
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 888

Session of
1985

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DISTLER, GRUITZA, DAVIES, SERAFINI AND STEVENS, APRIL 15,
1985

REFERRED TO COMMITTEE ON CONSERVATION, APRIL 15, 1985

AN ACT

1 Providing for measures to protect the citizens and the
2 environment of this Commonwealth from dangers and problems
3 associated with hazardous waste, for powers and duties of the
4 Department of Environmental Resources, for penalties and for
5 jurisdiction of the Commonwealth Court.

6 TABLE OF CONTENTS

7 Chapter 1. Preliminary Provisions

8 Section 101. Short title.

9 Section 102. Legislative intent.

10 Section 103. Definitions.

11 Section 104. Hazardous Substance Account.

12 Chapter 2. Assessment

13 Section 201. Annual disposal report.

14 Section 202. Imposition of assessments.

15 Section 203. Removal or remedy of release of hazardous waste.

16 Section 204. Voluntary hazardous waste collection program.

17 Section 205. Deposit in account.

1 Chapter 3. Uses of the State Account
2 Section 301. Qualification.
3 Section 302. Administrative costs and expenses.
4 Section 303. Appropriation on specific site basis.
5 Section 304. Removal or remedial action.
6 Section 305. Criteria for selection and priority ranking.
7 Section 306. Report to General Assembly.
8 Section 307. Federal funds; cooperative agreements.
9 Section 308. Trade secrets.
10 Section 309. Emergencies.
11 Section 310. Bidding for remedial or removal actions.
12 Section 311. Public participation.

13 Chapter 4. Recovery Actions

14 Section 401. Liability.
15 Section 402. Punitive damages.
16 Section 403. Exculpatory instruments.
17 Section 404. Collateral estoppel.
18 Section 405. Construction of act.
19 Section 406. Civil penalty.
20 Section 407. Deposit of money in account.

21 Chapter 5. Miscellaneous Provisions

22 Section 501. Regulations.
23 Section 502. Effective date.

24 CHAPTER 1

25 PRELIMINARY PROVISIONS

26 Section 101. Short title.

27 This act shall be known and may be cited as the Hazardous
28 Waste Response Act.

29 Section 102. Legislative intent.

30 It is the intent of the General Assembly to:

1 (1) Establish a program to provide for response
2 authority for releases of hazardous substances, including
3 spills, and for hazardous waste disposal sites that pose a
4 threat to public health or the environment.

5 (2) Make available adequate funds in order to permit the
6 Commonwealth to assure payment of its 10% share of the costs
7 mandated by section 104(c)(3) of the Federal act (42 U.S.C. §
8 9604(c)(3)).

9 Section 103. Definitions.

10 (a) General definitions.--The following words and phrases
11 when used in this act shall have the meanings given to them in
12 this section unless the context clearly indicates otherwise:

13 "Account." The Hazardous Substance Account created under
14 section 104.

15 "Board." The Hazardous Waste Response Board.

16 "Department." The Department of Environmental Resources of
17 the Commonwealth.

18 "Dispose." To discard waste into or on land as a final
19 action after use has been achieved and no intended beneficial
20 use or reuse can be demonstrated. The term does not include
21 injection of materials for the purpose of stimulating or
22 treating wells for the production of crude oil, natural gas,
23 water or geothermal energy or for the purpose of secondary,
24 tertiary or other enhanced recovery of crude oil or natural gas
25 nor materials which are brought to the surface in conjunction
26 with the production of geothermal resources, crude oil or
27 natural gas and which are reinjected.

28 "Federal act." The Comprehensive Environmental Response,
29 Compensation and Liability Act of 1980 (Public Law 96-510, 42
30 U.S.C. § 6911a and § 9601 et seq. and 26 U.S.C. §§ 4611, 4612,

1 4661, 4662, 4681 and 4682).

2 "Hazardous substance."

3 (1) The term includes:

4 (i) Substances designated under section 311(b)(2)(A)
5 of the Federal Water Pollution Control Act (62 Stat.
6 1155, 33 U.S.C. § 1321(b)(2)(A)).

7 (ii) Elements, compounds, mixtures, solutions or
8 substances designated under section 102 of the Federal
9 act (42 U.S.C. § 9602).

