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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1852 Session of  
1987

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Report of the Committee of Conference

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To the Members of the House of Representatives and Senate:

We, the undersigned, Committee of Conference on the part of the House of Representatives and Senate for the purpose of considering House Bill No. 1852, entitled:

"An act providing for the cleanup of hazardous waste sites; providing further powers and duties of the Department of Environmental Resources and the Environmental Quality Board; providing for response and investigations for liability and cost recovery; establishing the Hazardous Sites Cleanup Fund; \* \* \*; AND providing for certain fees and for enforcement, remedies and penalties \* \* \*,"

respectfully submit the following bill as our report:

CAMILLE GEORGE

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(Committee on the part of the House of Representatives.)

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(Committee on the part of the Senate.)

AN ACT

1 Providing for the cleanup of hazardous waste sites; providing  
2 further powers and duties of the Department of Environmental  
3 Resources and the Environmental Quality Board; providing for  
4 response and investigations for liability and cost recovery;  
5 establishing the Hazardous Sites Cleanup Fund; providing for  
6 certain fees and for enforcement, remedies and penalties; and  
7 repealing certain provisions relating to the rate of the  
8 capital stock franchise tax.

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23 The General Assembly of the Commonwealth of Pennsylvania  
24 hereby enacts as follows:  
25 CHAPTER 1  
26 PRELIMINARY PROVISIONS

27 Section 101. Short title.

28 This act shall be known and may be cited as the Hazardous  
29 Sites Cleanup Act.

30 Section 102. Declaration of policy.

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1 The General Assembly finds and declares as follows:

2 (1) The citizens of this Commonwealth have a right to

4 Assembly has a responsibility to ensure the protection of  
5 that right.

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

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

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

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

30 (6) Traditional methods of administrative and judicial

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1 review have interfered with responses to the release of  
2 hazardous substances into the environment. It is, therefore,  
3 necessary to provide a special procedure which will postpone

5 completion of the response action.

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

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

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

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

30 (11) It is the intent of the General Assembly that the

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1 department shall undertake such measures and steps as are  
2 necessary to expedite the siting, review, permitting and  
3 development of hazardous waste treatment and disposal  
4 facilities within this Commonwealth, in order to protect

6 the environment.

7 (12) The following are the purposes of this act:

8 (i) Authorize the department to participate in the  
9 investigation, assessment and cleanup of sites under the  
10 Federal Superfund Act to the full extent provided by that  
11 act.

12 (ii) Establish independent authority for the  
13 department to conduct site investigations and  
14 assessments; to provide for the cleanup of sites in this  
15 Commonwealth that are releasing or threatening the  
16 release of hazardous substances or contaminants into the  
17 environment; to require the replacement of water supplies  
18 contaminated by these substances; to take other  
19 appropriate response actions and recover from responsible  
20 persons its costs for conducting the responses.

21 (iii) Establish the fund to provide to the  
22 department the financial resources needed to plan and  
23 implement a timely and effective response to the release  
24 of hazardous substances and contaminants, including  
25 emergency response actions, studies and investigations,  
26 planning, remedial response, maintenance and monitoring  
27 activities, replacement of water supplies and protection  
28 of the public from the hazardous site.

29 (iv) Establish hazardous waste transportation and  
30 management fees to encourage preferred hazardous waste

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1 management practices and implement the hazardous waste  
2 management hierarchy described in the hazardous waste  
3 facilities plan and to generate revenues for the fund.

4 (v) Establish and maintain a cooperative State and  
5 Federal program for the investigation and cleanup of

7 for the replacement of affected water supplies and to  
8 take other appropriate response actions.

9 (vi) Protect the public health, safety and welfare  
10 and the natural resources of this Commonwealth from the  
11 short-term and long-term effects of the release of  
12 hazardous substances and contaminants into the  
13 environment.

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

16 (viii) Encourage the siting of new hazardous waste  
17 management facilities to properly store, treat and  
18 dispose of hazardous materials.

19 (ix) Encourage responsible persons to voluntarily  
20 perform response activities by enabling the department to  
21 enter into settlement agreements with responsible persons  
22 to perform response activities that protect human health  
23 and the environment; by enabling the department to enter  
24 into settlement agreements with responsible persons to  
25 settle a minor portion of response costs; and by  
26 authorizing the department to utilize moneys from the  
27 fund established by this act to enter into settlement  
28 agreements that allow the department, when necessary to  
29 achieve a cleanup, to pay for a portion of the costs  
30 associated with response activities.

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1 (x) It is in the public interest to eliminate  
2 hazardous waste by encouraging and providing incentives  
3 to reduce the volume of hazardous waste materials  
4 produced, transported and disposed of in this  
5 Commonwealth by providing a special grant from the fund  
6 to persons who purchase or lease and install recycling



8 of such materials by reclaiming them on site and  
9 converting them into a raw material product that is  
10 reusable and nonhazardous.

11 Section 103. Definitions.

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

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

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

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

23 "Captive facility." A captive facility as defined and  
24 permitted under the act of July 7, 1980 (P.L.380, No.97), known  
25 as the Solid Waste Management Act.

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

27 "Commercial hazardous waste disposal facility." A hazardous  
28 waste disposal facility permitted under the act of July 7, 1980  
29 (P.L.380, No.97), known as the Solid Waste Management Act, which  
30 is not a captive facility.

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1 "Commercial hazardous waste storage facility." A hazardous  
2 waste storage facility permitted under the act of July 7, 1980  
3 (P.L.380, No.97), known as the Solid Waste Management Act, which  
4 is not a captive facility.

5 "Commercial hazardous waste treatment facility." A hazardous  
6 waste treatment facility permitted under the act of July 7, 1980  
7 (P.L.380, No.97), known as the Solid Waste Management Act, which

9 "Contaminant." An element, substance, compound or mixture  
10 which is defined as a pollutant or contaminant pursuant to the  
11 Federal Superfund Act. The term shall not include an element,  
12 substance, compound or mixture from a coal mining operation  
13 under the jurisdiction of the department or from a site eligible  
14 for funding under Title IV of the Surface Mining Control and  
15 Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et  
16 seq.); nor shall the term include natural gas, natural gas  
17 liquids, liquified natural gas or synthetic gas usable for fuel  
18 or mixtures of natural gas and synthetic gas usable for fuel,  
19 except for the purposes of an emergency response. The term shall  
20 also not include the following wastes generated primarily from  
21 the combustion of coal or other fossil fuels for the production  
22 of electricity: slag waste; flue gas emission control waste; and  
23 fly ash waste and bottom ash waste which is disposed of or  
24 beneficially used in accordance with the act of July 7, 1980  
25 (P.L.380, No.97), known as the Solid Waste Management Act, and  
26 the regulations promulgated thereto or which has been disposed  
27 of under a valid permit issued pursuant to any other  
28 environmental statute.

29 "Department." The Department of Environmental Resources of  
30 the Commonwealth.

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1 "Disposal." The incineration, combustion, evaporation, air  
2 stripping, deposition, injection, dumping, spilling, leaking,  
3 mixing or placing of a hazardous substance or contaminant into  
4 the air, water or land in a manner which allows it to enter the  
5 environment.

6 "Drinking water supply." A raw or finished water source that  
7 is or may be used by a public water system, as defined in the  
8 Safe Drinking Water Act (Public Law 95-323, 21 U.S.C. § 349 and

10 or more individuals.

11 "Environment." Surface water, groundwater, drinking water  
12 supply, land surface or subsurface strata or ambient air within  
13 this Commonwealth.

14 "Federal Superfund Act." The Comprehensive Environmental  
15 Response Compensation and Liability Act of 1980 (Public Law 96-  
16 510, 94 Stat. 2767), as amended.

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

19 "Fund." The Hazardous Sites Cleanup Fund established by  
20 section 901.

21 "Groundwater." Water occurring in a saturated zone or  
22 stratum or percolating beneath the surface of land.

23 "Hazardous substance."

24 (1) Any element, compound or material which is:

25 (i) Designated as a hazardous waste under the act of  
26 July 7, 1980 (P.L.380, No.97), known as the Solid Waste  
27 Management Act, and the regulations promulgated thereto.

28 (ii) Defined or designated as a hazardous substance  
29 pursuant to the Federal Superfund Act.

30 (iii) Contaminated with a hazardous substance to the

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1 degree that its release or threatened release poses a  
2 substantial threat to the public health and safety or the  
3 environment as determined by the department.

4 (iv) Determined to be substantially harmful to  
5 public health and safety or the environment based on a  
6 standardized and uniformly applied department testing  
7 procedure and listed in regulations proposed by the  
8 department and promulgated by the Environmental Quality  
9 Board.

11 products, including crude oil or any fraction thereof, which  
12 are not otherwise specifically listed or designated as a  
13 hazardous substance under paragraph (1); natural gas, natural  
14 gas liquids, liquified natural gas or synthetic gas usable  
15 for fuel or mixtures of natural gas and synthetic gas usable  
16 for fuel; an element, substance, compound or mixture from a  
17 coal mining operation under the jurisdiction of the  
18 department or from a site eligible for funding under Title IV  
19 of the Surface Mining Control and Reclamation Act of 1977  
20 (Public Law 95-87, 30 U.S.C. § 1201 et seq.). The term shall  
21 also not include the following wastes generated primarily  
22 from the combustion of coal or other fossil fuels for the  
23 production of electricity: slag waste; flue gas emission  
24 control waste; and fly ash waste and bottom ash waste which  
25 is disposed of or beneficially used in accordance with the  
26 Solid Waste Management Act and the regulations promulgated  
27 thereto or which has been disposed of under a valid permit  
28 issued pursuant to any other environmental statute.

29 "Hazardous waste." Any waste defined as hazardous under the  
30 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste

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1 Management Act, and any regulations promulgated under that act.

