

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1

Session of
1995

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

AS AMENDED ON THIRD CONSIDERATION, FEBRUARY 28, 1995

AN ACT

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

TABLE OF CONTENTS

9
10 Chapter 1. General Provisions
11 Section 101. Short title.
12 Section 102. Declaration of policy.
13 Section 103. Definitions.
14 Section 104. Powers and duties.
15 Section 105. Cleanup Standards Scientific Advisory Board.
16 Section 106. Scope.
17 Section 107. Existing standards.
18 Chapter 3. Remediation Standards and Review Procedures

1 Section 301. Remediation standards.

2 Section 302. Background standard.

3 Section 303. Statewide health standard.

4 Section 304. Site-specific standard.

5 Section 305. Special industrial areas.

6 Section 306. Privatization.

7 Section 307. Local land development controls.

8 Section 308. Immediate response.

9 Section 309. Appealable actions.

10 Chapter 5. Cleanup Liability Protection

11 Section 501. Cleanup liability protection.

12 Section 502. Special industrial ~~sites~~ AREAS. <—

13 Section 503. Existing exclusions.

14 Section 504. New liability.

15 Section 505. Reopeners.

16 Section 506. Authority reserved.

17 Chapter 7. Industrial Land Recycling Fund

18 Section 701. Industrial Land Recycling Fund.

19 Section 702. Voluntary Cleanup Loan Program.

20 Section 703. Fees.

21 Chapter 9. Miscellaneous Provisions

22 Section 901. Plain language.

23 Section 902. Permits AND OTHER REQUIREMENTS. <—

24 Section 903. Future actions.

25 Section 904. Relationship to Federal and State programs.

26 Section 905. Enforcement.

27 Section 906. Past penalties.

28 SECTION 907. EVALUATION. <—

29 Section ~~907~~ 908. Repeals. <—

30 Section ~~908~~ 909. Effective date. <—

1 The General Assembly of the Commonwealth of Pennsylvania
2 hereby enacts as follows:

3 CHAPTER 1

4 GENERAL PROVISIONS

5 Section 101. Short title.

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

8 Section 102. Declaration of policy.

9 The General Assembly finds and declares as follows:

10 (1) The elimination of public health and environmental
11 hazards on existing commercial and industrial land across
12 this Commonwealth is vital to their use and reuse as sources
13 of employment, housing, recreation and open-space areas. The
14 reuse of industrial land is an important component of a sound
15 land-use policy that will help prevent the needless
16 development of prime farmland, open-space areas and natural
17 areas and reduce public costs for installing new water, sewer
18 and highway infrastructure.

19 (2) Incentives should be put in place to encourage
20 responsible persons to voluntarily develop and implement
21 cleanup plans without the use of taxpayer funds or the need
22 for adversarial enforcement actions by the Department of
23 Environmental Resources which frequently only serve to delay
24 cleanups and increase their cost.

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

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

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

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

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

27 Section 103. Definitions.

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

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

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

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

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

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

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

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

1 "CLEANUP OR REMEDIATION." TO CLEAN UP, MITIGATE, CORRECT,
2 ABATE, MINIMIZE, ELIMINATE, CONTROL OR PREVENT A RELEASE OF A
3 REGULATED SUBSTANCE INTO THE ENVIRONMENT IN ORDER TO PROTECT THE
4 PRESENT OR FUTURE PUBLIC HEALTH, SAFETY, WELFARE OR THE
5 ENVIRONMENT, INCLUDING PRELIMINARY ACTIONS TO STUDY OR ASSESS
6 THE RELEASE.

7 "Contaminant." A regulated substance released into the
8 environment.

9 "Control." To apply engineering measures, such as capping or
10 treatment, or institutional measures, such as deed restrictions,
11 to sites with contaminated media.

12 "Department." The Department of Environmental Resources of
13 the Commonwealth or its successor agency.

14 "Engineering controls." Remedial actions directed
15 exclusively toward containing or controlling the migration of
16 regulated substances through the environment. These include, but
17 are not limited to, slurry walls, liner systems, caps, leachate
18 collection systems and groundwater recovery trenches.

19 "EPA." The Environmental Protection Agency or its successor
20 agency.

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

25 "Groundwater." Water below the land surface in a zone of
26 saturation.

27 "Hazard index." The sum of more than one hazard quotient for
28 multiple substances and multiple exposure pathways. The hazard
29 index is calculated separately for chronic, subchronic and
30 shorter duration exposures.

1 "Hazard quotient." The ratio of a single substance exposure
2 level over a specified period, e.g. subchronic, to a reference
3 dose for that substance derived from a similar exposure period.

4 "Hazardous Sites Cleanup Fund." The fund established under
5 the act of October 18, 1988 (P.L.756, No.108), known as the
6 Hazardous Sites Cleanup Act.

7 "Health advisory levels" or "HALs." The health advisory
8 levels published by the United States Environmental Protection
9 Agency for particular substances.

