUBSTANCE IN~~
11 ~~QUANTITIES LARGER THAN THE THRESHOLD PLANNING QUANTITY SHALL PAY~~
12 ~~TO THE TREASURER OF THE COUNTY WHERE THE FACILITY IS LOCATED,~~
13 ~~FOR DEPOSIT INTO THE HAZARDOUS MATERIAL EMERGENCY RESPONSE~~
14 ~~ACCOUNT, AN ANNUAL FEE OF \$100 TO BE KNOWN AS AN EMERGENCY~~
15 ~~PLANNING FEE. THIS FEE SHALL BE PAYABLE ON OR BEFORE JULY 1,~~
16 ~~1990, AND THE FIRST DAY OF JULY OF EVERY YEAR THEREAFTER.~~

17 (F) EMERGENCY PLANNING FEE.--BY MARCH 1 OF EACH YEAR, EACH <—
18 OWNER OR OPERATOR OF A FACILITY THAT MANUFACTURES, PRODUCES,
19 USES, STORES, SUPPLIES OR DISTRIBUTES ANY EXTREMELY HAZARDOUS
20 SUBSTANCE IN QUANTITIES LARGER THAN THE THRESHOLD PLANNING
21 QUANTITIES SHALL BE REQUIRED TO PAY TO THE COUNTY TREASURER
22 WHERE THE FACILITY IS LOCATED AN EMERGENCY PLANNING FEE OF UP TO
23 \$100 AS ESTABLISHED BY THE COUNTY BY ORDINANCE. COUNTIES SHALL
24 GRANT FACILITY OWNERS UP TO 100% CREDIT TOWARD ANY EMERGENCY
25 PLANNING FEE OBLIGATION UNDER THIS SECTION FOR TRAINING,
26 EQUIPMENT OR OTHER IN-KIND SERVICES DONATED TO THE COUNTY TO
27 SUPPORT THE HAZARDOUS MATERIALS SAFETY PROGRAM IF SUCH TRAINING,
28 EQUIPMENT OR IN-KIND SERVICES ARE ACCEPTED BY THE COUNTY, IN
29 ADDITION TO THOSE FOR WHICH A CREDIT IS CLAIMED UNDER SUBSECTION
30 (B)(2). THE CREDIT SHALL BE BASED ON THE FAIR MARKET VALUE OF

1 EQUIPMENT DONATED AND THE AGREE-UPON VALUE OF TRAINING OR IN-
2 KIND SERVICES DONATED.

3 ~~(d)~~ (G) Exemptions.--The owners or operators of family farm <—
4 enterprises, service stations and facilities owned by State and
5 local governments shall be exempt from payment of the fees
6 required under subsections (b) ~~and (e)~~, (C), (D), (E) AND (F). <—

7 ~~(e)~~ (H) Federal funds, grants or other gifts.--The council <—
8 is authorized to accept and may deposit into the Hazardous
9 Material Response Fund grants, gifts and Federal funds, for the
10 purpose of carrying out the provisions of this act.

11 ~~(f)~~ (I) Changes in threshold quantities and chemicals.--For <—
12 purposes of the fees established in this section, the term

13 "hazardous chemical" shall mean chemicals on lists established
14 by the United States Environmental Protection Agency effective
15 on July 1, 1989. ~~No fee may be applied to additional facilities~~ <—
16 ~~or chemicals because of changes made by the United States~~

17 ~~Environmental Protection Agency in lists of chemicals,~~
18 ~~thresholds or other requirements under SARA, Title III, without~~
19 ~~complying with the provisions of section 213. NO FEE MAY BE~~ <—

20 APPLIED TO ADDITIONAL FACILITIES OR HAZARDOUS MATERIALS BECAUSE
21 OF CHANGES MADE BY THE UNITED STATES ENVIRONMENTAL PROTECTION
22 AGENCY IN LISTS OF HAZARDOUS MATERIALS, THRESHOLD PLANNING
23 QUANTITIES OR OTHER REQUIREMENTS UNDER SARA TITLE III, WITHOUT
24 COMPLYING WITH THE PROVISIONS OF SECTION 213.

25 ~~(g)~~ (J) Termination.--The fees established in this section <—
26 or ~~in~~ PURSUANT TO section 213 shall terminate ten years after <—
27 the effective date of this act unless reestablished by the
28 General Assembly by statute.

29 ~~(h)~~ (K) Transportation fee study.--Within one year of the <—
30 effective date of this act, the council shall report to the

1 General Assembly on the feasibility of establishing a fee on the
2 transporters of hazardous materials regulated under this act.
3 The purpose of this fee would be to supplement the funds
4 provided by fixed facility owners or operators to the Hazardous
5 Material Response Fund.