10 (iii) Hazardous wastes having the characteristics
11 identified under or listed under section 3001 of the
12 Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. §
13 6921).

14 (iv) Toxic pollutants listed under section 307(a) of
15 the Federal Water Pollution Control Act (33 U.S.C. §
16 1317(a)).

17 (v) Hazardous air pollutants listed under section
18 112 of the Clean Air Act (Public Law 95-95, 42 U.S.C. §
19 7412).

20 (vi) Imminently hazardous chemical substances or
21 mixtures with respect to which the Administrator of the
22 United States Environmental Protection Agency has taken
23 action under section 7 of the Toxic Substances Control
24 Act (Public Law 94-469, 15 U.S.C. § 2606).

25 (vii) Hazardous wastes as defined by regulations
26 promulgated under the act of July 7, 1980 (P.L.380,
27 No.97), known as the Solid Waste Management Act.

28 (2) The term does not include petroleum, including crude
29 oil or any fraction thereof which is not otherwise
30 specifically listed or designated as a hazardous substance in

paragraph (1); natural gas, natural gas liquids, liquefied natural gas or synthetic gas usable for fuel; mixtures of natural gas and synthetic gas used for fuel; the ash produced by a resource recovery facility utilizing a municipal solid waste stream; nor nontoxic, nonflammable, noncorrosive stormwater runoff drained from underground vaults, chambers or manholes into gutters or storm sewers.

"Hazardous waste." The meaning provided in section 1004 of the Solid Waste Disposal Act (Public Law 84-272, 42 U.S.C. § 6903).

"Natural resource." Land, fish, wildlife, biota, air, water, groundwater, drinking water supplies and other resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States, a State or local government or a foreign government. The term includes the resources of the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act (Public Law 94-265, 90 Stat. 331).

"Person." An individual, trust, firm, joint stock company or corporation. The term includes government corporations, partnerships and associations. The term includes the Commonwealth and its political subdivisions and the Federal Government, and their agencies.

"Release." Spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment. The term does not include:

(1) A release which results in exposure to persons solely within a workplace, with respect to a claim which such exposed persons may assert against their employer.

(2) Emissions from the engine exhaust of a motor

1 vehicle, rolling stock, aircraft, vessel or pipeline pumping
2 station engine.

3 (3) Release of source, byproduct or special nuclear
4 material from a nuclear incident as those terms are defined
5 in the Atomic Energy Act of 1954 (5 U.S.C. §§ 1031(d), 1032
6 and 42 U.S.C. § 2011 et seq.).

7 (4) The normal application of fertilizer, plant growth
8 regulants and pesticides.

9 "Release authorized or permitted pursuant to law." A release
10 into the environment which is authorized by statute, ordinance,
11 regulation or rule of a regional, State or local agency or
12 government or by a specific permit, license or similar
13 authorization from such agency which recognizes a standard
14 industry practice, including variances obtained from such agency
15 which allow operations for facilities during a period of time
16 when releases from the facilities do not conform with relevant
17 statutes, ordinances, regulations or rules. The term includes a
18 federally permitted release, as defined by section 101(10) of
19 the Federal act (42 U.S.C. § 9601(10)) and releases which are in
20 accordance with a court order or consent decree.

21 "Remedy" or "remedial action." Those actions consistent with
22 permanent remedy taken instead of or in addition to removal
23 actions in the event of a release or threatened release of a
24 hazardous substance into the environment, to prevent or minimize
25 the release of hazardous substances so that they do not migrate
26 to cause substantial danger to present or future public health
27 or welfare or the environment. The term includes, but is not
28 limited to, actions at the location of the release such as
29 storage, confinement, perimeter protection using dikes, trenches
30 or ditches, clay cover, neutralization, cleanup of released