10 "Industrial activity." Commercial, manufacturing, public
11 utility, mining or any other activity done to further either the
12 development, manufacturing or distribution of goods and
13 services, ~~including, but not limited to, administration of~~ <—
14 ~~business activities, research and development, warehousing,~~
15 ~~shipping, transport, remanufacturing, stockpiling, storage,~~
16 ~~solid waste management, repair and maintenance of raw materials,~~
17 ~~intermediate and final products and solid waste created during~~
18 ~~such activities, commercial machinery and equipment.~~

19 INTERMEDIATE AND FINAL PRODUCTS AND SOLID WASTE CREATED DURING <—
20 SUCH ACTIVITIES, INCLUDING, BUT NOT LIMITED TO, ADMINISTRATION
21 OF BUSINESS ACTIVITIES, RESEARCH AND DEVELOPMENT, WAREHOUSING,
22 SHIPPING, TRANSPORT, REMANUFACTURING, STOCKPILING OF RAW
23 MATERIALS, STORAGE, REPAIR AND MAINTENANCE OF COMMERCIAL
24 MACHINERY AND EQUIPMENT AND SOLID WASTE MANAGEMENT.

25 "Institutional controls." A measure undertaken to limit or
26 prohibit certain activities that may interfere with the
27 integrity of a remedial action or result in exposure to
28 regulated substances at a site. These include, but are not
29 limited to, fencing or restrictions on the future use of the
30 site.

1 "Medium-specific concentration." The concentration
2 associated with a specified environmental medium for potential
3 risk exposures.

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

7 "Municipality." A township, borough, city, incorporated
8 village or home rule municipality. This term shall not include a
9 county.

10 "Nonresidential property." Any real property on which
11 commercial, industrial, manufacturing or any other activity is
12 done to further either the development, manufacturing or
13 distribution of goods and services, INTERMEDIATE AND FINAL <—
14 PRODUCTS, including, but not limited to, administration of
15 business activities, research and development, warehousing,
16 shipping, transport, remanufacturing, stockpiling of raw
17 materials, storage, repair and maintenance of commercial
18 machinery and equipment ~~or intermediate and final products and,~~ <—
19 AND solid waste management. This term shall not include schools,
20 nursing homes or other residential-style facilities OR <—
21 RECREATIONAL AREAS.

22 "Person." An individual, firm, corporation, association,
23 partnership, consortium, joint venture, commercial entity,
24 authority, nonprofit corporation, interstate body or other legal
25 entity which is recognized by law as the subject of rights and
26 duties. The term includes the Federal Government, State
27 government, political subdivisions and Commonwealth
28 instrumentalities.

29 "Point of compliance." For the purposes of determining
30 compliance with groundwater standards, the property boundary at

1 the time the ~~area of~~ contamination is ~~defined~~ DISCOVERED or such <—
2 point beyond the property boundary as the Department of
3 Environmental Resources may determine to be appropriate.

4 "Practical quantitation limit." The lowest limit that can be
5 reliably achieved within specified limits of precision and
6 accuracy under routine laboratory conditions for a specified
7 matrix and based on quantitation, precision and accuracy, normal
8 operation of a laboratory and the practical need in a
9 compliance-monitoring program to have a sufficient number of
10 laboratories available to conduct the analyses.

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

13 "Regulated substance." The term shall include hazardous
14 substances AND CONTAMINANTS regulated under the act of October <—
15 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
16 Act, and substances covered by the act of June 22, 1937
17 (P.L.1987, No.394), known as The Clean Streams Law, the act of
18 January 8, 1960 (1959 P.L.2119, No.787), known as the Air
19 Pollution Control Act, the act of July 7, 1980 (P.L.380, No.97),
20 known as the Solid Waste Management Act, the act of July 13,
21 1988 (P.L.525, No.93), referred to as the Infectious and
22 Chemotherapeutic Waste Law, and the act of July 6, 1989
23 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
24 Act.

25 "Release." Spilling, leaking, pumping, pouring, emitting,
26 emptying, discharging, injecting, escaping, leaching, dumping or
27 disposing of a regulated substance into the environment in a
28 manner not authorized by the Department of Environmental
29 Resources. The term includes the abandonment or discarding of
30 barrels, containers, vessels and other receptacles containing a

1 regulated substance.

2 ~~"Remediation." To clean up, mitigate, correct, abate,~~ <—
3 ~~minimize, eliminate, control or prevent a release of a regulated~~
4 ~~substance into the environment in order to protect the present~~
5 ~~or future public health, safety, welfare or the environment,~~
6 ~~including preliminary actions to study or assess the release.~~

7 "Residential property." Any property or portion of the
8 property which does not meet the definition of "nonresidential
9 property."

10 "Responsible person." The term shall have the same meaning
11 as given to it in the act of October 18, 1988 (P.L.756, No.108),
12 known as the Hazardous Sites Cleanup Act, and shall include a
13 person subject to enforcement actions for substances covered by
14 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean
15 Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787),
16 known as the Air Pollution Control Act, the act of July 7, 1980
17 (P.L.380, No.97), known as the Solid Waste Management Act, the
18 act of July 13, 1988 (P.L.525, No.93), referred to as the
19 Infectious and Chemotherapeutic Waste Law, and the act of July
20 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill
21 Prevention Act.

22 "Secretary." The Secretary of Environmental Resources of the
23 Commonwealth.

24 "Site." The extent of contamination originating within the
25 property boundaries and all areas in close proximity to the
26 contamination necessary for the implementation of remediation
27 activities to be conducted under this act.

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

30 "Treatment." The term shall have the same meaning as given

1 to it in the act of October 18, 1988 (P.L.756, No.108), known as
2 the Hazardous Sites Cleanup Act.