2 "Interim response." Response which does not exceed 12 months  
3 in duration or \$2,000,000 in cost. An interim response may  
4 exceed these limitations only where one of the following  
5 applies:

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

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

10 (3) Assistance will not otherwise be provided on a

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

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

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

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1 of a financial institution, nor a corporate instrumentality of  
2 the Federal Government, which acquired the site by foreclosure  
3 or by deed in lieu of foreclosure as a result of the enforcement  
4 of a mortgage or security interest held by such financial  
5 institution, parent of such financial institution, affiliate of  
6 such financial institution, or a corporate instrumentality of  
7 the Federal Government before it had knowledge that the site was  
8 included on the National Priority List or corresponding State  
9 list and did not manage or control activities at the site which  
10 contributed to the release or threatened release of a hazardous  
11 substance. For the purposes of this subsection, the term

13 the finances or fiscal operations of a responsible person or an  
14 owner or operator in connection with a loan to, services  
15 provided for or fiscal obligation of that responsible person or  
16 owner or operator or actions taken to protect or preserve the  
17 value of the site or operations conducted on the site. This  
18 exclusion does not apply to a political subdivision which has  
19 caused or contributed to the release or threatened release of a  
20 hazardous substance from the site.

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

27 "Recycling equipment." Machinery used exclusively to process  
28 and reclaim hazardous waste materials into a raw material  
29 product that is nonhazardous and reusable, thereby reducing the  
30 total amount of hazardous material produced at a particular

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1 location.

2 "Release." Spilling, leaking, pumping, pouring, emitting,  
3 emptying, discharging, injecting, escaping, leaching, dumping or  
4 disposal into the environment. The term includes the abandonment  
5 or discarding of barrels, containers, vessels and other  
6 receptacles containing a hazardous substance or contaminant. The  
7 term does not include:

8 (1) any release which results in exposure to persons  
9 solely within a workplace which may be subject to the  
10 assertion of a claim against the employer of such persons;

11 (2) combustion exhaust emissions from the engine of a  
12 motor vehicle, rolling stock, aircraft, vessel or pipeline

14 (3) release of source material, by-product material or  
15 special nuclear material from a nuclear incident, as those  
16 terms are defined in the Atomic Energy Act of 1954 (68 Stat.  
17 921, 28 U.S.C. §§ 2341(3)(A)-(C) and 2342(1)-(4) and 42  
18 U.S.C. § 2014, if such release is subject to requirements  
19 with respect to financial protection established by the  
20 Nuclear Regulatory Commission under section 170 of the Atomic  
21 Energy Act of 1954, or, for the purpose of section 104 of  
22 this act or any other response action, any release of source  
23 by-products, or special nuclear material from any processing  
24 site designated under section 102(a)(1) or 302(a) of the  
25 Uranium Mill Tailings Radiation Control Act of 1978 (Public  
26 Law 95-604, 42 U.S.C. § 7901 et seq.); and

27 (4) the normal application of fertilizer or pesticides.  
28 "Remedial response or remedy." Any response which is not an  
29 interim response.

30 "Response." Action taken in the event of a release or

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1 threatened release of a hazardous substance or a contaminant  
2 into the environment to study, assess, prevent, minimize or  
3 eliminate the release in order to protect the present or future  
4 public health, safety or welfare or the environment. The term  
5 includes, but is not limited to:

6 (1) Emergency response to the release of hazardous  
7 substances or contaminants.

8 (2) Actions at or near the location of the release, such  
9 as studies; health assessments; storage; confinement;  
10 perimeter protection using dikes, trenches, or ditches; clay  
11 cover; neutralization; cleanup or removal of released  
12 hazardous substances, contaminants or contaminated materials;  
13 recycling or reuse, diversion, destruction, segregation of

15 replacement of leaking containers; collection of leachate and  
16 runoff; onsite treatment or incineration; offsite transport  
17 and offsite storage; treatment, destruction, or secure  
18 disposition of hazardous substances and contaminants;  
19 treatment of groundwater, provision of alternative water  
20 supplies, fencing or other security measures; and monitoring  
21 and maintenance reasonably required to assure that these  
22 actions protect the public health, safety, and welfare and  
23 the environment.

24 (3) Costs of relocation of residents and businesses and  
25 community facilities when the department determines that,  
26 alone or in combination with other measures, relocation is  
27 more cost effective than and environmentally preferable to  
28 the transportation, storage, treatment, destruction or secure  
29 disposition offsite of hazardous substances or contaminants  
30 or may otherwise be necessary to protect the public health or

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1 welfare.

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

6 (5) Other actions necessary to assess, prevent,  
7 minimize, or mitigate damage to the public health, safety or  
8 welfare or the environment which may otherwise result from a  
9 release or threatened release of hazardous substances or  
10 contaminants.

11 (6) Investigation, enforcement, abatement of nuisances,  
12 and oversight and administrative activities related to  
13 interim or remedial response enforcement, abatement of  
14 nuisances, and oversight and administrative activities



16 "Responsible person." A person responsible for the release  
17 or threatened release of a hazardous substance as described in  
18 section 701. In no case shall a financial institution or its  
19 affiliate or a corporate instrumentality of the Federal  
20 Government be deemed to be a responsible person or to be jointly  
21 or contingently liable for the actions of a responsible person  
22 by virtue or supervision of, or other involvement with, the  
23 finances and operations of a responsible person in connection  
24 with a loan, obligation or other service provided.

25 "Secretary." The Secretary of Environmental Resources of the  
26 Commonwealth.

27 "Service station operator." A person who owns or operates a  
28 motor vehicle service station, filling station, garage or  
29 similar operation engaged in selling, repairing or servicing  
30 motor vehicles who accepts or undertakes the collection,

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1 accumulation and delivery to an oil recycling facility of  
2 recycled oil that has been removed from the engine of a motor  
3 vehicle or appliance and that is presented for collection,  
4 accumulation and delivery to an oil recycling facility. The term  
5 includes a government agency that establishes a facility solely  
6 for the purpose of accepting recycled oil and owners or  
7 operators of refuse collection services who are compelled by law  
8 to collect, accumulate and deliver recycled oil to an oil  
9 recycling facility.

10 "Site." Any building; structure; installation; equipment;  
11 pipe or pipeline, including any pipe into a sewer or publicly  
12 owned treatment works; well; pit; pond; lagoon; impoundment;  
13 ditch; landfill; storage container; tank; vehicle; rolling  
14 stock; aircraft; vessel; or area where a contaminant or  
15 hazardous substance has been deposited, stored, treated,

17 The term does not include a location where the hazardous  
18 substance or contaminant is a consumer product in normal  
19 consumer use or where pesticides and fertilizers are in normal  
20 agricultural use.

21 "Solid Waste Management Act." The act of July 7, 1980  
22 (P.L.380, No.97), known as the Solid Waste Management Act.

23 "Transportation." The conveyance of a hazardous substance or  
24 contaminant by any mode, including pipeline.

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

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1 term includes activity or processing designed to change the  
2 physical form or chemical composition of a hazardous substance  
3 so as to render it neutral or nonhazardous.

4 "Vessel." A watercraft or other artificial contrivance used,  
5 or capable of being used, as a means of transportation on water.  
6 Section 104. Construction.

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

12 CHAPTER 3

13 POWERS AND DUTIES

14 Section 301. Powers and duties of department.

15 The department has the following powers and duties:

16 (1) Develop, administer and enforce a program to provide

18 sites in this Commonwealth pursuant to the provisions of this  
19 act and regulations adopted under this act.

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

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

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1 be released into the environment.

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

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

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

16 (7) Promulgate the State standards and requirements  
17 applicable, relevant or appropriate for the cleanup of

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

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

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

27 (11) Institute prosecutions under this act.

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

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1 necessary expenses incurred by the members of advisory  
2 committees in carrying out their functions.

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

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

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

18 (16) Implement section 27 of Article 1 of the

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

24 Section 302. Special science and technology resources.

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

29 (b) Expertise.--The special science and technology staff  
30 shall have expertise in fields relating to the identification,

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

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

17 (d) Civil service.--In order to obtain the most highly  
18 qualified individuals for the special science and technology  
19 staff, the secretary may hire the staff without regard to the

21 as the Civil Service Act.

22 Section 303. Powers and duties of Environmental Quality Board.

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

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1 and other natural resources of this Commonwealth.

2 Section 304. Host municipality incentives and guarantees.

3 (a) Information required.--

4 (1) The department shall provide all of the following  
5 information to the governing body of host municipalities for  
6 a commercial hazardous waste storage, treatment or disposal  
7 facility permitted by the department under the Solid Waste  
8 Management Act, and located within that municipality:

9 (i) Copies of each department inspection report for  
10 the facility under the Solid Waste Management Act, the  
11 act of June 22, 1937 (P.L.1987, No.394), known as The  
12 Clean Streams Law, the act of January 8, 1960 (1959  
13 P.L.2119, No.787), known as the Air Pollution Control  
14 Act, and the act of November 26, 1978 (P.L.1375, No.325),  
15 known as the Dam Safety and Encroachments Act, within  
16 five working days after the preparation of the reports.

17 (ii) Prompt notification of all department  
18 enforcement or emergency actions for facilities,  
19 including, but not limited to, abatement orders,  
20 cessation orders, proposed and final civil penalty

22 (iii) Copies of all air and water quality monitoring  
23 data on samples collected by the department at  
24 facilities, within five working days after complete  
25 laboratory analysis of the data becomes available to the  
26 department.

27 (2) An operator of a commercial hazardous waste storage,  
28 treatment or disposal facility shall provide to the host  
29 municipality copies of all air and water quality monitoring  
30 data for the facility conducted by or on behalf of the

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1 operator under State or Federal statutes or regulations,  
2 within five days after the data becomes available to the  
3 operator.

4 (3) All information provided to the host municipality  
5 shall be made available by the host municipality to the  
6 public for review upon request.