1 hazardous substances or contaminated materials recycling or
2 reuse, diversion, destruction, segregation of reactive wastes,
3 dredging or excavations, repair or replacement of leaking
4 containers, collection of leachate and runoff, onsite treatment
5 or incineration, provision of alternative water supplies and
6 monitoring reasonably required to assure that the actions
7 protect the public health and welfare and the environment. The
8 term includes the costs of permanent relocation of residents and
9 businesses and community facilities where the President of the
10 United States determines that, alone or in combination with
11 other measures, relocation is more cost-effective than and
12 environmentally preferable to the transportation, storage,
13 treatment, destruction or secure offsite disposition of
14 hazardous substances or that relocation may otherwise be
15 necessary to protect the public health and welfare. The term
16 does not include offsite transport of hazardous substances or
17 the storage, treatment, destruction or secure offsite
18 disposition of hazardous substances or contaminated materials
19 unless the President of the United States determines that these
20 actions are more cost-effective than other remedial actions,
21 will create new capacity to manage in compliance with Title II,
22 Subtitle C, of the Solid Waste Disposal Act (Public Law 89-272,
23 42 U.S.C. Ch.82, Subch. III), or are necessary to protect public
24 health or welfare or the environment from a present or potential
25 risk which may be created by further exposure to the continued
26 presence of the substances or materials.

27 "Remove" or "removal." The cleanup or removal of released
28 hazardous substances from the environment; necessary actions
29 taken in the event of the threat of release of hazardous
30 substances into the environment; necessary actions to monitor,

1 assess and evaluate the release or threat of release of
2 hazardous substances; the disposal of removed material; or
3 necessary actions to prevent, minimize or mitigate damage to the
4 public health or welfare or to the environment which may
5 otherwise result from a release or threat of release. The term
6 includes, but is not limited to, security fencing or other
7 measures to limit access, provision of alternative water
8 supplies, temporary evacuation and housing of threatened
9 individuals not otherwise provided for, actions taken under
10 section 104(b) of the Federal act (42 U.S.C. § 9604(b)) and
11 emergency assistance which may be provided under the Disaster
12 Relief Act of 1974 (Public Law 93-288, 88 Stat. 143).

13 "Response action." Remedy, remedial action or removal.

14 "Secretary." The Secretary of Environmental Resources of the
15 Commonwealth.

16 "Trade secret." Includes, but is not limited to, formulas,
17 plans, patterns, processes, tools, mechanisms, compounds,
18 procedure compounds, production data or compilations of
19 information which are not patented; which are known only to
20 certain individuals within a business or commercial concern;
21 which are used to fabricate, produce, develop or compound an
22 article of trade or a service having commercial value; and which
23 provide the person in possession of them with a competitive
24 advantage over other businesses without possession.

25 (b) Additional definitions.--Except as otherwise provided in
26 this act, or unless the context requires otherwise, the
27 definitions set forth in section 101 of the Federal act (42
28 U.S.C. § 9601) shall apply to this act.

29 Section 104. Hazardous Substance Account.

30 (a) Creation.--There is established a special account in the

Treasury Department to be known as the Hazardous Substance Account. In addition to funds appropriated by the General Assembly and except as provided in subsection (b), the following shall be deposited into and credited to the State account:

- (1) Money recovered under Chapter 4.
- (2) Assessments collected under Chapter 2.
- (3) Fines and penalties collected under this act.
- (4) Funds received from the Federal Government under the Federal act.
- (5) Money received from responsible parties for remedial action or removal at a specific site.
- (6) Interest earned on money held in the account.

(b) Subaccount.--

(1) A separate subaccount for site operation and maintenance shall be established within the account. In addition to funds specifically appropriated by the General Assembly for site operation and maintenance, the following shall be deposited into and credited to the subaccount:

(i) Money received from responsible parties for site operation and maintenance.

(ii) Funds received from the Federal Government under the Federal act for site operation and maintenance.

(iii) Funds received from political subdivisions or from Commonwealth agencies for site operation and maintenance.

(2) The subaccount shall be administered by the secretary for response actions as set forth in Chapter 3, for administration and enforcement of this act, and for any other purpose specifically authorized by this act.

(3) The subaccount shall be administered by the

1 secretary only for response actions that involve site
2 operation and maintenance.

3 (c) Appropriation.--Money placed into the account or the
4 subaccount under this section is made available immediately and
5 are specifically appropriated to the department for the purpose
6 specified in this act. It is the intent of this act that the
7 account and subaccount shall act as revolving funds whereby
8 appropriations, deposits and payments, and interest earned
9 thereon, are continuously appropriated and may be applied and
10 reapplied for the purposes of this act. Money in the account and
11 subaccount shall not lapse to the General Fund nor be
12 transferred to any other fund or account in the State Treasury.