3 Section 104. Powers and duties.

4 (a) Environmental Quality Board.--The Environmental Quality
5 Board shall have the power and its duty shall be to adopt AND <—
6 AMEND PERIODICALLY THEREAFTER by regulation Statewide health
7 standards, appropriate mathematically valid statistical tests to
8 define compliance with this act and other regulations that may
9 be needed to implement the provisions of this act. Any
10 regulations needed to implement this act shall be proposed by <—
11 ~~the department~~ no later than 12 months after the effective date
12 of this act and shall be finalized no later than 24 months after
13 the effective date of this act, unless otherwise specified in
14 this act.

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

17 Section 105. Cleanup Standards Scientific Advisory Board.

18 (a) Establishment.--There is hereby created a 13-member
19 Cleanup Standards Scientific Advisory Board for the purpose of
20 assisting the department and the Environmental Quality Board in
21 developing Statewide health standards, determining the
22 appropriate statistically and scientifically valid procedures to
23 be used, determining the appropriate risk factors and providing
24 other technical and scientific advice as needed to implement the
25 provisions of this act.

26 (b) Membership.--Five members shall be appointed by the
27 secretary and two members each by the President pro tempore of
28 the Senate, the Minority Leader of the Senate, the Speaker of
29 the House of Representatives and the Minority Leader of the
30 House of Representatives. Members shall have a background in

1 engineering, biology, hydrogeology, statistics, medicine,
2 chemistry, toxicology or other related scientific education or
3 experience that relates to problems and issues likely to be
4 encountered in developing health-based cleanup standards and
5 other procedures needed to implement the provisions of this act.
6 The board membership shall include representatives of local
7 government, the public, the academic community, professionals
8 with the appropriate background and the regulated community
9 (manufacturing, small business and other members of the business
10 community). The members shall serve for a period of four years.
11 The initial terms of the members shall be staggered so that at
12 least one-half of the members' terms expire in two years.

13 (c) Organization.--The board shall elect a chairperson by
14 majority vote and may adopt any bylaws or procedures it deems
15 necessary to accomplish its purpose. Recommendations, positions
16 or other actions of the board shall be by a majority of its
17 members.

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

21 (e) Support.--The department shall provide the appropriate
22 administrative and technical support needed by the board in
23 order to accomplish its purpose, including support for surveys
24 and technical studies the board may wish to undertake. The
25 department shall publish a notice of meeting dates, times and
26 locations and a list of topics to be discussed at any meeting no
27 less than 14 days prior to the meeting, published in the same
28 manner as required by the act of July 3, 1986 (P.L.388, No.84),
29 known as the Sunshine Act.

30 (f) Interested persons list.--The department shall maintain

1 a mailing list of persons interested in receiving notice of
2 meetings and the activities of the board. The department shall
3 name a contact person to be responsible for board meetings and
4 to serve as a contact for the public to ask questions and get
5 information about the board.

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

10 Section 106. Scope.

11 The environmental remediation standards established under
12 this act shall be used whenever site remediation ~~and cleanup is~~ <—
13 ~~conducted~~ IS VOLUNTARILY CONDUCTED OR IS REQUIRED under the act <—
14 of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams
15 Law, the act of January 8, 1960 (1959 P.L.2119, No.787), known
16 as the Air Pollution Control Act, the act of July 7, 1980
17 (P.L.380, No.97), known as the Solid Waste Management Act, the
18 act of July 13, 1988 (P.L.525, No.93), referred to as the
19 Infectious and Chemotherapeutic Waste Law, the act of October
20 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
21 Act, and the act of July 6, 1989 (P.L.169, No.32), known as the
22 Storage Tank and Spill Prevention Act, to be eligible for
23 cleanup liability protection under Chapter 5. IN ADDITION, THE <—
24 REMEDIATION STANDARDS ESTABLISHED UNDER THIS ACT SHALL BE
25 CONSIDERED AS APPLICABLE, RELEVANT AND APPROPRIATE REQUIREMENTS
26 FOR THIS COMMONWEALTH UNDER THE COMPREHENSIVE ENVIRONMENTAL
27 RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 (PUBLIC LAW
28 96-510, 94 STAT. 2767) AND THE HAZARDOUS SITES CLEANUP ACT.

29 Section 107. Existing standards.

30 (a) General rule.--The department may continue to use

1 ~~cleanup~~ REMEDIATION standards not adopted under the provisions <—
2 of this act for a period of up to three years after the
3 effective date of this act, unless such existing standards are
4 revised or replaced by regulations adopted under this act. All
5 regulations, policies, guidance documents and procedures
6 relating to remediation STANDARDS which were not adopted under <—
7 the provisions of this act shall expire three years after the
8 effective date of this act. The standards established in
9 sections 302, 303(b)(3) and 304 shall be available for use on
10 the effective date of this act and shall supersede existing
11 regulations, policies, guidance documents and procedures.

12 (b) Agreements and consent orders.--The standards
13 established under this act are not intended to impose more
14 stringent cleanup standards than those which are contained in
15 any prior administrative consent order, consent adjudication,
16 judicially approved consent order, or other settlement agreement
17 entered into with the department under the authority of any of
18 the statutes referred to in section 106 and which were entered
19 into with the department on or before the effective date of this
20 act, unless all parties thereto agree to such change.

21 CHAPTER 3

22 REMEDIATION STANDARDS AND REVIEW PROCEDURES

23 Section 301. Remediation standards.

24 (a) Standards.--Any person who proposes OR IS REQUIRED to <—
25 respond to the release of a regulated substance at a site and
26 WHO WANTS to be eligible for the cleanup liability protection <—
27 under Chapter 5 shall select and attain compliance with one or
28 more of the following environmental standards when conducting
29 remediation activities:

30 (1) a background standard which achieves background ~~or~~ <—

1 ~~the practical quantitation limit~~ as further specified in
2 section 302;

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

8 (3) a site-specific standard which achieves remediation
9 levels based on a site-specific risk assessment so that any
10 substantial present or probable future risk to human health
11 and the environment is eliminated or reduced to protective
12 levels based upon the present or currently planned future use
13 of the property comprising the site as specified in section
14 304.