7 (b) Inspection of facilities.--

8 (1) The department shall establish and conduct a  
9 training program to certify host municipality inspectors for  
10 commercial hazardous waste storage, treatment or disposal  
11 facilities. No more than two persons from each host  
12 municipality shall be eligible for the program. Each host  
13 municipality shall inform the department, in writing, of the  
14 persons it has designated to participate in the training  
15 program. The department shall hold training sessions at least  
16 twice a year. The department shall certify host municipality  
17 inspectors upon completion of the training program and  
18 satisfactory performance in an examination administered by  
19 the department.

20 (2) Certified municipal inspectors shall be authorized  
21 to enter property, inspect records, take samples and conduct

23 orders. Upon the completion of an inspection, certified  
24 municipal inspectors shall transmit all findings from the  
25 inspection to the department. The department shall notify  
26 certified municipal inspectors of regular inspections of  
27 permitted facilities within their jurisdiction and shall  
28 provide opportunity for the inspectors to accompany  
29 department inspectors on inspections.

30 (3) The department shall reimburse the host

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1 municipalities for 50% of the approved cost of employing  
2 certified host municipality inspectors for a period not to  
3 exceed five years.

4 (4) The department shall promptly inspect a facility  
5 when a host municipality presents information to the  
6 department which gives the department reason to believe that  
7 a commercial hazardous waste storage, treatment or disposal  
8 facility is in violation of any requirement of The Clean  
9 Streams Law, the Air Pollution Control Act, the Dam Safety  
10 and Encroachments Act, the Solid Waste Management Act or this  
11 act; a regulation promulgated under these statutes; or the  
12 condition of a permit issued under these statutes.

13 (i) The department shall notify the host  
14 municipality of this inspection and shall permit a  
15 certified municipal inspector from the host municipality  
16 to accompany the department inspector during the  
17 inspection.

18 (ii) When the department determines that there is  
19 not sufficient information to give the department reason  
20 to believe that a violation is occurring or has occurred,  
21 the department shall provide a written explanation to the  
22 host municipality of its decision not to conduct an



24 (iii) Host municipalities may appeal the  
25 department's decision not to conduct a requested  
26 inspection to the Environmental Hearing Board. When the  
27 Environmental Hearing Board determines that failure to  
28 perform a requested inspection may be detrimental to  
29 public health and safety, it shall order the department  
30 to perform the requested inspection.

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1 (c) Water sampling and analysis.--

2 (1) Upon written request from persons owning property  
3 within 2,500 feet of a commercial hazardous waste storage,  
4 treatment or disposal facility, the operator of the facility  
5 shall have quarterly sampling and analysis conducted of  
6 private water supplies used by those persons for drinking  
7 water. Sampling and analysis shall be conducted by a  
8 laboratory certified pursuant to the act of May 1, 1984  
9 (P.L.206, No.43), known as the Pennsylvania Safe Drinking  
10 Water Act. The laboratory shall be chosen by the landowners  
11 from a list of regional laboratories supplied by the  
12 department. Sampling and analysis shall be at the expense of  
13 the facility operator.

14 (2) The laboratory performing sampling and analysis  
15 shall provide written copies of sample results to the  
16 landowner, the operator and the department.

17 (3) When the analysis indicates possible contamination  
18 from a facility, the department shall either conduct, or  
19 require the operator to have the laboratory conduct,  
20 additional sampling and analysis to determine more precisely  
21 the nature, extent and source of contamination.

22 (4) Within 60 days from the effective date of this  
23 section, the operator of a commercial hazardous waste

25 notice to landowners within 2,500 feet of the facility of  
26 their rights under this section on a form prepared by the  
27 department. Landowners who rent or lease property within  
28 2,500 feet of the facility shall provide written notice to  
29 tenants of the availability of this water testing program.  
30 Upon the request of a tenant to a landowner, the landowner

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1 shall be required to request quarterly water sampling and  
2 analysis under paragraph (1).

3 (d) Financial assistance.--

4 (1) The department shall reimburse host municipalities  
5 for costs incurred by host municipalities for professional  
6 technical review of a permit application under the Solid  
7 Waste Management Act for a commercial hazardous waste  
8 disposal facility or for a permit modification that would  
9 result in additional capacity for the facility. The  
10 reimbursement shall not exceed \$50,000 per complete  
11 application.

12 (2) The department may reimburse a county for costs  
13 incurred by a county's planning board or commission for  
14 professional technical planning and review for the potential  
15 siting of new commercial hazardous waste disposal facilities  
16 in the county. The reimbursement shall not exceed \$50,000 per  
17 county.

18 Section 305. Host Municipalities Fund.

19 (a) Establishment.--There is established within the State  
20 Treasury a separate account which shall be known as the Host  
21 Municipalities Fund. Two million dollars annually of all  
22 proceeds or as much thereof as may be necessary from hazardous  
23 waste transportation and management fees imposed under section  
24 903, including any interest generated thereon, shall be

26 (b) Purpose.--The purpose of the fund is to provide host  
27 municipality assistance programs under section 304 and direct  
28 financial assistance to host municipalities with certain  
29 categories of commercial hazardous waste facilities within their  
30 jurisdiction.

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1 (c) Appropriation.--All money placed in the fund is  
2 appropriated to the department for the purposes set forth in  
3 this section.

4 (d) Allocation.--The department shall annually allocate  
5 moneys in the fund for the following purposes:

6 (1) Conducting the host municipality inspector training  
7 program, employing a certified host municipality inspector,  
8 reimbursing municipalities and counties for independent  
9 evaluations and providing similar assistance related to the  
10 implementation of section 304.

11 (2) Providing a one-time payment, as provided in  
12 subsection (e)(2), to municipalities for each new or expanded  
13 commercial facility which is permitted after the effective  
14 date of this act which fulfills the commercial hazardous  
15 waste treatment or disposal capacity needs identified in the  
16 Pennsylvania Hazardous Waste Facilities Plan.

17 (e) Reimbursement amount.--

18 (1) At a minimum, each payment shall be in an amount  
19 sufficient to reimburse the host municipality for the host  
20 municipality's eligible share of any activities carried out  
21 under section 304.

22 (2) After a new or expanded commercial hazardous waste  
23 treatment or disposal facility is permitted and operating,  
24 the department shall distribute the balance contained in the  
25 fund after payments have been made under paragraph (1). The

27 formula established by regulation. The allocation formula  
28 shall do all of the following:

29 (i) Consider the degree to which the facility meets  
30 the hazardous waste capacity needs of the Commonwealth as

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1 identified in the Pennsylvania Hazardous Waste Facilities  
2 Plan under the Solid Waste Management Act.

3 (ii) Distribute funds to each host municipality  
4 based on all of the following:

5 (A) The toxicity, mobility and other  
6 characteristics of the hazardous waste.

7 (B) The proximity of the facility to persons or  
8 natural resources which would be endangered by the  
9 escape of the hazardous waste from the facility.

10 (C) The weight or volume of waste treated or  
11 disposed annually at the facility in proportion to  
12 the weight or volume of waste treated or disposed  
13 annually in this Commonwealth.

14 (D) The amount of waste disposed or treated at  
15 the facility generated inside this Commonwealth.

16 (3) A host municipality may expend money received under  
17 this subsection for any purpose for which the municipality is  
18 otherwise authorized by law to expend public funds,  
19 including, but not limited to, economic development  
20 activities and the payment on behalf of its residents of any  
21 county or school district taxes that would otherwise be  
22 imposed on its residents.

23 (f) Construction of section.--Nothing in this section shall  
24 be construed to prevent the host municipality and the owner or  
25 operator of a commercial hazardous waste treatment or disposal  
26 facility from entering contractual or other agreements by which

28 the host municipality.

29 Section 306. Host municipality benefit fee.

30 (a) Imposition.--There shall be imposed a host municipality

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1 benefit fee upon the operator of each commercial hazardous waste  
2 treatment or disposal facility that has a valid permit on the  
3 effective date of this act or receives a new permit or permit  
4 that results in additional capacity from the department under  
5 the Solid Waste Management Act after the effective date of this  
6 act. The fee shall be paid to the host municipality. If the  
7 facility is located within more than one host municipality, the  
8 fee shall be apportioned among them according to the percentage  
9 of the permitted area located in each municipality.

10 (b) Amount.--The fee shall be \$1 per ton of weighed  
11 hazardous waste or \$1 per three cubic yards of volume-measured  
12 hazardous waste for all hazardous waste received at a facility.  
13 Any amounts paid by an operator to a host municipality pursuant  
14 to a preexisting agreement shall serve as a credit against the  
15 fee amount imposed by this section.

16 (c) Municipal options.--Nothing in this section or section  
17 307 shall prevent a host municipality from receiving a higher  
18 fee or receiving the fee in a different form or at different  
19 times than provided in this section and section 307, if the host  
20 municipality and the operator of the commercial hazardous waste  
21 treatment or disposal facility agree in writing.

22 Section 307. Form and timing of host municipality benefit fee  
23 payment.

24 (a) Quarterly payment.--Each operator subject to section 306  
25 shall make the host municipality benefit fee payment quarterly.  
26 The fee shall be paid on or before the twentieth day of April,  
27 July, October and January for the three months ending the last

29 (b) Quarterly reports.--Each host municipality benefit fee  
30 payment shall be accompanied by a form prepared and furnished by  
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1 the department and completed by the operator. The form shall  
2 state the weight or volume of hazardous waste received by the  
3 facility during the payment period and provide any other  
4 information deemed necessary by the department to carry out the  
5 purposes of the act. The form shall be signed by the operator. A  
6 copy of the form shall be sent to the department at the same  
7 time that the fee and form are sent to the host municipality.

8 (c) Timeliness of payment.--An operator shall be deemed to  
9 have made a timely payment of the host municipality benefit fee  
10 if all of the following are met:

11 (1) The enclosed payment is for the full amount owed  
12 pursuant to this section, and no further host municipality  
13 action is required for collection.