6 ~~(i)~~ (L) Status of fund.--The Hazardous Material Response
7 Fund shall not be subject to 42 Pa.C.S. Ch. 37 Subch. C
8 (relating to judicial computer system).

9 Section 208. Emergency management grants.

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

15 (b) Applications.--A county or group of counties may apply
16 annually to the council for an emergency management grant.
17 Applications shall be made in the manner specified by the
18 council in regulations promulgated under section 201(g)
19 consistent with the county preparedness assessment.

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

22 (1) Developing a county Hazardous Material Emergency
23 Response Preparedness Assessment required in section 204(b).

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

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

28 (4) Collecting, documenting and processing chemical
29 inventory forms and other documents required by SARA, Title
30 III.

(5) Developing an emergency planning and response capability for responding to hazardous material releases and meeting the requirements of the Commonwealth's hazardous material safety program, including training, equipment, material and other supplies needed to respond to a release.

(6) Supporting the operation and administration of local committees.

(7) REIMBURSING CERTAIN RESPONSE COSTS OF SUPPORTING VOLUNTEER EMERGENCY SERVICE ORGANIZATIONS IN ACCORDANCE WITH SECTION 207(B)(1).

(d) Grant amount.--The amount of the annual grant from the Hazardous Material Response Fund shall not exceed the ~~amount~~ SUM of the funds of local revenues made available by the county for the purpose of complying with the requirements and provisions of SARA, Title III, and the Emergency Management Services Code with respect to hazardous material releases, retroactive to November 1986. ~~Counties may also use funds in the Hazardous Material Emergency Response Account to match State funds for the annual grant.~~ AND THE REVENUES COLLECTED UNDER SECTION 207(B)(2) AND (F); EXCEPT THAT ANY COUNTY EMERGENCY MANAGEMENT COORDINATOR WHOSE HAZARDOUS MATERIAL EMERGENCY RESPONSE ACCOUNT RECEIVES LESS THAN \$10,000 ANNUALLY IN FEES ESTABLISHED IN THIS SECTION OR MEETS THE REQUIREMENTS OF SUBSECTION (E)(3) SHALL BE ELIGIBLE FOR ADDITIONAL GRANTS EQUAL TO COUNTY FUNDS SPECIFICALLY APPROPRIATED FOR COMPLIANCE WITH THIS ACT, NOT TO EXCEED \$5,000.

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

1 (1) Completion of initial county Hazardous Material
2 Emergency Response Preparedness Assessment.

3 (2) Compliance with the requirements of SARA, Title III,
4 and the Commonwealth's hazardous material safety program and
5 Emergency Management Services Code with respect to hazardous
6 material releases.

7 (3) The number of facilities located within the county,
8 or the existence of unique or special circumstances that pose
9 a threat to the health and safety of the general public or
10 the environment, or both. ~~A COUNTY WITH LESS THAN 30~~ <—

11 ~~FACILITIES AND MORE THAN FIVE MILES OF INTERSTATE HIGHWAY~~
12 ~~WITHIN ITS JURISDICTIONAL BOUNDARIES MEETS BOTH CRITERIA~~
13 ~~LISTED IN THIS SUBSECTION AND WILL BE ENTITLED TO RECEIVE A~~
14 ~~FUNDING PRIORITY.~~ THE EXISTENCE OF UNIQUE OR SPECIAL <—

15 CIRCUMSTANCES UNDER THIS SECTION AS DETERMINED BY PEMA SHALL
16 INCLUDE AN INTERSTATE HIGHWAY, THE PENNSYLVANIA TURNPIKE OR
17 ANY SECONDARY ROUTE USED BY A TRANSPORTER BECAUSE OF LOAD
18 RESTRICTIONS ON PRIMARY ROUTES.

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

22 (5) No more than 10% of the grant funds shall be
23 expended in any one county in any year unless more than one
24 county applies for funds in a joint application.

25 (F) INITIAL GRANT.--IN ADDITION TO ANY OTHER GRANTS PROVIDED <—
26 FOR IN THIS SECTION, EACH COUNTY OF THE THIRD THROUGH EIGHTH
27 CLASS SHALL, WITHIN 18 MONTHS OF THE EFFECTIVE DATE OF THIS ACT,
28 RECEIVE AN INITIAL GRANT OF \$1,500 FOR THE PURPOSE OF COMPLYING
29 WITH THE PROVISIONS OF THIS ACT. THE INITIAL GRANT SHALL BE MADE
30 FROM THE HAZARDOUS MATERIAL RESPONSE FUND.