15 (b) Combination of standards.--A person may use a
16 combination of the remediation standards to implement a site
17 remediation plan and may propose to use the site-specific
18 standard whether or not efforts have been made to attain the
19 background or Statewide health standard.

20 (C) DETERMINING ATTAINMENT.--FOR THE PURPOSES OF DETERMINING <—
21 ATTAINMENT OF ANY ONE OR A COMBINATION OF REMEDIATION STANDARDS,
22 THE CONCENTRATION OF A REGULATED SUBSTANCE SHALL NOT BE REQUIRED
23 TO BE LESS THAN THE PRACTICAL QUANTITATION LIMIT FOR A REGULATED
24 SUBSTANCE AS DETERMINED FROM TIME TO TIME BY THE EPA. THE
25 DEPARTMENT MAY, IN CONSULTATION WITH THE BOARD, ESTABLISH BY
26 REGULATION PROCEDURES FOR DETERMINING ATTAINMENT OF REMEDIATION
27 STANDARDS WHEN PRACTICAL QUANTITATION LIMITS SET BY THE EPA HAVE
28 A HEALTH RISK THAT IS GREATER THAN THE RISK LEVELS SET IN
29 SECTIONS 303(C) AND 304(B) AND (C). THE DEPARTMENT SHALL NOT
30 ESTABLISH PROCEDURES FOR DETERMINING ATTAINMENT OF REMEDIATION

1 STANDARDS WHERE MAXIMUM CONTAMINANT LEVELS AND HEALTH ADVISORY
2 LEVELS HAVE ALREADY BEEN ESTABLISHED FOR REGULATED SUBSTANCES.
3 Section 302. Background standard.

4 (a) Standard.--Persons selecting the background standard
5 shall meet ~~a standard that is the greater of either of the~~ <—
6 ~~following concentrations~~ BACKGROUND for each regulated substance <—
7 in each environmental medium.÷ <—

8 ~~(1) background as represented by the results of analyses~~
9 ~~of representative samples; or~~
10 ~~(2) the achievable practical quantitation limit.~~

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

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

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

28 (i) The descriptions of procedures and conclusions
29 of the site investigation to characterize the nature,
30 extent, direction, volume and composition OR REGULATED <—

1 SUBSTANCES.

2 (ii) The basis for selecting environmental media of
3 concern, descriptions of removal or decontamination
4 procedures performed in remediation, summaries of
5 sampling methodology and analytical results which
6 demonstrate that remediation has attained the background
7 standard.

8 (3) Where remediation measures do not involve removal or
9 treatment of a contaminant to the background standard, the
10 final report shall demonstrate that any remaining
11 contaminants on the site will meet Statewide health standards
12 and show compliance with any postremediation care
13 requirements that may be needed to maintain compliance with
14 the Statewide health standards.

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

19 (c) Authority reserved.--If a person fails to demonstrate
20 attainment of the background standard, the department may
21 require that additional remediation measures be taken in order
22 to meet the background standard or the person may select to meet
23 the requirements of section 303 or 304.

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

1 prior to demonstrating compliance with the background standard
2 may be removed.

3 (e) Notice and review provisions.--Persons utilizing the
4 background standard shall comply with the following requirements
5 for notifying the public and the department of planned
6 remediation activities:

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

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

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

26 (2) Notice of the submission of the final report
27 demonstrating attainment of the background standard shall be
28 given to the municipality in which the remediation site is
29 located, published in a newspaper of general circulation
30 serving the area and in the Pennsylvania Bulletin.

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

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

Section 303. Statewide health standard.

(a) Standard.--The Environmental Quality Board shall promulgate Statewide health standards for regulated substances for each environmental medium. The standards shall include any existing numerical residential and nonresidential health-based standards adopted by the department and by the Federal Government by regulation or statute, and health advisory levels. For those health-based standards not already established by regulation or statute, the ~~department~~ ENVIRONMENTAL QUALITY BOARD shall, by regulation, propose residential and nonresidential STANDARDS AS medium-specific concentrations within 12 months of the effective date of this act. The Environmental Quality Board shall also promulgate, along with the standards, the methods used to calculate the standards.

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<—

Standards adopted under this section shall be no more stringent than those standards adopted by the Federal Government.

(b) Medium-specific ~~requirements~~ CONCENTRATIONS.--The following requirements shall be used ~~in defining~~ TO ESTABLISH a medium-specific concentration ~~limit~~:

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

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

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

(4) For the residential standard, the concentration of a regulated substance in soil shall not exceed either the

1 direct contact soil medium-specific concentration based on
2 residential exposure factors within a depth of UP TO 15 feet <—
3 from the existing ground surface, or the soil-to-groundwater
4 pathway numeric value throughout the soil column, the latter
5 to be determined by any one of the following methods:

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

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

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

22 (5) For the nonresidential standard, the concentration
23 of a regulated substance in soil ~~within a depth of 15 feet~~ <—
24 ~~from the existing ground surface~~ shall not exceed either the
25 direct contact soil medium-specific concentration based on
26 nonresidential exposure factors WITHIN A DEPTH OF UP TO 15 <—
27 FEET FROM THE EXISTING GROUND SURFACE using valid scientific
28 methods reflecting worker exposure or the soil to groundwater
29 pathway numeric value determined in accordance with paragraph
30 (4).