13 CHAPTER 2

14 ASSESSMENT

15 Section 201. Annual disposal report.

16 (a) Requirement.--By March 1, 1987, and by March 1 of each
17 year thereafter, a person who submitted for offsite disposal or
18 who disposed of onsite more than 500 pounds of hazardous waste
19 in this Commonwealth during the preceding calendar year shall
20 report to the board the total amount of hazardous waste which
21 that person has submitted for disposal or disposed of in this
22 Commonwealth during the preceding calendar year.

23 (b) Quantification.--The total amount of hazardous waste
24 reported under subsection (a) shall be the total weight,
25 measured in tons, of all components of the waste in the form in
26 which the waste existed at the time of submission for disposal
27 or at the time of disposal.

28 (c) Penalty.--A person who fails to file the report required
29 by this section shall be liable for a civil penalty not to
30 exceed \$500 for each day the violation continues. A person who

1 knowingly fails to file such report commits a misdemeanor of the
2 third degree and shall, upon conviction, be sentenced to pay a
3 fine of not more than \$25,000 or to imprisonment for not more
4 than one year, or both.

5 Section 202. Imposition of assessments.

6 (a) General rule.--After December 31, 1986, an assessment
7 shall be imposed upon persons engaged in the generation of
8 hazardous waste within this Commonwealth and the assessment
9 shall be determined as follows:

10 (1) Twelve dollars per ton of hazardous waste generated
11 after December 31, 1986, which is disposed of in a landfill.

12 (2) Nine dollars per ton of hazardous waste generated
13 after December 31, 1986, which is treated or disposed of,
14 exclusive of disposal in a landfill, in a facility located
15 off the site of the generation of the waste.

16 (3) Two dollars per ton of hazardous waste generated
17 after December 31, 1986, which is incinerated on the site
18 where the waste is generated.

19 (b) Permit holder.--After December 31, 1986, an assessment
20 shall be imposed upon persons holding permits for the storage,
21 treatment or disposal of hazardous waste under the act of July
22 7, 1980 (P.L.380, No.97), known as the Solid Waste Management
23 Act. The assessment shall be determined as follows:

24 (1) Twelve dollars per ton of hazardous waste which is
25 disposed of in a landfill after December 31, 1986.

26 (2) Nine dollars per ton of hazardous waste which is
27 treated or disposed of, exclusive of disposal in a landfill
28 after December 31, 1986, in a facility located off the site
29 where the waste is generated.

30 (3) No assessment under this subsection shall be imposed

1 upon disposal of hazardous waste where such waste was
2 generated by persons subject to assessment under subsection
3 (a).

4 (c) Waiver.--No person shall be required to pay an
5 assessment in a quarter if the amount due is \$15 or less per
6 quarter under subsection (e).

7 (d) Reports.--Generators of hazardous waste who treat or
8 dispose of hazardous wastes on the site of generation and who
9 are subject to the assessments imposed under this section shall
10 submit to the department, on a form approved by the department,
11 quarterly reports detailing the quantities of hazardous wastes
12 generated at the site. The report shall be submitted by the 20th
13 day of the month after the end of each quarter. The first report
14 shall be submitted by April 20, 1987.

15 (e) Payments.--The assessments imposed by this section shall
16 be reported and paid to the department, on a quarterly basis, by
17 the 20th day of the month after the end of each quarter. The
18 payment shall be accompanied by a return in a form prescribed by
19 the department.

20 (f) Secretary.--Following each quarterly reporting date, the
21 secretary shall certify the amount deposited in the account
22 during the quarter and the cumulative amount collected since the
23 start of the current calendar year. If the secretary certifies
24 that the total annual amount collected as of the end of any
25 quarter equals or exceeds \$10,000,000, no assessment shall be
26 collected for the remainder of the year.

27 (g) Penalty.--

28 (1) If a generator or person subject to assessment by
29 this section fails or refuses to file a return or to furnish
30 information requested in writing by the department, the

1 department may, from information in its possession, make an
2 estimate and issue an assessment against the generator or
3 person and may add a penalty of 15% of the amount of the
4 assessment so determined. This penalty shall be in addition
5 to other applicable penalties.

6 (2) If the assessment or a portion of the assessment
7 imposed by this section is not paid by the date prescribed
8 for its payment, there shall be collected, as part of the
9 assessment, interest upon the unpaid amount at the rate of
10 10% a year from the date prescribed for its payment until
11 payment is actually made to the department.