1 Section 209. Certified hazardous material response teams.

2 (a) General rule.--The council shall establish a program for
3 certifying hazardous material response teams setting standards
4 for training, equipment, safety, operations and administration
5 of the teams. The certification program shall include, but not
6 be limited to:

7 (1) Standards for certifying response teams with several
8 preparedness levels patterned after levels established by the
9 United States Occupational Health and Safety Administration
10 at ~~20~~ 29 CFR Part 1910.120. <—

11 (2) Reviewing existing hazardous material training and
12 certification programs to establish specific procedures for
13 crediting that training and certification under the program
14 established by this section.

15 (b) Hazardous material response zones.--The council may
16 establish hazardous material response zones, consisting of
17 portions of counties or multiple counties, that may be served by
18 certified hazardous material response teams that are certified
19 by the council where counties have not identified zones in their
20 Hazardous Material Emergency Response Preparedness Assessment.

21 (c) Grants.--Each certified hazardous material response team
22 may be eligible to receive, through an application submitted by
23 a county, an emergency management grant from the Hazardous
24 Material Response Fund. Counties are required to submit copies
25 of all applications and requests they receive from certified
26 hazardous material response teams as part of their application.

27 (d) Compliance with guidelines and regulations.--Hazardous
28 material response teams shall comply with any guidelines,
29 regulations, directives or other documents developed by the
30 council for incorporation into the Commonwealth's hazardous

1 material safety program and shall be consistent with the county
2 Hazardous Material Emergency Response Preparedness Assessment
3 approved by the Council.

4 (e) Compliance with act.--Each county shall comply with the
5 hazardous material safety program and 35 Pa.C.S. Pt. V (relating
6 to emergency management services) by doing any of the following,
7 consistent with the county Hazardous Material Emergency Response
8 Preparedness Assessment:

9 (1) Individually organizing and operating a certified
10 hazardous material response team.

11 (2) Contracting or having formal agreements with a
12 certified hazardous material response team, including those
13 formed by a regional hazardous material organization or
14 private companies.

15 (3) Participating as a member of a regional hazardous
16 material organization for the purpose of creating and
17 organizing a certified hazardous material response team.

18 (f) Grants to counties.--A county may be eligible for a
19 grant from the Hazardous Material Response Fund for a cost that
20 would otherwise be eligible under section 208(c) but was
21 actually incurred prior to the effective date of this act and
22 after the effective date of SARA, Title III, provided that no
23 such grant shall take priority over grants for eligible costs
24 incurred after the effective date of this act.

25 (g) Regional hazardous material organizations.--Regional
26 hazardous material organizations formed solely by a county or
27 counties may be funded fully or in part by proportional
28 contributions from the political subdivisions included within
29 the hazardous material response zone serviced by the regional
30 hazardous material organization or as otherwise agreed to by

1 contract between the regional hazardous material organization
2 and those political subdivisions and approved in the county
3 preparedness assessment.

4 (h) Insurance.--Each Commonwealth agency, local agency,
5 regional hazardous material organization, volunteer service
6 organization, hazardous material transporter, manufacturer,
7 supplier or user, or other entity that organizes a certified
8 hazardous material response team as identified on the team
9 certification, shall be responsible for providing DIRECTLY OR BY <—
10 AGREEMENT WITH A THIRD PARTY workers' compensation and ordinary
11 public liability insurance for its certified hazardous material
12 response team ~~or other agreement by the sponsor of the team that~~ <—
13 ~~provides this coverage~~. The Commonwealth, a county or
14 municipality may self-insure to meet this obligation to the
15 extent it is now authorized by State law. A certified hazardous
16 material response team that meets the training standards or
17 certification requirements established under the Commonwealth's
18 hazardous material safety program shall receive a discount from
19 the applicable insurance company as that insurance company's
20 loss experience justifies based on guidelines developed by the
21 Insurance Commissioner.

22 (i) Emergency response.--A certified hazardous material
23 response team may, when authorized by the county emergency
24 management coordinator, enter onto any private or public
25 property on which a release of a hazardous material has occurred
26 or the occurrence or the threat of a hazardous material release
27 is imminent. A certified hazardous material response team may
28 enter any adjacent or surrounding property to which the
29 hazardous material release has entered or threatens to enter. A
30 certified hazardous material response team may enter any private

1 or public property in order to respond to the release or
2 threatened release of a hazardous material, to monitor and
3 contain the hazardous material release, to perform cleanup,
4 stabilization actions, and to perform any other emergency
5 response activities deemed necessary by the certified hazardous
6 material response team or by the representatives of PEMA, the
7 county emergency management office as established under 35
8 Pa.C.S. Pt. V (relating to emergency management services), or
9 the local committee.