(6) Exposure scenarios for medium-specific concentrations for nonresidential conditions shall be established using valid scientific methods reflecting worker exposure.

~~(c) Additional limits. For those regulated substances where medium specific concentration limits cannot be established using the procedures in subsection (b)~~ (C) ADDITIONAL FACTORS.--WHEN ESTABLISHING A MEDIUM-SPECIFIC CONCENTRATION, OTHER THAN THOSE ESTABLISHED UNDER SUBSECTION (B)(1), (2) OR (3), the medium-specific concentration limits for the ingestion of groundwater, inhalation of soils, ingestion and inhalation of volatiles and particulates ~~from the soils~~ shall be calculated by the department using valid scientific methods, reasonable exposure pathway assumptions and exposure factors for residential and nonresidential land use which are no more stringent than the standard default exposure factors established by EPA based on the following levels of risk:

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

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

(d) Relationship to background.--The concentration of a

1 regulated substance in an environmental media of concern on a
2 site where the Statewide health standard has been selected shall
3 not be required to meet the Statewide health standard if the
4 Statewide health standard is numerically less than the
5 ~~achievable practical quantitative limit~~ BACKGROUND STANDARD. In <—
6 such cases, the ~~achievable practical quantitative limit~~ <—
7 BACKGROUND STANDARD shall apply. <—

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

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

21 (2) A final report that documents attainment of the
22 Statewide health standard shall be submitted to the
23 department which includes the descriptions of procedures and
24 conclusions of the site investigation to characterize the
25 nature, extent, direction, rate of movement of the site and
26 cumulative effects, if any, volume, composition, AND <—
27 concentration of contaminants in environmental media, the
28 basis for selecting environmental media of concern,
29 documentation supporting the selection of residential or
30 nonresidential exposure factors, descriptions of removal or

1 ~~decontamination~~ TREATMENT procedures performed in <—
2 remediation, summaries of sampling methodology and analytical
3 results which demonstrate that contaminants have been removed
4 or ~~decontaminated~~ TREATED to applicable levels and <—
5 documentation of compliance with postremediation care
6 requirements if they are needed to maintain the Statewide
7 health standard.

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

13 (f) Authority reserved.--If a person fails to demonstrate
14 attainment of the Statewide health standard, the department may
15 require that additional remediation measures be taken in order
16 to meet the health standard or the person may select to meet the
17 requirements of section 302 or 304.

18 (g) Deed notice.--Persons attaining and demonstrating
19 compliance with the Statewide health standard considering
20 residential exposure factors for a regulated substance on the
21 entire site shall not be subject to the deed acknowledgment
22 requirements of the act of July 7, 1980 (P.L.380, No.97), known
23 as the Solid Waste Management Act, or the act of October 18,
24 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
25 Act. An existing acknowledgment contained in a deed prior to
26 demonstrating compliance with the residential Statewide health
27 standard may be removed. The deed acknowledgment requirements
28 shall apply where nonresidential exposure factors were used to
29 comply with the Statewide health standard.

30 (h) Notice and review provisions.--Persons utilizing the

1 Statewide health standard shall comply with the following
2 requirements for notifying the public and the department of
3 planned remediation activities:

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

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

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

23 (2) Notice of the submission of the final report
24 demonstrating attainment of the Statewide health standard
25 shall be given to the municipality in which the remediation
26 site is located, published in a newspaper of general
27 circulation serving the area and in the Pennsylvania
28 Bulletin.

29 (3) The department shall review the final report
30 demonstrating attainment of the Statewide health standard

1 within 60 days of its receipt or notify the person submitting
2 the report of substantive deficiencies. If the department
3 does not respond with deficiencies within 60 days, the final
4 report shall be deemed approved.

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

15 Section 304. Site-specific standard.

16 (a) General.--Where a site-specific standard is selected as
17 the environmental remediation standard or where the background
18 or Statewide health standard is selected but not achieved, site <—
19 REMEDIAL investigation, risk assessment, cleanup plans and final <—
20 reports shall be developed using the procedures and factors
21 established by this section.

22 (b) Carcinogens.--For known or suspected carcinogens, soil
23 and groundwater cleanup standards shall be established at
24 exposures which represent an excess upper-bound lifetime risk of
25 between 1 in 10,000 and 1 in 1,000,000. The cumulative excess
26 risk to exposed populations, including sensitive subgroups,
27 shall not be greater than 1 in 10,000.

28 (c) Systemic toxicants.--For systemic toxicants, soil and
29 groundwater cleanup standards shall represent levels to which
30 the human population could be exposed on a daily basis without

1 appreciable risk of deleterious effect to the exposed
2 population. Where several systemic toxicants affect the same
3 target organ or act by the same method of toxicity, the hazard
4 index shall not exceed one. The hazard index is the sum of the
5 hazard quotients for multiple systemic toxicants acting through
6 a single-medium exposure pathway or through multiple-media
7 exposure pathways.

8 (d) Groundwater.--Cleanup standards for groundwater shall be
9 established IN ACCORDANCE WITH SUBSECTIONS (B) AND (C) using the <—
10 following considerations:

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

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

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

22 (iii) Natural environmental conditions affecting the
23 fate and transport of contaminants, such as natural
24 attenuation, shall be determined by appropriate
25 scientific methods.