14 (2) The payment is accompanied by the required form, and  
15 such form is complete and accurate.

16 (3) The letter transmitting the payment that is received  
17 by the host municipality is postmarked by the United States  
18 Postal Service on or prior to the final day on which the  
19 payment is to be received.

20 (d) Discount.--Any operator who makes a timely payment of  
21 the host municipality benefit fee as provided in this section  
22 shall be entitled to a credit and shall apply against the fee  
23 payable by him a discount of 1% of the amount of the fee  
24 collected by him.

25 (e) Alternative proof.--For purposes of this section,  
26 presentation of a receipt indicating that the payment was mailed  
27 by registered or certified mail on or before the due date shall  
28 be evidence of timely payment.

30 (a) Interest.--If an operator fails to make a timely payment

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1 of the host municipality benefit fee, the operator shall pay  
2 interest on the unpaid amount due at the rate established  
3 pursuant to section 806 of the act of April 9, 1929 (P.L.343,  
4 No.176), known as The Fiscal Code, from the last day for timely  
5 payment to the date paid.

6 (b) Additional penalty.--In addition to the interest  
7 provided in subsection (a), if an operator fails to make timely  
8 payment of the host municipality benefit fee, there shall be  
9 added to the amount of fee actually due 5% of the amount of such  
10 fee, if the failure to file a timely payment is for not more  
11 than one month, with an additional 5% for each additional month,  
12 or fraction thereof, during which such failure continues, not  
13 exceeding 25% in the aggregate.

14 (c) Assessment notices.--If the host municipality determines  
15 that any operator of a commercial hazardous waste treatment or  
16 disposal facility has not made a timely payment of the host  
17 municipality benefit fee, it shall send a written notice for the  
18 amount of the deficiency to such operator within 30 days from  
19 the date of determining such deficiency. When the operator has  
20 not provided a complete and accurate statement of the weight or  
21 volume of hazardous waste received at the facility for the  
22 payment period, the host municipality may estimate the weight or  
23 volume in its deficiency notice.

24 (d) Constructive trust.--All host municipality benefit fees  
25 collected by an operator and held by such operator prior to  
26 payment to the host municipality shall constitute a trust fund  
27 for the host municipality, and such trust shall be enforceable  
28 against such operator, its representatives and any person  
29 receiving any part of such fund without consideration or with

1 However, any person receiving a payment of lawful obligation of  
2 the operator from such trust fund shall be presumed to have  
3 received the same in good faith and without any knowledge of the  
4 breach of trust.

5 (e) Manner of collection.--All fees, interest and penalties  
6 and any other assessments shall be collectible in any manner  
7 provided by law for the collection of debts. If the person  
8 liable to pay any such amount neglects or refuses to pay the  
9 same after demand, the amount, together with interest and any  
10 costs that may accrue, shall be a judgment in favor of the  
11 Commonwealth or the host municipality, as the case may be, upon  
12 the property of such person, but only after same has been  
13 entered and docketed of record by the prothonotary of the county  
14 where such property is situated. The Commonwealth or host  
15 municipality, as the case may be, may at any time transmit to  
16 the prothonotaries of the respective counties certified copies  
17 of all such judgments, and it shall be the duty of each  
18 prothonotary to enter and docket the same of record in his  
19 office, and to index the same as judgments are indexed, without  
20 requiring the payment of costs as a condition precedent to the  
21 entry thereof.

22 (f) Remedies cumulative.--The remedies provided to host  
23 municipalities in this section are in addition to any other  
24 remedies provided at law or in equity.

25 Section 309. Hazardous Waste Facility Siting Team.

26 (a) Establishment.--Within 30 days after the effective date  
27 of this act, the secretary shall establish a Hazardous Waste  
28 Facility Siting Team consisting of department personnel with the  
29 particular expertise necessary for the complete review of permit  
30 applications for commercial hazardous waste treatment or



1 disposal facilities. The secretary shall select siting team  
2 representatives from each section of review required to  
3 determine conformity of applications with siting criteria  
4 contained in Phase I of 25 Pa. Code Ch. 75 Subch. F (relating to  
5 siting hazardous waste treatment and disposal facilities) and  
6 other applicable law and regulations relating to the review and  
7 approval of permit applications. Members of the siting team  
8 shall include attorneys, engineers and such other administrative  
9 and program personnel considered essential by the secretary for  
10 expedited review of permit applications. The performance of the  
11 siting team's duties pursuant to this section shall be deemed a  
12 priority with regard to any other work assignments and  
13 responsibilities.

14 (b) Application procedures.--Within three months after the  
15 effective date of this act, the secretary shall set forth  
16 guidelines by which any person interested in establishing a  
17 commercial hazardous waste treatment or disposal facility may  
18 submit the siting modules and the remainder of a permit  
19 application directly to the siting team. The guidelines shall  
20 instruct applicants on siting criteria and permit requirements,  
21 application timetables and the review process.

22 (c) Expedited site review.--Within five months of the  
23 receipt of an administratively complete siting module portion of  
24 a permit application for a commercial hazardous waste treatment  
25 or disposal facility, the siting team shall complete its review  
26 of the siting modules to determine the conformity of the  
27 proposed site to the siting criteria established pursuant to  
28 Phase I of 25 Pa. Code Ch. 75 Subch. F. Upon filing the siting  
29 modules with the siting team, an applicant shall provide written  
30 notification of such filing to the governing bodies of the

2 by the host county and host municipality, grants may be made  
3 available pursuant to section 304(d). In addition, members of  
4 the department's siting team shall be available to the applicant  
5 and the governing bodies of the proposed host county and host  
6 municipality for the purpose of discussing the siting modules  
7 and their conformity with the siting criteria. The siting team  
8 shall conduct one public hearing and at least one public  
9 information meeting on the application at locations near the  
10 proposed site during the five-month review period. The siting  
11 team shall notify the applicant, the host county and host  
12 municipality of its determination regarding the conformity of  
13 the siting modules with the siting criteria in writing.

14 (d) Expedited permit review.--Within 90 days of receipt of  
15 the remainder of a permit application to operate a commercial  
16 hazardous waste treatment or disposal facility, the siting team  
17 shall review the permit application to determine whether it is  
18 administratively complete. Should the siting team find that the  
19 permit application is not administratively complete, it shall  
20 return the permit application to the applicant, along with a  
21 written statement indicating the deficiencies of the permit  
22 application.

23 (e) Review period.--Within ten months of the date of the  
24 determination by the siting team that a permit application is  
25 administratively complete, the siting team shall complete its  
26 review of the permit application and shall recommend to the  
27 secretary either the approval or the disapproval of the permit  
28 application. The secretary shall publish notice of the intent to  
29 either approve or disapprove the permit application within 30  
30 days after receipt of the recommendation of the siting team.

3 (f) Public education.--The department shall develop a  
4 comprehensive, innovative and effective public education program  
5 to inform the public with regard to the nature and extent of  
6 hazardous waste generation and the need for environmentally  
7 sound management, treatment and disposal of hazardous waste.  
8 Section 310. Certificate of public necessity.

9 Within 30 days of the effective date of this act, the  
10 department shall publish for proposed rulemaking the certificate  
11 of public necessity regulations as provided under the Solid  
12 Waste Management Act.

13 Section 311. Siting assistance.

14 (a) General rule.--The Department of Commerce shall be  
15 responsible for identifying and encouraging potential commercial  
16 hazardous waste treatment or disposal facility developers to  
17 establish within the Commonwealth the commercial hazardous waste  
18 treatment or disposal facilities needed to properly manage  
19 Pennsylvania's hazardous waste. The Department of Commerce shall  
20 coordinate business outreach efforts with the needs and  
21 priorities established by the Pennsylvania Hazardous Waste  
22 Facilities Plan and siting criteria adopted under the Solid  
23 Waste Management Act.

24 (b) Siting coordinator.--The Secretary of Commerce shall  
25 designate a commercial hazardous waste facility siting  
26 coordinator to serve as the department's liaison with potential  
27 commercial treatment or disposal facility developers, other  
28 State agencies and local governments. The siting coordinator  
29 shall develop and be responsible for State efforts aimed at  
30 business outreach, preliminary site evaluation assistance and

1 the packaging of available financial assistance programs. For  
2 the effective performance of these duties, the siting

4 of the department's siting team, as well as employees of other  
5 State agencies, to coordinate necessary activities pursuant to  
6 this act.

7 (c) Technical assistance.--The siting coordinator shall  
8 assist interested developers in the identification of potential  
9 locations for proposed commercial hazardous waste treatment or  
10 disposal facilities. The assistance shall be limited to the  
11 examination of nonenvironmental site selection factors,  
12 including access to transportation networks and markets.

13 (d) Assistance programs.--The Department of Commerce shall  
14 ensure that interested developers are advised of and assisted in  
15 the use of available State financial assistance programs in  
16 order to encourage the siting of new commercial hazardous waste  
17 treatment or disposal facilities in this Commonwealth. Programs  
18 that may be considered shall include, but are not limited to,  
19 the Pennsylvania Industrial Development Authority, business  
20 infrastructure development, site development, the Ben Franklin  
21 Partnership and the Pennsylvania Infrastructure Investment  
22 Authority. The Department of Commerce shall also ensure, as  
23 allocations permit, the availability of tax-exempt industrial  
24 development bonds for commercial hazardous waste treatment or  
25 disposal facilities.