10 (J) STATE AGENCY.--NOTWITHSTANDING ANY FEDERAL LAW TO THE <—
11 CONTRARY, THE DEPARTMENT OF ENVIRONMENTAL RESOURCES, CONSISTENT
12 WITH THE STATE EMERGENCY OPERATIONS PLAN IS DESIGNATED AS THE
13 STATE AGENCY ASSIGNED THE RESPONSIBILITY TO DIRECT CLEANUP
14 EFFORTS AT A RELEASE SITE UPON THE OCCURRENCE OF A RELEASE.

15 Section 210. Recovery of response costs.

16 (a) General rule.--A person who causes a release of a
17 hazardous material shall be liable for the response costs
18 incurred by a certified hazardous material response team OR A <—
19 SUPPORTING PAID OR VOLUNTEER EMERGENCY SERVICE ORGANIZATION. The
20 Commonwealth agency, local agency, regional hazardous material
21 organization, volunteer emergency service organization, or
22 hazardous material transporter, manufacturer, supplier or user
23 that organized the certified hazardous material response team,
24 as identified on the team certification, OR SUPPORTING PAID OR <—
25 VOLUNTEER EMERGENCY SERVICE ORGANIZATIONS, that undertakes a
26 response action may recover those response costs in LAW OR an <—
27 action in equity brought before a court of competent
28 jurisdiction OR MAY PROCEED UNDER THE PROVISIONS OF SUBSECTION <—
29 (D). Should more than one certified hazardous material response
30 team incur response costs for the same hazardous material

1 release or incident, the organizing entities of those certified
2 hazardous material response teams may file a joint action in LAW <—
3 OR equity and may designate one entity to represent the others
4 in the law suit. ~~IN LIEU OF FILING A LAW SUIT IN COURT, THE~~ <—
5 ~~PERSON WHO CAUSED A RELEASE OF A HAZARDOUS MATERIAL AND THE~~
6 ~~ORGANIZERS OF ANY CERTIFIED HAZARDOUS MATERIAL RESPONSE TEAMS~~
7 ~~AND OR EMERGENCY SERVICE ORGANIZATIONS THAT RESPONDED TO THE~~
8 ~~HAZARDOUS MATERIAL RELEASE MAY AGREE TO SUBMIT ANY COST RECOVERY~~
9 ~~DISPUTES, CONCERNING THOSE COSTS DEFINED IN SUBSECTION (C), FOR~~
10 ~~BINDING ARBITRATION TO THE LOCAL EMERGENCY PLANNING COMMITTEE OF~~
11 ~~THE EMERGENCY PLANNING DISTRICT WITHIN WHICH THE RELEASE~~
12 ~~OCCURRED. A LOCAL COMMITTEE SHALL HAVE THE RIGHT TO DECLINE TO~~
13 ~~ARBITRATE THE COST RECOVERY DISPUTE ON A CASE BY CASE BASIS~~
14 ~~AFTER IT HAS MADE A PRELIMINARY REVIEW OF THE ISSUES INVOLVED IN~~
15 ~~THE DISPUTE. SHOULD THE LOCAL COMMITTEE ACCEPT THE COST RECOVERY~~
16 ~~DISPUTE FOR ARBITRATION, AND NOTIFY THE PARTIES TO THE DISPUTE~~
17 ~~OF ITS DECISION, THE NOTIFIED PARTIES SHALL HAVE WAIVED THEIR~~
18 ~~RIGHT TO FILE A LAW SUIT TO RECOVERY THOSE COSTS IN THE~~
19 ~~APPROPRIATE COURT OF COMPETENT JURISDICTION.~~

20 (b) Amount.--In an action to recover response costs, a
21 Commonwealth agency, local agency, regional hazardous material
22 organization, SUPPORTING PAID OR VOLUNTEER EMERGENCY SERVICE <—
23 ORGANIZATION, or a hazardous material transporter, manufacturer,
24 supplier or user may include operational, administrative
25 personnel and legal costs incurred from its initial response
26 action up to the time that it recovers its costs. The amount <—
27 ~~attributable to administrative and legal costs shall be 10% of~~
28 ~~the amount paid for the response action or the actual costs,~~
29 ~~whichever is greater. Volunteer emergency service organizations~~
30 ~~may include only operational, administrative and legal costs~~

1 ~~incurred from its initial response action up to the time that it~~
2 ~~recovers its costs.~~ ONLY THOSE CERTIFIED HAZARDOUS MATERIAL <—
3 RESPONSE TEAMS OR SUPPORTING PAID OR VOLUNTEER EMERGENCY SERVICE
4 ORGANIZATIONS THAT ARE PROPERLY TRAINED IN ACCORDANCE WITH THE
5 STANDARDS DEVELOPED UNDER THIS ACT AND THAT ARE PROPERLY
6 REQUESTED AND DISPATCHED BY A LEGALLY CONSTITUTED AUTHORITY
7 SHALL BE ELIGIBLE TO RECOVER THEIR RESPONSE COSTS.