26 (2) Groundwater not in aquifers shall be evaluated using
27 current or probable future exposure scenarios. Appropriate
28 management actions shall be instituted at the point of
29 exposure where a person is exposed to groundwater by
30 ingestion or other avenues to protect human health and the

environment. This shall not preclude taking appropriate source management actions by the responsible party to achieve the equivalent level of protection.

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

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

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

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

(3) The potential of human ingestion of regulated substances in surface water or other site-specific surface

water exposure pathways, if applicable.

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

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

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

(i) Combination of measures.--The standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls and can include innovative or other demonstrated measures. THE DEPARTMENT MAY DISAPPROVE A SITE-SPECIFIC REMEDIATION PLAN THAT CONSISTS SOLELY OF FENCING, WARNING SIGNS OR FUTURE LAND USE RESTRICTIONS.

(j) Remedy evaluation.--The final remediation plan for a site submitted to the department shall include remediation

alternatives and a final remedy which consider each of the following factors:

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

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

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

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

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

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

(vi) Time to achieve cleanup standards.

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

(3) Short-term risks and effectiveness of the remedy, including the short-term risks that may be posed to the community, workers or the environment during implementation

1 of the remedy and the effectiveness and reliability of
2 protective measures to address short-term risks.

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

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

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

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

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

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

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

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

11 (1) A remedial investigation report ~~shall be submitted~~ <—
12 which includes:

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

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

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

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

29 (v) If no exposure pathways exist, a risk assessment
30 report and cleanup plan are not required and no remedy is

1 required to be proposed or completed.

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

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

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

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

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

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

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

27 (ii) The notices required by this paragraph shall
28 include a 30-day public and municipal comment period
29 during which the municipality can request to be involved
30 in the development of the remediation and reuse plans for

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

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

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

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

30 (3) If the remedial investigation report, risk

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

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

25 Section 305. Special industrial areas.

26 (a) Special sites.--For property used for industrial
27 activities where there is ~~now~~ no financially viable responsible <—
28 person to clean up contamination or for land located within
29 enterprise zones designated pursuant to the requirements of the
30 Department of Community Affairs, the review procedures of this

1 section shall apply for persons conducting remediation
2 activities who ~~are not responsible for~~ DID NOT CAUSE OR <—
3 CONTRIBUTE TO contamination on the property. Any environmental
4 remediation undertaken pursuant to this section shall comply
5 with one or more of the standards established in this chapter.

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

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

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

1 circulation serving the area in which the site is located.

2 (2) The notices required by this subsection shall
3 include a 30-day public and municipal comment period during
4 which the municipality can request to be involved in the
5 development of the remediation and reuse plans for the site.

6 If requested by the municipality, the person undertaking the
7 remediation shall develop and implement a public involvement
8 program plan which meets the requirements of section 304(o).

9 Persons undertaking the remediation are encouraged to develop
10 a proactive approach to working with the municipality in
11 developing and implementing remediation and reuse plans.

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

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

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

1 (g) Deed notice.--Persons entering into agreements pursuant
2 to this section shall be subject to the deed acknowledgment
3 requirements of the act of July 7, 1980 (P.L.380, No.97), known
4 as the Solid Waste Management Act, or the act of October 18,
5 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
6 Act, where applicable.

7 Section 306. Privatization.

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

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

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

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

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

26 (D) PRIVATE FIRM.--PRIVATE FIRMS UNDERTAKING A PORTION OF
27 THE TECHNICAL REVIEWS UNDER THIS SECTION SHALL BE SUBJECT TO THE
28 SAME REQUIREMENTS AS THE DEPARTMENT.

29 Section 307. Local land development controls.

30 This act shall not affect the ability of local governments to

1 regulate land development under the act of July 31, 1968
2 (P.L.805, No.247), known as the Pennsylvania Municipalities
3 Planning Code. The use of the identified property and any deed
4 restrictions used as part of a remediation plan shall comply
5 with local land development controls adopted under the
6 Pennsylvania Municipalities Planning Code.

7 Section 308. Immediate response.

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

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

28 Section 309. Appealable actions.

29 Decisions by the department involving the reports and
30 evaluations required under this chapter shall be considered

1 appealable actions under the act of July 13, 1988 (P.L.530,
2 No.94), known as the Environmental Hearing Board Act.

3 CHAPTER 5

4 CLEANUP LIABILITY PROTECTION

5 Section 501. Cleanup liability protection.

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

16 (1) The current or future owner of the identified
17 property OR ANY OTHER PERSON, who participated in the
18 remediation of the site.

<—

19 (2) A person who develops or otherwise occupies the
20 identified site.

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

23 (4) A public utility to the extent the public utility
24 performs activities on the identified site.

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

1 or transaction screen.

2 (c) Illegal activities.--The provisions of this chapter do
3 not create a defense against the imposition of criminal and
4 civil fines and penalties or administrative penalties otherwise
5 authorized by law and imposed as the result of the illegal
6 disposal of waste or for the pollution of the land, air or
7 waters of this Commonwealth on the identified site.