12 (h) Exemption.--This section does not apply to this
13 Commonwealth or its political subdivisions.

14 (i) Exception.--For the purposes of this section, generation
15 of hazardous waste does not include retrieval or creation of
16 hazardous waste which must be disposed of due to remediation of
17 an inactive disposal site. No assessment shall be imposed under
18 this section on the resource recovery of any hazardous waste.
19 Section 203. Removal or remedy of release of hazardous waste.

20 (a) Exemption.--Sections 201 and 202 do not apply to the
21 Commonwealth or a political subdivision or a contractor of
22 either which removes or remedies a release, by another person,
23 of hazardous waste. This subsection applies to acts performed
24 after December 31, 1986.

25 (b) Responsibility.--The person responsible for a release of
26 hazardous waste which has been removed or remedied by the
27 Commonwealth or a political subdivision or a contractor of
28 either shall submit to the board the information required by
29 section 201 for the hazardous waste which was released and shall
30 pay the assessment provided in section 202.

1 Section 204. Voluntary hazardous waste collection program.

2 The reporting requirements of section 201 and the assessment
3 imposed by section 202 do not apply to hazardous wastes
4 collected by designated county officials which result from
5 voluntary hazardous waste collection programs if the total
6 quantities collected are limited to 1,000 kilograms or less per
7 month from all sources. For the purposes of this subsection,
8 "voluntary hazardous waste collection program" means a program
9 in which small quantities of hazardous wastes are received from
10 nonindustrial sources, stored and ultimately transferred to a
11 licensed hazardous waste disposal site.

12 Section 205. Deposit in account.

13 Money collected or received by the department under this
14 chapter shall be deposited in the account.

15 CHAPTER 3

16 USES OF THE STATE ACCOUNT

17 Section 301. Qualification.

18 (a) Federal act responses.--For response actions taken under
19 the Federal act, only those costs for actions which are
20 consistent with the priorities, guidelines, criteria and
21 regulations contained in the national contingency plan, as
22 revised and republished, under sections 105 of the Federal act
23 (42 U.S.C. § 9605), shall qualify for expenditure by the
24 secretary under sections 302 and 304.

25 (b) Other responses.--For response actions not taken under
26 the Federal act or for response actions taken which are not
27 specifically addressed by the priorities, guidelines, criteria
28 and regulations contained in the national contingency plan, as
29 revised and republished, the costs shall also qualify for
30 expenditure by the secretary under sections 302 and 304 if they

1 are, to the maximum extent possible, consistent with the
2 priorities, guidelines, criteria and regulations contained in
3 the national contingency plan for similar releases, situations
4 or events.

5 (c) Duplication.--Response actions taken under this act by
6 the department, regional agencies or agencies of political
7 subdivisions may not duplicate Federal response actions.

8 Section 302. Administrative costs and expenses.

9 (a) Account.--Consistent with the requirements of section
10 114(c) of the Federal act (42 U.S.C. § 9614(c)), money in the
11 account may be expended by the secretary for the following
12 purposes:

13 (1) The costs and expenses reasonably necessary for and
14 incidental to the administration of this act by the
15 department.

16 (2) The State share mandated under section 104(c)(3) of
17 the Federal act (42 U.S.C. § 9604(c)(3)).

18 (3) The purchase by the Commonwealth or a political
19 subdivision, with the approval of the secretary, of hazardous
20 substance response equipment and other preparations for
21 response to a release of hazardous substances. Equipment
22 shall be purchased in a cost-effective manner after
23 consideration of the adequacy of existing equipment owned by
24 the Commonwealth or the political subdivision, and the
25 availability of equipment owned by private contractors.

26 (4) The cost of removal and remedial action incurred by
27 the Commonwealth or a political subdivision, with the
28 approval of the secretary, in response to a release or a
29 threatened release of a hazardous substance, to the extent
30 the costs are not reimbursed by the Federal act.

(5) The cost of actions taken under section 210(b), to the extent that these costs are not paid by the Federal act.