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

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

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

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

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

22 (5) Compensation of PAID employees or members of the <—
23 hazardous material response team OR SUPPORTING PAID OR <—
24 VOLUNTEER EMERGENCY SERVICE ORGANIZATION, to include regular
25 and overtime pay for permanent full-time and other than full-
26 time 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 (10) Costs associated with the removal and disposal of
7 hazardous materials.

8 (D) ARBITRATION.--

<—

9 (1) IN LIEU OF BRINGING AN ACTION AT LAW OR IN EQUITY IN
10 A COURT OF COMPETENT JURISDICTION IN THE MATTER OF A RESPONSE
11 COST DISPUTE UNDER SUBSECTION (A), THE PARTY WHO IS THE
12 PERSON WHO CAUSED A RELEASE OF A HAZARDOUS MATERIAL AND THE
13 PARTY WHO IS THE CERTIFIED HAZARDOUS MATERIALS RESPONSE TEAM,
14 INCLUDING ANY VOLUNTEER EMERGENCY SERVICE ORGANIZATIONS
15 REQUESTED AND DISPATCHED BY A LEGALLY CONSTITUTED AUTHORITY,
16 MAY AGREE TO SUBMIT THE RESPONSE COST DISPUTE TO BINDING
17 ARBITRATION AS PROVIDED IN THIS SUBPARAGRAPH. BY SUBMITTING
18 THE RESPONSE COST DISPUTE TO ARBITRATION, THE PARTIES SHALL
19 HAVE WAIVED ALL RIGHTS TO REMEDIES AVAILABLE UNDER SUBSECTION
20 (A) OR TO ANY OTHER REMEDIES AVAILABLE AT LAW.

21 (2) ONCE THE PARTIES AGREE TO SUBMIT THE RESPONSE COST
22 DISPUTE TO BINDING ARBITRATION, THE LOCAL COMMITTEE SHALL
23 NOTIFY THE COUNCIL AND THE PARTIES OF THE REQUEST FOR A BOARD
24 OF ARBITRATION AND SHALL REQUEST THE RECOMMENDATION OF THE
25 PARTIES FOR PERSONS TO BE APPOINTED TO THE BOARD. THE BOARD
26 OF ARBITRATION SHALL CONSIST OF THREE PERSONS, ONE TO BE
27 SELECTED BY EACH OF THE PARTIES AND A THIRD PERSON TO BE
28 AGREED UPON BY THE ARBITRATORS AS SPECIFIED IN SUBSECTION
29 (D)(4). WITHIN FIVE DAYS OF THE REQUEST FOR ARBITRATION, THE
30 PARTIES SHALL SUBMIT THE NAMES OF THE ARBITRATORS THAT THEY

1 HAVE CHOSEN AND THE LOCAL COMMITTEE SHALL APPOINT THOSE
2 PERSONS TO THE BOARD OF ARBITRATION.

3 (3) WITHIN FIVE DAYS AFTER THEIR APPOINTMENT, THE TWO
4 ARBITRATORS SHALL MEET AND SELECT A THIRD ARBITRATOR WHO
5 SHALL BE APPOINTED TO THE BOARD BY THE LOCAL COMMITTEE, AND
6 WHO WILL BE CHAIRMAN OF THE BOARD OF ARBITRATION.

7 (4) IF THE TWO ARBITRATORS FAIL TO SELECT A THIRD
8 ARBITRATOR AS PROVIDED IN SUBSECTION (D)(3), THE COUNCIL
9 SHALL, WITHIN FIVE DAYS, SELECT A THIRD ARBITRATOR WHO SHALL
10 BE APPOINTED TO THE BOARD. THE PERSON SO SELECTED SHALL NOT
11 BE A MEMBER OF THE COUNCIL, A MEMBER OF ANY LOCAL COMMITTEE
12 OR A PERSON OR A RELATIVE OF A PERSON EMPLOYED BY THE PARTY
13 OR A SUBSIDIARY OF THE PARTY WHO CAUSED THE HAZARDOUS
14 MATERIAL RELEASE OR WHO HAS AN OWNERSHIP OR EQUITY INTEREST
15 IN THE PARTY OR SUBSIDIARY OF THE PARTY WHO CAUSED THE
16 HAZARDOUS MATERIAL RELEASE.