26 Section 312. Hazardous Waste Facility Siting Commission.

27 (a) Establishment.--In the event that no commercial  
28 hazardous waste disposal facility has been permitted within this  
29 Commonwealth pursuant to the Solid Waste Management Act by July  
30 1, 1992, an independent agency, known as the Hazardous Waste

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1 Facility Siting Commission, is hereby established. The  
2 commission shall consist of seven members, three of whom shall  
3 be appointed by the Governor, one of whom shall be designated as

5 tempore of the Senate, one of whom shall be appointed by the  
6 Speaker of the House of Representatives, one of whom shall be  
7 appointed by the Minority Leader of the Senate and one of whom  
8 shall be appointed by the Minority Leader of the House of  
9 Representatives. Those persons appointed shall be knowledgeable  
10 in the fields of hazardous waste management, environmental  
11 protection, municipal government or other pertinent fields and  
12 shall be appointed in such a manner as to fairly represent local  
13 government, industry and public interest groups. No member of  
14 the General Assembly or any officer or employee of the State  
15 government shall serve as a member of the commission.

16 (b) Terms of members.--Each appointment shall be for a term  
17 of three years. All vacancies shall be filled, for the remainder  
18 of the unexpired term, by the respective appointing authority.  
19 Any member, upon the expiration of his term, shall continue to  
20 hold office until his successor shall be appointed. No member  
21 may be removed from office during his term, except for cause, by  
22 the respective appointing authority.

23 (c) Compensation.--Members shall receive such compensation  
24 for their services as shall be set by the Executive Board. The  
25 members shall be entitled to reimbursement for travel and other  
26 necessary expenses incurred as a result of their duties as  
27 members of the commission.

28 (d) Meetings.--The commission shall meet as necessary to  
29 carry out its business, but not less than four times per year,  
30 at such times and places as shall be set by the chairman. For

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1 purposes of conducting official business, a quorum shall consist  
2 of four members.

3 (e) Organizational meeting.--Within two weeks following the  
4 appointment of the members of the commission, the chairman shall

6 organizational meeting, the commission shall appoint and fix the  
7 compensation of an executive director, who shall devote his full  
8 time to the general supervision of all the affairs of the  
9 commission. In addition, the commission may appoint and fix the  
10 compensation of such other employees as the commission may, from  
11 time to time, find necessary for the proper performance of its  
12 functions.

13 (f) Federal deadline.--Notwithstanding the provisions of  
14 subsection (a), in the event the Environmental Protection  
15 Agency, or its successor, notifies the department that Federal  
16 funds for response actions shall not be provided to the  
17 Commonwealth for failure to comply with the provisions of  
18 section 104(b)(9) of the Federal Superfund Act, the commission  
19 shall be established within one year from receipt of the notice  
20 by the department, unless the department and the Environmental  
21 Protection Agency reach an agreement prior to the establishment  
22 of the commission that provides for the continued usage of  
23 Federal funds for response actions.

24 Section 313. Powers and duties of commission.

25 (a) General rule.--The commission shall have the power and  
26 its duties shall be to:

27 (1) Cooperate with interested persons to identify areas  
28 suitable for siting hazardous waste disposal facilities.

29 (2) Review and approve or disapprove the siting module  
30 portion of applications for hazardous waste disposal facility

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1 sites brought before the commission to determine conformity  
2 with Phase I of departmental siting criteria as found in 25  
3 Pa. Code Ch. 75 Subch. F (relating to siting hazardous waste  
4 treatment and disposal facilities).

5 (3) Assist local governments in planning for the siting

7 siting module portion of applications for such facilities.

8 (b) Schedule for facilities.--Within 90 days following the  
9 commission's organizational meeting, the commission shall  
10 establish a schedule that outlines the process for siting new  
11 hazardous waste disposal facilities identified as necessary in  
12 the Pennsylvania Hazardous Waste Facilities Plan. The commission  
13 may amend such schedule from time to time.

14 (c) Criteria.--The commission shall use existing  
15 departmental regulations for the siting of hazardous waste  
16 disposal facilities as set forth in Phase I of departmental  
17 siting criteria found in 25 Pa. Code Ch. 75 Subch. F.

18 (d) Selection of site by commission.--The commission shall  
19 apply the siting criteria to the entire Commonwealth and shall  
20 identify potentially suitable sites for hazardous waste disposal  
21 facilities throughout this Commonwealth. The commission may, at  
22 any time, solicit proposals from interested persons to develop  
23 hazardous waste disposal facilities at such sites as may be  
24 identified by the commission. If no such proposals are received  
25 by January 1, 1994, the commission may make application to the  
26 department, in the name of the Commonwealth, for the necessary  
27 permits to establish a State-owned hazardous waste disposal  
28 facility. In carrying out its duties under this subsection, the  
29 commission shall be authorized to lease such real estate owned  
30 by the Commonwealth which is not being used in connection with

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1 the work of any department, board or commission thereof for a  
2 period of not more than 50 years to individuals, firms,  
3 corporations or the Federal Government pursuant to section  
4 2402(i) of the act of April 9, 1929 (P.L.177, No.175), known as  
5 The Administrative Code of 1929, and shall also have the power  
6 of eminent domain to acquire a site or sites as may be deemed

8 disposal facility.

9 (e) Transition.--The department shall complete its review of  
10 any permit application for a commercial hazardous waste disposal  
11 facility, which is deemed administratively complete and has been  
12 filed with the department prior to or on July 1, 1992. The  
13 siting module portion of a permit application for a commercial  
14 hazardous waste disposal facility that is subject to review  
15 subsequent to July 1, 1992, shall be filed with the commission  
16 in accordance with this section. For the purpose of implementing  
17 this section, the authority of the department with regard to the  
18 review and approval of the siting module portion of a permit  
19 application for a commercial hazardous waste disposal facility  
20 as set forth in section 309(c) and applicable provisions of the  
21 Solid Waste Management Act is hereby transferred to the  
22 commission only to the extent that it relates to the siting of a  
23 commercial hazardous waste disposal facility within this  
24 Commonwealth.

25 (f) Applicability.--Nothing in this section shall be  
26 construed to affect, impair or supersede the authority of the  
27 department to issue a permit for a hazardous waste disposal  
28 facility pursuant to the Solid Waste Management Act.

29 CHAPTER 5

30 RESPONSE AND INVESTIGATION

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1 Section 501. Response authorities.

2 (a) General rule.--Where there is a release or substantial  
3 threat of release of a contaminant which presents a substantial  
4 danger to the public health or safety or the environment or  
5 where there is a release or threat of a release of a hazardous  
6 substance, the department shall investigate and, if further  
7 response action is deemed appropriate, the department shall



9 such release or threat of a release if such persons are known  
10 and may allow such person or persons to investigate and  
11 undertake an appropriate response, or may undertake any further  
12 investigation, interim response or remedial response relating to  
13 the contaminant or hazardous substance which the department  
14 deems necessary or appropriate to protect the public health,  
15 safety or welfare or the environment.

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

19 (c) Exclusion.--

20 (1) The department shall not provide for an interim  
21 response or remedial response under this section in response  
22 to a release or threat of release:

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

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

30 (iii) into public or private drinking water supplies

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1 due to deterioration of the system through ordinary use;

2 or

3 (iv) from a coal mining operation under the  
4 jurisdiction of the department or from a site eligible  
5 for funding under Title IV of the Surface Mining Control  
6 and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C.  
7 § 1201 et seq.).

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

10 release or threat of release when, in the department's  
11 discretion, it determines that the release or threat of  
12 release constitutes a public health, safety or environmental  
13 emergency and that no other person with the authority and  
14 capability to respond to the emergency will do so in a timely  
15 manner.

16 (d) Investigations.--The department shall undertake or cause  
17 to be undertaken by the owner, operator or any other responsible  
18 person as permitted under subsection (a), investigations,  
19 monitoring, surveys, testing and other similar activities  
20 necessary or appropriate to identify the existence and extent of  
21 the release or threat of release, the source and nature of the  
22 hazardous substances or contaminants and the extent of danger to  
23 the public health or welfare or the environment. The department  
24 may also undertake planning, legal, fiscal, economic,  
25 engineering, architectural and other studies or investigations  
26 necessary or appropriate to plan and direct a response action,  
27 to recover the costs of the response action and to enforce the  
28 provisions of this act. The department shall undertake the  
29 activities described in this subsection in one or more of the  
30 following circumstances:

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1 (1) When the department is authorized to act under  
2 subsection (a).

3 (2) When the department has reason to believe that a  
4 release of a hazardous substance or a contaminant has  
5 occurred or is about to occur.

6 (3) When the department determines that illness or  
7 disease or complaints of illness or disease may be  
8 attributable to exposure to a hazardous substance or  
9 contaminant.

11 undertaking any investigation, interim response or remedial  
12 response under this section, shall give prompt written notice  
13 thereof to the owner and operator of the site and to the first  
14 mortgagee holding a mortgage on the premises on which the site  
15 is located.

16 (f) Bidding for remedial or removal actions.--

17 (1) The department may prequalify bidders for remedial  
18 or removal actions taken under subsection (d). The department  
19 may reject the bid of a prospective bidder who has not been  
20 prequalified.

21 (2) To prequalify bidders, the department shall, as  
22 contained in regulations to be proposed by the department and  
23 promulgated by the Environmental Quality Board, apply a  
24 uniform system of rating bidders. In order to obtain  
25 information for rating, the department may require from  
26 prospective bidders answers to questions, including, but not  
27 limited to, questions about the bidder's financial ability;  
28 the bidder's experience in removal and remedial action  
29 involving hazardous substances; the bidder's past safety  
30 record; and the bidder's past performance on Federal, State

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1 or local government projects. The department may also require  
2 prospective bidders to submit financial statements.

3 (3) The department shall utilize the business financial  
4 data and information submitted by a bidder under this section  
5 only for the purposes of prequalifying bidders and shall not  
6 otherwise disclose this data or information.

7 (g) Emergency response authority.--In addition to the powers  
8 and duties set forth in this act, when the Governor determines  
9 that there is an imminent and substantial endangerment to the  
10 public health and welfare or the environment because of an

12 that the person who owns or operates has failed to take  
13 appropriate emergency response, the Governor may order or  
14 undertake the necessary and appropriate emergency interim  
15 response. No more than \$2.5 million from the fund may be  
16 expended annually by the Governor for this purpose, except when  
17 the General Assembly, by concurrent resolution, deems  
18 appropriate.