(6) Cost incurred in cooperation with the Agency for Toxic Substances and Disease Registry, established under section 104(i) of the Federal act (42 U.S.C. § 9604(i)), and costs of health effect studies undertaken regarding specific sites or specific substances at specific sites. Funds appropriated for this purpose may not exceed \$500,000 in a fiscal year. These actions may not duplicate reasonably available Federal actions and studies.

(b) Federal funds.--The secretary shall expend Federal funds which have been appropriated to the account consistent with the requirements specified in section 114 of the Federal act (42 U.S.C. § 9614) and for the purposes for which the funds were provided to the Commonwealth.

Section 303. Appropriation on specific site basis.

Appropriations made by the General Assembly to the account may be made on a specific site basis. These funds shall be expended only for costs incurred in restoring, rehabilitating, replacing or acquiring the equivalent of a natural resource injured, degraded, destroyed or lost as a result of a release of a hazardous substance at a specific site, to the extent that the costs are not reimbursed under the Federal act and taking into account processes of natural rehabilitation, restoration and replacement.

Section 304. Removal or remedial action.

(a) Coordination.--The secretary is authorized to coordinate Commonwealth response actions for sites identified in section 305 in order to assure the maximum use of available Federal funds.

1 (b) Initiation.--The secretary may initiate removal or
2 remedial action under this act unless these actions have been
3 taken or are being taken properly and in a timely fashion by a
4 responsible party.

5 (c) Notice.--At least 30 days before initiating removal or
6 remedial actions, the department shall make a reasonable effort
7 to notify the persons identified by the department as
8 potentially responsible parties and shall publish notice of this
9 action in a newspaper of general circulation in the affected
10 area. Notice shall be by registered or certified mail to the
11 last known address of the person identified by the department.
12 This subsection does not apply to actions taken under section
13 309(b). A responsible party may be held liable under this act
14 whether or not the responsible party received the notice
15 specified in this subsection.

16 Section 305. Criteria for selection and priority ranking.

17 (a) Regulations.--By January 1, 1987, the department shall
18 promulgate regulations setting forth the criteria for the
19 selection and priority ranking of sites for remedial action
20 under this act. They shall take into account the pertinent
21 factors relating to the public health and the environment, which
22 shall include, but not be limited to, potential hazards to
23 public health and environment, the risk of fire or explosion,
24 toxic hazards, and the criteria established under section 105(8)
25 of the Federal act (42 U.S.C. § 9605(8)).

26 (b) Notice.--The department shall prepare and revise, at
27 least annually, a list of the priority ranking of sites. The
28 list shall be transmitted to the General Assembly by January 1
29 of each year, except that for 1987, the list shall be submitted
30 as soon as possible before January 1, 1988. The list shall be

1 published as a notice in the Pennsylvania Bulletin. The
2 department shall bear the cost of publication under section
3 302(a)(1). The development of the priority ranking of sites
4 shall be subject to the regulations promulgated under subsection
5 (a).

6 (c) Expenditures.--Consistent with the provisions of this
7 act, money in the account shall be expended in conformance with
8 the priority ranking of sites. Nothing in this section shall be
9 construed to prohibit the expenditure of funds on more than one
10 site on the list at one time.

11 Section 306. Report to General Assembly.

12 By March 1 of each year, the department shall submit a report
13 to the General Assembly which shall contain all of the following
14 information:

15 (1) The actual funds expended for each site listed
16 during the preceding fiscal year under section 305.

17 (2) The Commonwealth's efforts to obtain available
18 Federal funds for the purposes of this act.

19 (3) An accounting of Federal funds which have been
20 obtained by or committed to the Commonwealth.

21 (4) The Commonwealth's efforts to obtain contributions
22 for removal or remedial actions from potentially responsible
23 parties.

24 Section 307. Federal funds; cooperative agreements.

25 The Commonwealth shall actively seek to obtain Federal funds
26 to which it is entitled under the Federal act and shall take
27 actions necessary to enter into contractual or cooperative
28 agreements under sections 104(c)(3) and (d)(1) of the Federal
29 act (42 U.S.C. § 9604(c)(3) and (d)(1)).