17 (5) UPON APPOINTMENT OF THE THIRD MEMBER, THE BOARD
18 SHALL COMMENCE ITS PROCEEDINGS AND WITHIN 30 DAYS SHALL MAKE
19 ITS DETERMINATION, WHICH SHALL BE BINDING ON ALL PARTIES.

20 (6) UNLESS OTHERWISE PRESCRIBED IN THE AGREEMENT TO
21 ARBITRATE, THE EXPENSES AND FEES OF THE ARBITRATORS AND OTHER
22 EXPENSES, BUT NOT INCLUDING COUNSEL FEES, INCURRED IN THE
23 CONDUCT OF THE ARBITRATION SHALL BE PAID AS PRESCRIBED IN THE
24 AWARD.

25 Section 211. Facility and vehicle inspection and testing.

26 (a) Inspection.--In order to determine compliance with this
27 act and SARA, Title III, either the qualified council or local
28 committee member or representative, as defined in subsection
29 (e), may enter a facility or vehicle site, during normal
30 business hours, to inspect the facility or vehicle and to

1 request information or reports from the facility or vehicle
2 owner or operator concerning the chemical name, identity, amount
3 or any other information necessary for emergency planning and
4 response purposes for any substance, liquid, mixture, compound,
5 material or product manufactured, produced, used, stored,
6 supplied, imported, exported or distributed at, to or from the
7 facility or vehicle.

8 (b) Testing.--Should the qualified council or local
9 committee member or representative determine during the course
10 of a facility or vehicle inspection that the chemical name,
11 identity, amount or any other requested information for any
12 substance, liquid, mixture, compound, material or product
13 present at the facility or vehicle cannot be identified or
14 determined to his satisfaction, due to the lack of proper
15 labeling, placarding, recordkeeping or for any other reason, the
16 representative shall have the authority to analyze or arrange
17 for the analysis of the substance to identify the chemical
18 properties of the sample or specimen, the amount of the
19 substance, liquid, mixture, compound, material or product
20 manufactured, produced, used, stored, supplied, imported,
21 exported or distributed at, to or from the facility or vehicle
22 to determine if it is regulated by this act. The owner or
23 operator of a facility or vehicle shall pay any testing and
24 laboratory analysis costs incurred by the council or a local
25 committee as performed under this section. Samples of any
26 substance required to be taken under this section by the
27 qualified council or local representative shall be split with
28 the facility for analysis.

29 (c) Emergency situations.--Should a release or threatened
30 release of a known or unknown substance, liquid, mixture,

1 compound, material or product occur or appear to be imminent at
2 a facility or vehicle site, which endangers or has the potential
3 to endanger the health, safety and welfare of the public,
4 employees of the facility, or the vehicle's owner or operator,
5 or the employees of the owner or operator of the vehicle, the
6 council or the local committee may send qualified
7 representatives to the facility or vehicle site at any time in
8 order to inspect the facility or vehicle and to assess the
9 danger posed by the release or threatened release and to obtain
10 samples or specimens of the substance, liquid, mixture,
11 compound, material or product involved in the release or
12 threatened release and to perform any other emergency response
13 activities deemed necessary by the representatives of the
14 council or the local committee.

15 (d) Trade secrets.--A person shall provide the qualified
16 representative of the council or the local committee with the
17 chemical name, identity or any other information requested
18 concerning any substance, liquid, mixture, compound, material or
19 product present at the facility or vehicle, whether or not the
20 chemical name, identity or other information requested is
21 entitled to protection as a trade secret under section 322 of
22 SARA, Title III, unless the manufacturer of the substance will
23 not provide the information requested to the facility owner
24 because it has received trade secret protection under SARA,
25 Title III. For that information which has received trade secret
26 protection under section 322 of SARA, Title III, prior to the
27 date of the inspection or request, the qualified representative
28 shall give a written assurance to the person that reasonable
29 measures will be taken to protect the confidentiality of any
30 information provided to the qualified representative.

1 (e) Qualified person.--For purposes of this section, the
2 council shall develop qualification standards for members of the
3 council, local committees or their representatives who exercise
4 the reporting, inspection and testing authority contained in
5 this section. At a minimum, those qualifications shall include:

6 (1) Training in inspection and enforcement activities
7 related to enforcing environmental or fire incident
8 investigations.

9 (2) Training in the handling and recognition of
10 hazardous materials.