8 Section 502. Special industrial ~~sites~~ AREAS. <—

9 (a) Agreement.--The department and the person undertaking
10 the ~~reuse of an abandoned industrial site~~ REUSE IN A SPECIAL <—
11 INDUSTRIAL AREA under section 305 shall enter into an agreement
12 based on the environmental report which outlines cleanup
13 liability for the ~~site~~ PROPERTY. Any person included in such an <—
14 agreement shall not be subject to a citizen suit, other
15 contribution actions brought by responsible persons not
16 participating in the remediation of the ~~site~~ PROPERTY or other <—
17 actions brought by the department with respect to the ~~site~~ <—
18 PROPERTY except those which may be necessary to enforce the <—
19 terms of the agreement.

20 (b) Liability.--The cleanup liabilities for the person
21 undertaking the reuse of the ~~site~~ PROPERTY shall include the <—
22 following:

23 (1) The person shall only be responsible for remediation
24 of any immediate, direct or imminent threats to public health
25 or the environment, such as drummed waste, which would
26 prevent the ~~site~~ PROPERTY from being occupied for its <—
27 intended purpose.

28 (2) The person shall not be held responsible for the
29 remediation of any contamination identified in the
30 environmental report, other than the contamination noted in

paragraph (1).

(3) Nothing in this act shall relieve the person from any cleanup liability for contamination later caused by that person on the ~~site~~ PROPERTY. <—

(c) Developer or occupier.--A person who develops or occupies the ~~site~~ PROPERTY shall not be considered a responsible person for purposes of assigning cleanup liability. <—

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

(e) Public utility.--A public utility shall not be considered a responsible person for purposes of assigning cleanup liability to the extent the public utility performs activities on the identified ~~site~~ PROPERTY, provided the public utility is not a person responsible for contamination on the property. <—

Section 503. Existing exclusions.

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

Section 504. New liability.

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

1 3.

2 Section 505. Reopeners.

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

6 (1) fraud was committed in ~~the certification of~~ <—
7 DEMONSTRATING ATTAINMENT OF A STANDARD AT the site that <—
8 resulted in avoiding the need for further cleanup of the
9 site;

10 (2) new information confirms the existence of an area of
11 previously unknown contamination which contains regulated
12 substances that have been shown to exceed the standards
13 applied to previous remediation at the site;

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

16 (4) the level of risk is increased beyond the acceptable
17 risk range at a site due to substantial changes in exposure
18 conditions, such as in a change in land use from
19 nonresidential to a residential use, or new information is
20 obtained about a regulated substance associated with the site
21 which revises exposure assumptions beyond the acceptable
22 range. Any person who changes the use of the property causing
23 the level of risk to increase beyond the acceptable risk
24 range shall be required by the department to undertake
25 additional remediation measures under the provisions of this
26 act.

27 Section 506. Authority reserved.

28 Except for the performance of further remediation of the
29 site, nothing in this act shall affect the ability or authority
30 of any person to seek any relief available against any party who

1 may have liability with respect to this site. This act shall not
2 affect the ability or authority to seek a contribution from any <—
3 person who may have liability with respect to the site and did
4 not receive cleanup liability protection under this chapter.

5 CHAPTER 7

6 INDUSTRIAL LAND RECYCLING FUND

7 Section 701. Industrial Land Recycling Fund.

8 (a) Fund.--There is hereby established a separate account in
9 the State Treasury, to be known as the Industrial Land Recycling
10 Fund, which shall be a special fund administered by the
11 department.

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

15 (c) Funds.--In addition to any funds appropriated by the
16 General Assembly, Federal funds and private contributions and
17 any fines and penalties assessed under this act shall be
18 deposited into the fund. MONEYS IN THE FUND ARE HEREBY <—
19 APPROPRIATED, UPON THE APPROVAL OF THE GOVERNOR, FOR THE
20 PURPOSES OF THIS ACT.

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

24 Section 702. Voluntary Cleanup Loan Program.

25 (a) Establishment.--There is hereby established a separate
26 account in the State Treasury, to be known as the Voluntary
27 Cleanup Loan Fund, which shall be a special fund administered by
28 the Department of Commerce. Within 60 days of the effective date
29 of this act, the Department of Commerce shall finalize
30 guidelines and issue application forms to administer this fund.

1 The Department of Commerce, in conjunction with the Department
2 of Environmental Resources may establish funding priorities
3 under this program.

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

10 (1) Local economic development agencies, public agencies
11 and local governments and persons not responsible for
12 contamination on a site shall be eligible for grants for the
13 purpose of completing environmental studies and implementing
14 cleanup plans.

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

20 (c) Funds.--In addition to any funds appropriated by the
21 General Assembly, ~~at least \$5,000,000 shall be transferred on~~ <—
22 ~~July 1 of~~ UP TO \$5,000,000 SHALL BE TRANSFERRED UPON APPROVAL OF <—
23 THE GOVERNOR each year from the Hazardous Sites Cleanup Fund
24 established by the act of October 18, 1988 (P.L.756, No.108),
25 known as the Hazardous Sites Cleanup Act, to the Voluntary
26 Cleanup Loan Fund for the purpose of implementing the program
27 established in this section. Moneys received by the Department
28 of Commerce as repayment of outstanding loans shall be deposited
29 in the fund. Any interest earned by moneys in the fund shall
30 remain in the fund. The first transfer of funds from the

1 Hazardous Sites Cleanup Fund required by this subsection shall
2 occur within 60 days of the effective date of this act. MONIES <—
3 IN THE FUND ARE HEREBY APPROPRIATED, UPON THE APPROVAL OF THE
4 GOVERNOR, FOR THE PURPOSES OF THIS SECTION.

5 (d) Annual report.--The Department of Commerce shall on
6 October 1 of each year report to the General Assembly on the
7 grants, loans, expenditures and commitments made from the fund.
8 Section 703. Fees.