19 Section 502. Priorities.

20 (a) List.--

21 (1) The department shall publish in the Pennsylvania  
22 Bulletin a priority list of sites with releases or threatened  
23 releases for the purpose of taking remedial response. The  
24 department shall allow a 30-day public comment period  
25 subsequent to publication. In compiling the priority list,  
26 the department shall utilize the Uncontrolled Hazardous Waste  
27 Site Ranking System (40 CFR Part. 300, App. A) established  
28 under the Federal Superfund Act which provides that sites  
29 shall be ranked according to the relative risk or danger to  
30 public health and welfare or the environment, taking into

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1 account, to the extent possible, the population at risk, the  
2 hazardous potential of the hazardous substances or  
3 contaminants at the sites, the potential for contamination of  
4 drinking water supplies, the potential for direct human  
5 contact, the potential for destruction of sensitive  
6 ecosystems. The department shall also consider the maximum  
7 usage of available Federal funds for sites which qualify for  
8 the National Priority List and the administrative,  
9 enforcement and financial capabilities of the department.  
10 Remedial responses may be on-going at more than one site at  
11 any given time, regardless of the site's ranked position on

13 (2) Any modification by the department in the  
14 Uncontrolled Waste Site Ranking System shall be made only by  
15 regulation and shall be based upon the relative risk or  
16 danger to the public health and welfare or the environment,  
17 taking into account, to the extent possible, the population  
18 at risk, the hazardous potential of the hazardous substances  
19 or contaminants at the sites, the potential for contamination  
20 of drinking water supplies, the potential for direct human  
21 contact, the potential for destruction of sensitive  
22 ecosystems, the maximum usage of available Federal funds for  
23 sites which qualify for the National Priority List and the  
24 administrative, enforcement and financial capabilities of the  
25 department.

26 (b) Status.--The placement or removal of a site with a  
27 release or threatened release upon the priority list shall not  
28 be deemed to be a final action subject to review under Title 2  
29 of the Pennsylvania Consolidated Statutes (relating to  
30 administrative law and procedure) or the act of July 13, 1988

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1 (P.L.530, No.94), known as the Environmental Hearing Board Act,  
2 nor shall it confer a right or duty upon the department or any  
3 person, nor shall the placement of the site upon the priority  
4 list preclude any responsible person from undertaking a  
5 voluntary cleanup pursuant to this act.

6 (c) Listing.--One hundred twenty days prior to the placement  
7 of a site upon the priority list, the department shall notify  
8 the known responsible persons of the proposed listing. The site  
9 shall not be placed upon the list if a responsible person enters  
10 into a settlement with the department which provides for the  
11 abatement of the release or threatened release.

12 (d) Removal from list.--Once a site has been placed upon the

14 department that the responsible person has complied with the  
15 terms of the settlement and has initiated a cleanup.

16 (e) National Priority List.--

17 (1) No site which has been placed upon the National  
18 Priority List established pursuant to the Federal Superfund  
19 Act shall be included on the priority list of sites published  
20 by the department.

21 (2) The department may take a remedial response action  
22 on a site listed upon the National Priority List provided  
23 that:

24 (i) the department has an agreement with the Federal  
25 Government which assures that the site qualifies for  
26 response action funding under section 104(c) of the  
27 Federal Superfund Act; or

28 (ii) the department has attempted, but failed to  
29 secure an agreement with the Federal Government pursuant  
30 to section 104(c) of the Federal Superfund Act, the

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1 Federal Government has failed to act within a reasonable  
2 period of time to perform a remedial response action and  
3 the Federal Government does not have an agreement with a  
4 responsible person to initiate such action. The total  
5 State funding contribution in excess of the Federally-  
6 mandated State minimum under section 104(c) of the  
7 Federal Superfund Act for remedial response actions  
8 undertaken pursuant to subparagraph (ii) shall not exceed  
9 \$6,000,000 annually.

10 (3) Except as provided in paragraph (2), nothing in this  
11 section shall abrogate, limit or alter the powers and duties  
12 accorded to the Commonwealth under the Federal Superfund Act.

13 (f) Rights preserved.--Nothing in this act shall be

15 inherent right to bring an action in mandamus to correct  
16 department actions under the standards currently recognized in  
17 Pennsylvania equity practice.

18 Section 503. Information gathering and access.

19 (a) Authority.--The authority of this section shall be  
20 exercised when there is a reasonable basis to believe there may  
21 be a release or threat of release of a hazardous substance or  
22 contaminant. The authority of this section shall be exercised  
23 for the purposes of determining the need for response, choosing  
24 or taking a response action under this act or otherwise  
25 enforcing the provisions of this act.

26 (b) Information.--

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

29 (i) The identification, nature and quantity of  
30 materials which have been or are generated, treated,

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1 stored or disposed of at a site or other place or  
2 property or transported to a site or other place or  
3 property.

4 (ii) The nature or extent of a release or threatened  
5 release of a hazardous substance or contaminant at or  
6 from a site or other place or property.

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

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

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

14 (ii) copy and furnish to the department all the

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

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

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

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

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

30 (5) There is a container or impoundment which is typical

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1 of those used to contain or impound hazardous substances and  
2 entry is needed to determine the existence of a hazardous  
3 substance.

4 (d) Inspection.--

5 (1) The department may inspect and obtain samples from a  
6 site or other place or property referred to in subsection (c)  
7 or from a location of a suspected hazardous substance or  
8 contaminant. The department's right of inspection shall  
9 include the sampling of solids, liquids and gases;  
10 excavations for soil sampling; drilling and maintenance of  
11 wells to monitor groundwater; and the installation and  
12 maintenance of other equipment to monitor the nature or  
13 extent of a release of a suspected hazardous substance or  
14 contaminant. The department may inspect and obtain samples of  
15 containers or labeling for suspected hazardous substances or



17 reasonable promptness.

18 (2) When the department obtains samples, before leaving  
19 the premises, it shall give to the owner, operator, tenant or  
20 other person in charge of the place from which the samples  
21 were obtained a receipt describing the sample obtained and,  
22 when requested, a portion of the sample. A copy of the  
23 results of an analysis made of the samples shall be furnished  
24 promptly to the owner, operator, tenant or other person in  
25 charge when the person can be located.

26 (e) Duty to cooperate with response action.--

27 (1) The following persons shall allow the department  
28 access or right of entry and inspection as may be reasonably  
29 necessary to determine the nature and extent of a release of  
30 a hazardous substance or contaminant:

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1 (i) A person who owns or occupies land on which  
2 there is a release or threat of a release of a hazardous  
3 substance or contaminant.

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

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

9 (iv) A person who is a responsible person under  
10 section 701.

11 (2) The following persons shall allow the department  
12 access or right of entry and inspection as may be reasonably  
13 necessary to perform a response under section 501:

14 (i) A person who owns or occupies land on which  
15 there is a release or a threat of release of a hazardous  
16 substance or contaminant.

18 affected by the release of a hazardous substance or  
19 contaminant.

20 (iii) A person who is a responsible person under  
21 section 701.

22 (f) Remedies.--

23 (1) In addition to any other remedy provided by this  
24 act, the department may enforce the provisions of this  
25 section by issuing orders requiring access to information,  
26 requiring entry onto property and restraining interference  
27 with any response action. An order issued under this section  
28 may be appealed to the board under the act of July 13, 1988  
29 (P.L.530, No.94), known as the Environmental Hearing Board  
30 Act.

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

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

6 (ii) There has not been full compliance with the  
7 order.

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

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

17 (i) The department has a reasonable basis to believe

19 hazardous substance or contaminant.

20 (ii) The order or relief requested is reasonably  
21 related to determining the need for a response, to  
22 choosing or taking any response or to otherwise enforcing  
23 the provisions of this act.

24 (5) Except as provided in this subsection, there shall  
25 be no administrative or judicial review of action by the  
26 department or its agents to obtain access to information, to  
27 obtain entry onto property or to perform work on the property  
28 in connection with a response action. Neither the board nor  
29 any court may restrain action of the department under this  
30 section unless all of the following apply:

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

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

6 (6) The minimum civil penalty assessed under section  
7 1104 for a violation of an order issued under this section  
8 shall be \$5,000 for each day the order is violated.

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

12 (h) Public records.--

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

20 (i) The information contains the trade secrets,  
21 processes, operations, style of work or apparatus of a  
22 person or is otherwise confidential business information,  
23 including information obtained under subsection  
24 (b)(1)(iii).

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

27 (2) When submitting information to the department under  
28 this act, a person shall designate the information which the  
29 person believes is confidential or shall submit that  
30 information separately from other information being

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1 submitted.

2 (i) Use of force.--When a person refuses to allow the  
3 department to have access to information or entry onto property  
4 under this section, the department shall not use force to obtain  
5 the information or entry unless one of the following applies:

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

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

10 Section 504. Cleanup standards.

11 (a) General rule.--Final remedial responses under this act  
12 shall meet all standards, requirements, criteria or limitations  
13 which are legally applicable or relevant and appropriate under  
14 the circumstances presented by the release or threatened release  
15 of the hazardous substance or contaminant and shall be cost  
16 effective. Cleanup standards promulgated under this act shall be  
17 consistent with State standards permitted under section 121(d)  
18 of the Federal Superfund Act.

19 (b) Interim cleanup standards.--Until final cleanup

21 be those cleanup standards applicable under section 121 of the  
22 Federal Superfund Act.

23 (c) Rulemaking.--The department shall propose and the  
24 Environmental Quality Board shall promulgate the standards,  
25 requirements, criteria or limitations that are generally  
26 applicable to remedial responses to releases of hazardous  
27 substances or contaminants by regulation.