11 (3) Conflict of interest standards and procedures
12 designed to prevent a local committee member or
13 representative from using the authority of this section to
14 gather information on a business competitor or other trade
15 secret information.

16 (4) Procedures for decertifying a member or
17 representative who was determined to be a qualified
18 representative of the council or local committee.

19 Section 212. Annual report.

20 ~~(a) General rule.~~ The council shall submit an annual report <—
21 to the General Assembly by October 1 of each year on the
22 activities it has undertaken to implement this act. The report
23 shall include, but not be limited to:

24 (1) An accounting of revenues and expenditures from the
25 Hazardous Material Response Fund and the county Hazardous
26 Material Emergency Response Accounts along with a description
27 of the projects undertaken with these funds and a projection
28 of future activities.

29 (2) The status of local emergency planning committee
30 activities.

1 (3) The status of facilities required to comply with
2 this act, including their number, location, number of
3 employees and the number and amount of chemicals reported.

4 (4) The number and nature of emergency notifications
5 handled by PEMA.

6 ~~Section 213. Changes in SARA, Title III, program.~~ <—

7 ~~If changes made by the Environmental Protection Agency under~~
8 ~~SARA, Title III, result in the fees established in section 207~~
9 ~~being applied to additional facilities because of changes in~~
10 ~~threshold quantities, the addition of chemicals or other~~
11 ~~changes, no fees may be collected from these facilities until a~~
12 ~~revised fee structure is considered by the General Assembly~~
13 ~~under procedures set forth in the act of April 7, 1955 (P.L.23,~~
14 ~~No.8), known as the Reorganization Act of 1955. THE OWNER OR~~ <—
15 ~~OPERATOR SHALL PAY THE FEE BY JULY 1 FOLLOWING THE EFFECTIVE~~
16 ~~DATE OF THE CHANGES MADE BY THE ENVIRONMENTAL PROTECTION AGENCY~~
17 ~~AND JULY 1 OF EVERY YEAR THEREAFTER.~~

18 SECTION 213. CHANGES IN FEES. <—

19 (A) ADDITIONAL FACILITIES.--IF CHANGES MADE BY THE UNITED
20 STATES ENVIRONMENTAL PROTECTION AGENCY UNDER SARA, TITLE III,
21 RESULT IN THE FEES ESTABLISHED IN SECTION 207 BEING APPLIED TO
22 ADDITIONAL FACILITIES, NO FEES MAY BE COLLECTED FROM THE OWNERS
23 OR OPERATORS OF THESE FACILITIES UNTIL THE COUNCIL SUBJECTS
24 THESE FACILITIES TO THE FEES BY REGULATION.

25 (B) CHANGE IN REQUIREMENTS.--THE COUNCIL, BY REGULATION, MAY
26 ALSO REVISE THE FEES ESTABLISHED IN SECTION 207, AS THEY APPLY
27 TO ALL FACILITIES WHEN THE ENVIRONMENTAL PROTECTION AGENCY,
28 UNDER SARA, TITLE III CHANGES THE THRESHOLD PLANNING QUANTITIES,
29 THE HAZARDOUS MATERIAL LISTS OR OTHER REQUIREMENTS.

MISCELLANEOUS PROVISIONS

Section 301. Immunity from civil liability.

(a) General.--No Commonwealth agency, local agency, regional hazardous material organization, volunteer emergency service organization or hazardous material transporter, manufacturer, supplier or user that organized the certified hazardous material response team nor their elected officers, officials, directors and employees, and no certified hazardous material response team member, member of an industrial hazardous material response team, law enforcement officer, ambulance service or rescue squad member, firefighter or other emergency response or public works personnel engaged in any emergency service or response activities involving a hazardous material release at a facility or transportation accident site shall be liable for the death of or any injury to persons or loss or damage to property or the environment resulting from ~~that~~ A RESPONSE TO A hazardous material release, except for any acts or omissions which constitute GROSS NEGLIGENCE OR willful misconduct. NOTHING IN THIS SECTION SHALL EXEMPT ANY HAZARDOUS MATERIAL TRANSPORTER, MANUFACTURER, ~~SUPPLIES~~ SUPPLIER OR USER FROM LIABILITY FOR THE DEATH OF OR ANY INJURY TO PERSONS OR LOSS OR DAMAGE TO PROPERTY OR THE ENVIRONMENT RESULTING FROM THE RELEASE OF ANY HAZARDOUS MATERIAL.