30 Section 308. Trade secrets.

1 (a) Protection.--The department may not disclose trade
2 secrets received by it under this act, except to authorized
3 representatives, contractors, or other government agencies in
4 connection with the department's responsibilities under this
5 act. The department may also make available to the United States
6 Environmental Protection Agency information required by law to
7 be furnished to that agency. The sharing of information between
8 the department and the United States Environmental Protection
9 Agency under this subsection shall not constitute a waiver by
10 the department or an affected person of a privilege of
11 confidentiality provided by law which pertains to the
12 information. The department shall, by regulation, establish
13 procedures to ensure that trade secrets are utilized only in
14 connection with these responsibilities and are not otherwise
15 disseminated without the consent of the person who provided the
16 information to the department.

17 (b) Procedure.--

18 (1) When submitting information required by this act, a
19 person shall identify the information that the person
20 believes is entitled to protection as a trade secret and
21 shall submit the information identified as a trade secret
22 separately from other information submitted under this act,
23 in accordance with procedures prescribed by the department in
24 regulations under subsection (a). Information not identified
25 as a trade secret shall be made available to the public
26 unless prohibited from disclosure by other provisions of law.

27 (2) A person may request a review of a trade secret
28 claim. A review of a trade secret claim shall be made in the
29 same manner as a review of a trade secret claim under section
30 11 of the act of October 5, 1984 (P.L.734, No.159), known as

1 the Worker and Community Right-to-Know Act.

2 (c) Penalty.--A person who intentionally and knowingly
3 discloses trade secrets, except in accordance with the
4 provisions of this section, commits a misdemeanor of the third
5 degree, and shall, upon conviction, be sentenced to pay a fine
6 of not more than \$5,000, or to imprisonment for not more than
7 one year, or both.

8 Section 309. Emergencies.

9 (a) Danger.--Whenever the secretary determines that there
10 may be an imminent or substantial endangerment to the public
11 health or welfare or to the environment because of a release or
12 a threatened release of a hazardous substance, the secretary may
13 take the following actions:

14 (1) Order responsible parties to take appropriate
15 removal or remedial action necessary to protect the public
16 health and safety and the environment. No order under this
17 paragraph may be made to an owner of real property solely on
18 the basis of that ownership.

19 (2) Take or contract for necessary removal or remedial
20 action.

21 (3) Request the Attorney General to secure relief
22 necessary to abate the danger or threat. The Commonwealth
23 Court shall have jurisdiction to grant such relief as the
24 public interest and equities of the case may require.

25 (b) Release of substances.--When the secretary determines
26 that a release of a hazardous substance has occurred or is about
27 to occur, the secretary may take the following actions, in
28 addition to other actions which may be authorized by this act:

29 (1) Undertake investigations, monitoring, surveys,
30 testing and other information gathering necessary to identify

1 the existence, source, nature and extent to the hazardous
2 substances involved and the extent of danger to the public
3 health or environment.

4 (2) Undertake planning, legal, fiscal, economic,
5 engineering, architectural and other studies or
6 investigations necessary or appropriate to plan and direct
7 response actions, to recover the costs of those actions, and
8 to enforce this act.

9 (c) Removal and remediation.--When there is a release or
10 threatened release of a hazardous substance into the
11 environment, the secretary may take necessary removal or
12 remedial action in accordance with this act.

13 Section 310. Bidding for remedial or removal actions.

14 (a) Prequalification.--The department may prequalify bidders
15 for remedial or removal actions taken under section 309. The
16 department may reject the bid of a prospective bidder that has
17 not been prequalified.

18 (b) Rating.--To prequalify bidders, the department shall
19 adopt, by regulation, and apply a uniform system of rating
20 bidders. In order to obtain information for rating, the
21 department may require from prospective bidders answers to
22 questions, including, but not limited to, questions about the
23 bidder's financial ability; the bidder's experience in removal
24 and remedial action involving hazardous substances; the bidder's
25 past safety record; and the bidder's past performance on
26 Federal, State or local government projects. The department may
27 also require prospective bidders to submit financial statements.

28 (c) Confidentiality.--The department shall utilize the
29 business financial data and information submitted by a bidder
30 under this section only for the purposes of prequalifying

1 bidders and shall not otherwise disclose this data or
2 information.