28 (d) Special standards.--The department may add, without  
29 rulemaking under subsection (c), special standards, more  
30 stringent than the general cleanup standards, on a case-by-case

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1 basis if the department can show that any of the following apply  
2 based on the administrative record:

3 (1) The circumstances at the site are such that the  
4 applicable general standards, as applied, would not provide  
5 the degree of protection to public health or the environment  
6 intended by the general standards.

7 (2) The degree of additional environmental protection  
8 provided by the special standard is significant in relation  
9 to the cost of implementing it.

10 (e) Modification.--The department may waive or modify  
11 otherwise applicable requirements if any of the following apply:

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

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

17 (3) The remedial actions selected will attain a standard  
18 of performance that is equivalent to that required under the  
19 otherwise applicable requirement through use of another  
20 method or approach.

22 cost-effective response.

23 (f) Fund money.--In addition to the provisions of subsection  
24 (e), if the response action is to be done using only fund money,  
25 the department may waive or modify requirements that might  
26 otherwise be applicable to a response at the site undertaken by  
27 a responsible person if the department determines the waiver or  
28 modification to be in the public interest.

29 (g) Permits.--No State or local permits shall be required  
30 for a response action conducted entirely on the site if prior

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1 written approval is obtained from the department.

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

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

7 (a) Basis.--The selection of a remedial response shall be  
8 based upon the administrative record developed under section  
9 506.

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

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

27 (1) In the case of a release or threatened release of a  
28 hazardous substance, the department may:

29 (i) Issue an order to a responsible person. This  
30 subparagraph does not prohibit action under subparagraph

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1 (ii).

2 (ii) Take the action itself. This subparagraph does  
3 not prohibit action under subparagraph (i).

4 (2) In the case of a release or substantial threat of a  
5 release of a contaminant, which presents a substantial danger  
6 to the public health or safety or the environment, the  
7 department may:

8 (i) Issue an order to a responsible person. This  
9 subparagraph does not prohibit action under subparagraph  
10 (ii).

11 (ii) Take the action itself. This subparagraph does  
12 not prohibit action under subparagraph (i).

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

15 (1) Orders requiring a responsible person to take a  
16 response action.

17 (2) Orders restraining a person from interfering with a  
18 response action.

19 (3) Orders modifying a response action, including  
20 response actions which had been previously approved by the  
21 department.

22 (e) Judicial action.--The department may file an action to

24 or in any other court of competent jurisdiction. The department  
25 may include in the same action a civil penalty assessment under  
26 section 1104. When the department files such an action, its  
27 order shall be enforced and its civil penalty assessment shall  
28 be upheld unless the person subject to the order or the civil  
29 penalty can demonstrate that the department acted arbitrarily  
30 and capriciously on the basis of the administrative record

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1 developed under section 506 as permitted to be supplemented  
2 under section 508.

3 (f) Costs.--

4 (1) When the department issues an order under this  
5 section, a person subject to the order may seek to recover  
6 from the fund the cost of complying with the order by filing  
7 an action with the board after completion of the response  
8 action. The action must be filed within 60 days after the  
9 completion of the required action. To recover costs, the  
10 person must demonstrate by a preponderance of the evidence,  
11 all of the following:

12 (i) The person was not a responsible person under  
13 this act.

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

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

21 (g) Voluntary settlements.--The department, in its  
22 discretion, may enter into an agreement with any person,  
23 including a person who may be liable under section 701, to



25 such action will be properly done in accordance with the  
26 department's standards and after such person has submitted a  
27 plan and obtained the department's approval of such plan.  
28 Whenever practicable and in the public interest, the department  
29 may enter into agreements under this section in order to  
30 expedite efficient remedial action and minimize litigation. The

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1 decision of the department to use or not to use the procedures  
2 of this subsection is not subject to judicial review.

3 (h) Mixed funding.--An agreement under this section may  
4 provide that the department will pay from the fund a certain  
5 portion of the total response costs or the cost of certain  
6 response actions. The department may enter into mixed funding  
7 settlements for that portion of the response costs or damages  
8 allocable to persons against whom recovery cannot be obtained by  
9 reason of insolvency, dissolution, lack of jurisdiction by  
10 Commonwealth courts or other similar reasons. The department may  
11 also enter into mixed funding settlements when the financial  
12 resources of the known responsible persons are too small to  
13 cover the anticipated response costs, or the known and  
14 financially viable responsible persons have collectively  
15 contributed only a small fraction of the known hazardous  
16 substances at the site.

17 Section 506. Administrative record.

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

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

21 (2) Information, including, but not limited to, studies,  
22 inspection reports, sample results and permit files, which is  
23 known and reasonably available to the department and which  
24 relates to the release or threatened release and to the

26 (3) Written comments submitted during the public comment  
27 period under subsection (c).

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

30 (5) The department's statement of the basis and purpose

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1 for its decision, including findings of fact, an analysis of  
2 the alternatives considered and the reasons for selecting the  
3 proposed response action, and its response to significant  
4 comments made during the public comment period.

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

7 (b) Notice.--

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

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

12 (ii) The time and place during which the information  
13 listed on the docket maintained under subsection (f) may  
14 be inspected and copied.

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

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

20 (2) The notice shall be mailed to responsible persons  
21 whose identities and addresses are known to the department.  
22 In addition, notice shall be mailed to all holders of liens  
23 of record filed against all properties subject to section  
24 509(b). The notice shall also be published in a newspaper of  
25 general circulation in the area in which the release has

27 provide this notice does not affect a responsible person's  
28 liability under this act.

29 (c) Public comment.--

30 (1) The public comment period shall extend for at least

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1 90 days from the date that notice is published in the  
2 Pennsylvania Bulletin. During the public comment period the  
3 department shall make available for inspection during normal  
4 business hours all of the following:

5 (i) The department's description of the response  
6 action.

7 (ii) Information, including, but not limited to,  
8 studies, inspection reports, sample results and permit  
9 files, which is known and reasonably available to the  
10 department and which relates to the release or threatened  
11 release and to the selection, design and adequacy of the  
12 response action.

13 (iii) Written comments submitted during the public  
14 comment period.

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

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

19 (d) Public hearing.--At least one public hearing shall be  
20 conducted near the site of the response action to allow  
21 interested persons to give oral or written comments. A  
22 transcript shall be kept of oral presentations. The hearing  
23 shall be scheduled at least 30 days after the publication of the  
24 notice in the Pennsylvania Bulletin.

25 (e) Decision.--At the close of the public comment period,  
26 the department shall file a statement of the basis and purpose

28 an analysis of the alternatives considered and the reasons for  
29 selecting the proposed response action. It shall include an  
30 explanation of any major changes in the response action from

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1 that described in the notice. The department shall also file a  
2 response to each of the significant comments, criticisms and new  
3 data submitted in oral or written presentations during the  
4 public comment period.

5 (f) Docket.--The department shall maintain a docket listing  
6 of all the items which form the administrative record, and it  
7 shall notify a person submitting a comment that it has been  
8 entered on the docket. It shall be the responsibility of the  
9 person submitting written comments to either verify that the  
10 comments have been noted on the docket or to notify the  
11 department, before the end of the public comment period, that  
12 the docket does not note the submitted written comment.

13 (g) Closing.--The administrative record shall be closed,  
14 once the department has filed its statement and response under  
15 subsection (e). The department's decision may not be based, in  
16 whole or in part, upon information which has not been noted on  
17 the docket as of the date the administrative record is closed.  
18 The administrative record may be reopened only for any of the  
19 following reasons:

20 (1) Additional information which the department  
21 determines to be of central relevance to the selected action  
22 is obtained during the implementation of the response action.

23 (2) A person raising an objection to the response action  
24 can demonstrate that it was impracticable to raise the  
25 objection during the public comment period or that the  
26 grounds for the objection arose after the public comment  
27 period.

29 costs.

30 (4) A case is remanded to the department under section  
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1 508.

2 (h) Reopening.--To reopen the administrative record, the  
3 department shall provide a notice setting forth the purpose of  
4 the reopening and the time and place for submitting written  
5 comments during a 60-day public comment period. The department  
6 may hold a public hearing if a written request is received  
7 within 30 days of publication of the notice of reopening. The  
8 docket shall note additional information submitted by the  
9 department, written comments, oral comments made at the public  
10 hearing and the department's responses to the significant  
11 comments. The department's decision not to reopen the  
12 administrative record may only be reviewed as provided in  
13 section 508.

14 Section 507. Recovery of response costs.

15 (a) General rule.--A responsible person under section 701 or  
16 a person who causes a release or threat of a release of a  
17 hazardous substance or causes a public nuisance under this act  
18 or causes a release or a substantial threat of release of a  
19 contaminant which presents a substantial danger to the public  
20 health or safety or the environment, or causes a release of a  
21 nonhazardous substance pursuant to section 501(g) shall be  
22 liable for the response costs and for damages to natural  
23 resources. The department, a Commonwealth agency, or a  
24 municipality which undertakes to abate a public nuisance under  
25 this act or take a response action may recover those response  
26 costs and natural resource damages in an action in equity  
27 brought before a court of competent jurisdiction. In addition,  
28 the board is given jurisdiction over actions by the department

30 (b) Amount.--In an action to recover response costs and

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1 natural resource damages, the department shall include  
2 administrative and legal costs incurred from its initial  
3 investigation up to the time that it recovers its costs. The  
4 amount attributable to administrative and legal costs shall be  
5 10% of the amount paid for the response action or the actual  
6 costs, whichever is greater.

7 (c) Punitive damages.--Notwithstanding the provisions of  
8 section 709, a person who willfully fails to comply with an  
9 order of the department requiring a response action under  
10 section 505(c)(1) shall be liable for punitive damages in an  
11 amount which is at least equal to but not more than three times  
12 the costs recoverable under this section. A party shall not be  
13 liable for punitive damages when a court reviewing the order  
14 under section 508 finds that the department's order was invalid  
15 as to that party.