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

12 (1) A person utilizing the background or Statewide
13 health standards for environmental remediation shall pay a
14 fee of \$250 upon submission of the report certifying
15 compliance with the standards.

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

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

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

28 (b) Deposit.--Fees imposed under this section shall be
29 deposited in the Industrial Land Recycling Fund established
30 under section 701.

CHAPTER 9

MISCELLANEOUS PROVISIONS

Section 901. Plain language.

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

Section 902. Permits AND OTHER REQUIREMENTS. <—

(A) GENERAL RULE.--A State or local permit or permit revision shall not be required for remediation activities undertaken entirely on the site if they are undertaken pursuant to the requirements of this act. <—

(B) APPLICABLE REQUIREMENTS.--THE DEPARTMENT MAY WAIVE IN WHOLE OR IN PART, IN WRITING, OTHERWISE APPLICABLE REQUIREMENTS WHERE RESPONSIBLE PERSONS DEMONSTRATE THAT ANY OF THE FOLLOWING APPLY: <—

(1) COMPLIANCE WITH A REQUIREMENT AT A SITE WILL RESULT IN GREATER RISK TO HUMAN HEALTH, SAFETY AND WELFARE AND THE ENVIRONMENT THAN ALTERNATIVE OPTIONS.

(2) COMPLIANCE WITH A REQUIREMENT AT A SITE WILL SUBSTANTIALLY INTERFERE WITH NATURAL OR ARTIFICIAL STRUCTURES OR FEATURES.

(3) THE PROPOSED REMEDIAL ACTION WILL ATTAIN A STANDARD OF PERFORMANCE THAT IS EQUIVALENT TO THAT REQUIRED UNDER THE OTHERWISE APPLICABLE REQUIREMENT THROUGH THE USE OF AN ALTERNATIVE METHOD OR APPROACH.

(4) COMPLIANCE WITH A REQUIREMENT AT A SITE WILL NOT

1 PROVIDE FOR A COST-EFFECTIVE REMEDIAL ACTION.

2 THE DEPARTMENT MAY NOT WAIVE THE REMEDIATION STANDARDS
3 ESTABLISHED UNDER SECTIONS 301, 302, 303 AND 304.

4 Section 903. Future actions.

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

12 Section 904. Relationship to Federal and State programs.

13 (a) Federal.--The provisions of this act shall not prevent
14 the Commonwealth from enforcing specific numerical cleanup
15 standards, monitoring or compliance requirements specifically
16 required to be enforced by the Federal Government as a condition
17 ~~of primacy or to receive~~ TO RECEIVE PROGRAM AUTHORIZATION, <—
18 DELEGATION, PRIMACY OR Federal funds.

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

27 (c) Storage tanks.--The environmental remediation standards
28 established under this act shall be used in corrective actions
29 undertaken pursuant to the act of July 6, 1989 (P.L.169, No.32),
30 known as the Storage Tank and Spill Prevention Act. However, the

1 procedures in the Storage Tank and Spill Prevention Act for
2 reviewing and approving corrective actions shall be used in lieu
3 of the procedures and reviews required by this act.

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

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

24 Section 905. Enforcement.

25 (a) General.--The department is authorized to use the
26 enforcement and penalty provisions applicable to the
27 environmental medium or activity of concern, as appropriate,
28 established under the act of June 22, 1937 (P.L.1987, No.394),
29 known as The Clean Streams Law, the act of January 8, 1960 (1959
30 P.L.2119, No.787), known as the Air Pollution Control Act, the

1 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
2 Management Act, the act of July 13, 1988 (P.L.525, No.93),
3 referred to as the Infectious and Chemotherapeutic Waste Law,
4 the act of October 18, 1988 (P.L.756, No.108), known as the
5 Hazardous Sites Cleanup Act, or the act of July 6, 1989
6 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
7 Act, to enforce the provisions of this act.

8 (b) Fraud.--Any person who willfully commits fraud
9 demonstrating attainment with one or more standards established
10 under this act shall, upon conviction, be subject to an
11 additional penalty of \$50,000 for each separate offense or to
12 imprisonment for a period of not more than one year for each
13 separate offense, or both. Each day shall be a separate offense.
14 Section 906. Past penalties.

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

20 SECTION 907. EVALUATION.

<—

21 BEGINNING THREE YEARS AFTER THE EFFECTIVE DATE OF THIS ACT
22 AND EVERY TWO YEARS THEREAFTER, THE DEPARTMENT SHALL CONDUCT AND
23 SUBMIT TO THE GENERAL ASSEMBLY AN EVALUATION OF THE
24 EFFECTIVENESS OF THIS ACT IN RECYCLING EXISTING INDUSTRIAL AND
25 COMMERCIAL SITES. THE EVALUATION SHALL INCLUDE ANY
26 RECOMMENDATIONS FOR ADDITIONAL INCENTIVES OR CHANGES, IF NEEDED,
27 TO IMPROVE THE EFFECTIVENESS OF THIS ACT IN RECYCLING SUCH
28 SITES.

29 Section ~~907~~ 908. Repeals.

<—

30 (a) Absolute.--Section 504(b) through ~~(f) and (h)~~ (D) of the

<—

1 act of October 18, 1988 (P.L.756, No.108), known as the
2 Hazardous Sites Cleanup Act, are repealed.

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

6 Section ~~908~~ 909. Effective date.

<—

7 This act shall take effect in 60 days.