(b) Council and local committees.--No member of the council or a local committee shall be liable for the death of or any injury to persons or loss or damage to property or the environment or any civil damages resulting from any act or omission arising out of the performance of the functions, duties and responsibilities of the council or local committee, except for acts or omissions which 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 or fails to pay the fees outlined in sections 201 through 207,
13 ~~not including any violations of section 313 of SARA, Title III,~~ <—
14 or any regulations promulgated under those sections shall be
15 subject to a civil penalty of not less than \$1,000 and not more
16 than \$25,000. Each day of a continuing violation shall be
17 considered a separate offense.

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

19 (1) Knowingly and willfully fails to report the release
20 of a hazardous substance or extremely hazardous substance as
21 required by sections 205 and 206 commits a misdemeanor of the
22 third degree and shall, upon conviction, be sentenced to pay
23 a fine of not less than \$1,000 and not more than ~~\$25,000~~ <—
24 \$2,500 for each separate offense or imprisonment in the <—
25 county jail for a period of not more than one year, or both.
26 For the purposes of this paragraph, each day of continued
27 violation constitutes a separate offense.

28 (2) Intentionally obstructs or impairs, by force,
29 violence, physical interference or obstacle, a representative
30 of PEMA, a certified hazardous material response team or the

1 local committee attempting to perform the duties and
2 functions set forth in section 211, commits a misdemeanor of
3 the second degree and shall, upon conviction, be sentenced to
4 pay a fine of not less than \$1,000 and not more than \$5,000
5 for each separate offense or imprisonment in the county jail
6 for a period of not more than two years, or both.

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

12 Section 303. Enforcement.

13 (a) Civil actions.--The Office of Attorney General, or the
14 Office of General Counsel may commence a civil action against
15 any person for failure to comply with this act or its
16 regulations. ~~60 days after notice of a violation.~~ NO ACTION MAY <—
17 BE COMMENCED UNDER THIS SUBSECTION PRIOR TO 60 DAYS AFTER THE
18 OFFICE OF ATTORNEY GENERAL OR OFFICE OF GENERAL COUNSEL HAS
19 GIVEN WRITTEN NOTICE OF THE ALLEGED VIOLATION TO THE ALLEGED
20 VIOLATOR. The council, a county or a municipality may commence a
21 civil action against any person for failure to comply with this
22 act or its regulations if the Office of Attorney General or the
23 Office of General Counsel has not commenced such action and more
24 than 120 days have elapsed since the ~~plaintiff~~ COUNCIL, A <—
25 COUNTY, OR A MUNICIPALITY gave notice of the alleged violation
26 to the alleged violator.

27 (b) Criminal actions.--The Office of Attorney General under
28 the act of October 15, 1980 (P.L.950, No.164), known as the
29 Commonwealth Attorneys Act, or the district attorney for the
30 county in which the violation is alleged to have occurred, may

1 commence criminal proceedings for the enforcement of this act
2 and its regulations ~~60 days after notice of a violation.~~ <—

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

7 Section 304. Relationship to other laws.

8 (a) Federal law.--This law shall be read in conjunction with
9 Federal acts, laws or regulations providing for the
10 identification, labeling or reporting of information concerning
11 hazardous material releases, and any other health and safety
12 matters related to hazardous materials, and is intended to
13 supplement Federal acts, laws and regulations in the interests
14 of protecting the health and safety of the citizens of this
15 Commonwealth. In those instances where the provisions of this
16 act are more comprehensive or stringent than the provisions of
17 an applicable Federal act, law or regulation, the provisions of
18 this act shall be controlling.

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

22 (c) Local law.--This act shall preempt any ordinances or
23 resolutions passed or adopted by any political subdivision that
24 is effective on or before OR AFTER the effective date of this <—
25 act to the extent that such ordinance or resolution conflicts or
26 is inconsistent with the provisions of this act.

27 Section 305. Facility insurance.

28 A facility that complies with the emergency reporting
29 requirements of section 205(a), (b) AND (c), ~~(e) and (g) of this~~ <—
30 ~~act~~, as applicable to that facility, may receive a discount from

1 that facility's insurance company as that insurance company loss
2 experience justifies.

3 ~~Section 306. Appropriation.~~ <—

4 ~~The sum of \$1,000,000 \$650,000 is appropriated to the~~ <—
5 ~~Hazardous Material Response Fund for fiscal year July 1, 1990,~~
6 ~~to June 30, 1991, in order to carry out the hazardous material~~
7 ~~safety program.~~

8 ~~Section 307~~ 306. Severability. <—

9 The provisions of this act are severable. If any provision of
10 this act or its application to any person or circumstance is
11 held invalid, the invalidity shall not affect other provisions
12 or applications of this act which can be given effect without
13 the invalid provision or application.

14 ~~Section 308~~ 307. Effective date. <—

15 This act shall take effect in 60 days.