3 Section 311. Public participation.

4 (a) Public meetings.--Upon written request by any person
5 affected by a response action taken under this act, the
6 department shall hold a public meeting in the vicinity of the
7 location of the release or threatened release. Notice of the
8 meeting shall be given in accordance with the act of July 19,
9 1974 (P.L.486, No.175), referred to as the Public Agency Open
10 Meeting Law. At the public meeting, the department shall make
11 available all information in its possession which relates to the
12 release or threatened release and the response action except for
13 that information which is protected from disclosure by this act
14 or by State or Federal law. The department shall permit a
15 person, upon request, to testify and to present evidence
16 relative to the release or threatened release and the response
17 action.

18 (b) Schedule of activities.--The department shall develop
19 and make available to the public a schedule of activities for
20 each site for which remedial action is expected to be taken by
21 the department under this act and shall make available to the
22 public a plan provided to the department by a responsible party
23 unless the department is prohibited from releasing information
24 by State or Federal law.

25 CHAPTER 4

26 RECOVERY ACTIONS

27 Section 401. Liability.

28 (a) Costs.--A person who releases or threatens to release a
29 hazardous substance into the environment shall be liable to the
30 department for costs incurred by it in taking a response action

1 related to the release or threatened release. The department may
2 recover costs in an action in equity brought before Commonwealth
3 Court. The department may also recover an administrative cost
4 equal to 10% of the costs incurred in taking the response action
5 or \$500, whichever is greater.

6 (b) Apportionment.--A party found liable for costs incurred
7 in taking a response action who establishes by a preponderance
8 of the evidence that only a portion of the costs are
9 attributable to the party's actions shall be liable for that
10 portion of the costs.

11 (c) Defenses.--Nothing in this section shall be construed to
12 deprive a party of a defense available in equity.

13 Section 402. Punitive damages.

14 (a) General rule.--A person who releases or threatens to
15 release a hazardous substance and who fails to provide
16 appropriate removal or remedial action in accordance with an
17 order of the secretary or of the Commonwealth Court issued under
18 section 309 shall be liable to the department for punitive
19 damages in an amount equal to three times the amount of costs
20 incurred by the department as a result of the failure of the
21 person to properly carry out the order. The department may
22 recover punitive damages in an action brought before the
23 Commonwealth Court.

24 (b) Exclusion.--There shall be no recovery of punitive
25 damages under this section for injury to natural resources which
26 occurred wholly before January 1, 1987. This section shall not
27 be construed as precluding the recovery of punitive damages for
28 injury to or loss of natural resources in an action brought
29 pursuant to any other provision of law.

30 Section 403. Exculpatory instruments.

1 No indemnification, hold-harmless, or similar agreement or
2 conveyance shall be effective to transfer liability for costs or
3 damages recoverable under this act. This section does not bar an
4 agreement to insure, hold harmless or indemnify a party for
5 liability under this act.

6 Section 404. Collateral estoppel.

7 The entry of a judgment against a party to an action to
8 recover costs shall not be deemed to bar a future action by the
9 department against any other person for costs incurred relating
10 to the same response action if the original party was found
11 liable for only a portion of the costs incurred under section
12 401(b).

13 Section 405. Construction of act.

14 (a) Liability.--This act shall not be construed to impose
15 any new liability associated with acts that occurred on or
16 before January 1, 1987, if those acts were not in violation of
17 existing State and Federal laws or regulations at the time the
18 acts occurred.

19 (b) Nonliability.--Nothing in this act shall be construed to
20 authorize recovery for costs incurred or damages for a release
21 authorized pursuant to law.

22 (c) Other law.--Except as provided in section 401, nothing
23 in this act shall affect or modify the obligations or liability
24 of a person under any other provision of State or Federal law,
25 for damages, injury or loss resulting from a release or for
26 removal or remedial action, or the costs of removal or remedial
27 action of hazardous substances.

28 Section 406. Civil penalty.

29 A person who intentionally makes a false statement or
30 representation in a report or information furnished to the

1 department or who intentionally fails to provide any information
2 requested pursuant to regulations promulgated under this act
3 shall be liable for a civil penalty not to exceed \$25,000 for
4 each separate violation, or for each day during which the
5 violation continues.

6 Section 407. Deposit of money in account.

7 Money recovered under this chapter shall be deposited in the
8 Hazardous Substance Account.

9 CHAPTER 5

10 MISCELLANEOUS PROVISIONS

11 Section 501. Regulations.

12 The department may promulgate regulations for the
13 administration and enforcement of this act.

14 Section 502. Effective date.

15 This act shall take effect in 60 days.