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

25 (e) Civil penalty.--When the department files an action to  
26 recover its response costs and natural resources damage  
27 assessment, it may also seek civil penalties under section 1104.  
28 Its right to recover response costs, natural resources' damages  
29 and civil penalties shall be upheld unless the liable person can

1 capriciously on the basis of the administrative record developed  
2 under section 506 as permitted to be supplemented under section  
3 508.

4 (f) Recycled oil.--

5 (1) When recycled oil is not mixed with any other  
6 hazardous substance and is stored, treated, transported and  
7 otherwise managed in compliance with regulations or standards  
8 promulgated under applicable State and Federal law relating  
9 to recycled oil, then all of the following apply:

10 (i) No person may recover from a service station  
11 operator, under section 702(a)(2) or (3), response costs  
12 or damages resulting from a release or threatened release  
13 of recycled oil.

14 (ii) Section 1102 does not apply against a service  
15 station operator other than a service station operator  
16 described in section 702(a)(1).

17 (2) For purposes of this subsection, a service station  
18 operator may presume that a small quantity of used oil is not  
19 mixed with other hazardous substances when it has been  
20 removed from the engine of a motor vehicle or appliance by  
21 the owner of the vehicle or appliance and is presented to the  
22 operator for collection, accumulation and delivery to an oil  
23 recycling facility.

24 Section 508. Administrative and judicial review of response  
25 actions.

26 (a) General rule.--Notwithstanding any other provision of  
27 law, the provisions of this section shall provide the exclusive  
28 method of challenging either the administrative record developed  
29 under section 506 or a decision of the department based upon the  
30 administrative record.

1 (b) Timing of review.--Neither the board nor a court shall  
2 have jurisdiction to review a response action taken by the  
3 department or ordered by the department under section 505 until  
4 the department files an action to enforce the order or to  
5 collect a penalty for violation of such order or to recover its  
6 response costs or in an action for contribution under section  
7 705. In the case of an action to enforce an order of the  
8 department, the person receiving such order shall be entitled to  
9 challenge said order within 30 days from the date the department  
10 moves to enforce its order.

11 (c) Grounds.--A challenge to the selection and adequacy of a  
12 remedial action shall be limited to the administrative record  
13 developed under section 506. In a challenge to liability for  
14 natural resource damages, civil penalties or the recovery of  
15 response costs, or where the assessment of civil penalties is  
16 challenged, the record shall be limited to the administrative  
17 record developed under section 506, except that it may be  
18 supplemented with additional evidence supporting or refuting the  
19 department's determination that a person is a responsible person  
20 under section 701 or the department's assessment of civil  
21 penalties. The party challenging the department's determination  
22 or assessment shall retain the burden of proving the  
23 department's determination or assessment was arbitrary and  
24 capricious.

25 (d) Procedural errors.--Procedural errors in the development  
26 of the administrative record shall not be a basis for  
27 challenging a response action unless the errors were so serious  
28 and related to matters of such central relevance to the response  
29 action that the action would have been significantly changed had  
30 the errors not been made. The person asserting the significance



2 the action would have been significantly changed.

3 (e) Remand.--When a response action is demonstrated to be  
4 arbitrary and capricious on the basis of the administrative  
5 record developed under section 506, or when a procedural error  
6 occurred in the development of the administrative record which  
7 (error) would have significantly changed the response action,  
8 the following apply:

9 (1) When additional information could affect the outcome  
10 of the case, the matter shall be remanded to the department  
11 for reopening the administrative record.

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

18 Section 509. Lien.

19 (a) Establishment.--An award of response costs, assessment  
20 of damages to natural resources or assessment of civil penalties  
21 shall constitute a judgment against the responsible person. The  
22 judgment may be collected in any manner provided by law. The  
23 department shall send a notice of lien to the prothonotary or  
24 equivalent official of the county in which the responsible  
25 person has real or personal property, setting forth the amount  
26 of the award of costs, of the assessment of damages and of the  
27 assessment of penalties. The prothonotary or equivalent official  
28 shall promptly enter upon the civil judgment or order docket the  
29 name and address of the responsible person and the amount of the  
30 lien as set forth in the notice of lien. Upon entry by the

1 prothonotary, the lien shall attach to the revenue and all real

3 the responsible person is insolvent.

4 (b) Registry.--There shall be established a central registry  
5 of all liens filed under this act in the Department of State.  
6 The Commonwealth shall file a notice of lien with the Secretary  
7 of the Commonwealth in addition to filings with a prothonotary  
8 or equivalent official.

9 (c) Priority.--The notice of lien filed under this section  
10 affecting property of a responsible person, including property  
11 subject to response action, shall create a lien which shall have  
12 priority from the day of the filing of the notice of the lien  
13 over all subsequent claims and liens against the property, but  
14 it shall not affect any valid lien, right or interest in the  
15 property filed in accordance with established procedure prior to  
16 the filing of a notice of lien under this subsection.

17 Section 510. Evaluation grant.

18 The department may make available a reasonable sum as a grant  
19 to the governing body of the host municipality of a site where  
20 the department is considering a remedial response. The host  
21 municipality shall use this sum solely to conduct an independent  
22 technical evaluation of the proposed remedial response. The  
23 grant shall not exceed \$50,000 unless the department proposes  
24 and the Environmental Quality Board promulgates regulations  
25 establishing a schedule for grants.

26 Section 511. Acquisition of real property.

27 (a) General rule.--The department may acquire, by purchase,  
28 lease, condemnation, donation or otherwise, real property or an  
29 interest in real property that the department, in its  
30 discretion, determines is needed to conduct a response action

1 under this act. The department has no duty to acquire any  
2 interest in real property under this act.

4 liable under this act as a result of acquiring an interest in  
5 real estate under this section, nor shall anything in this act  
6 be construed as a waiver of sovereign immunity or a waiver under  
7 42 Pa.C.S. § 8522 (relating to exceptions to sovereign  
8 immunity).

9 Section 512. After closure and conveyance of property.

10 (a) General rule.--A site at which hazardous substances  
11 remain after completion of a response action shall not be put to  
12 a use which would disturb or be inconsistent with the response  
13 action implemented. The department shall have the authority to  
14 issue an order precluding or requiring cessation of activity at  
15 a facility which the department finds would disturb or be  
16 inconsistent with the response action implemented. A person  
17 adversely affected by the order may file an appeal with the  
18 board. The department shall require the recorder of deeds to  
19 record an order under this subsection in a manner which will  
20 assure its disclosure in the ordinary course of a title search  
21 of the subject property. An order under this subsection, when  
22 recorded, shall be binding upon subsequent purchasers.

23 (b) Acknowledgment.--The grantor, in every deed for the  
24 conveyance of property on which a hazardous substance is either  
25 presently being disposed or has ever been disposed by the  
26 grantor or to the grantor's actual knowledge, shall include in  
27 the property description section of the deed an acknowledgment  
28 of the hazardous substance disposal. To the extent the  
29 information is available, the acknowledgment shall include, but  
30 not be limited to, the surface area size and exact location of

1 the disposed substances and a description of the types of  
2 hazardous substances contained therein. This property  
3 description shall be made a part of the deed for all future

5 of any response undertaken with respect to the disposal of the  
6 hazardous substance as well as notice of any decision by the  
7 department to remove the site from the priority list provided  
8 for in section 502 shall also be made part of the deed.

9 Section 513. Contracting.

10 (a) Authority.--The department shall have the authority to  
11 enter into a contract with any person or firm to have them  
12 provide assistance to the department for the implementation of  
13 this act.

14 (b) Indemnification.--Any person who enters into a contract  
15 with the department to assist the department in implementing  
16 this chapter shall not be required to indemnify the Commonwealth  
17 or Commonwealth employees against claims arising out of  
18 performance of the contract.

19 CHAPTER 7

20 LIABILITY AND SETTLEMENT PROCEDURES

21 Section 701. Responsible person.

22 (a) General rule.--Except for releases of hazardous  
23 substances expressly and specifically approved under a valid  
24 Federal or State permit, a person shall be responsible for a  
25 release or threatened release of a hazardous substance from a  
26 site when any of the following apply:

27 (1) The person owns or operates the site:

28 (i) when a hazardous substance is placed or comes to  
29 be located in or on a site;

30 (ii) when a hazardous substance is located in or on

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1 the site, but before it is released; or

2 (iii) during the time of the release or threatened  
3 release.

4 (2) The person generates, owns or possesses a hazardous

6 for the disposal, treatment or transport for disposal or  
7 treatment of the hazardous substance.

8 (3) The person accepts hazardous substances for  
9 transport to disposal or treatment facilities, incineration  
10 vessels or sites selected by such person from which there is  
11 a release or a threatened release of a hazardous substance  
12 which causes the incurrence of response costs.

13 (b) Exceptions.--

14 (1) An owner of real property is not responsible for the  
15 release or threatened release of a hazardous substance from a  
16 site in or on the property when the owner demonstrates to the  
17 department that all of the following are true:

18 (i) The real property on which the site concerned is  
19 located was acquired by the owner after the disposal or  
20 placement of a hazardous substance on, in or at the site.

21 (ii) The owner has exercised due care with respect  
22 to the hazardous substances concerned, taking into  
23 consideration the characteristics of such hazardous  
24 substances, in light of all relevant facts and  
25 circumstances.

26 (iii) The owner took precautions against foreseeable  
27 acts or omissions of any third party and the consequences  
28 that could foreseeably result from such acts or  
29 omissions.

30 (iv) The owner obtained actual knowledge of the

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1 release or threatened release of a hazardous substance at  
2 the site when the owner owned the real property, and the  
3 owner did not subsequently transfer ownership of the  
4 property to another person without disclosing such  
5 knowledge.

7 contributed to the release or threatened release of a  
8 hazardous substance which is the subject of the response  
9 action relating to the site.

10 (vi) The owner meets one of these requirements:

11 (A) At the time the owner acquired the site, the  
12 owner did not know, and had no reason to know, that a  
13 hazardous substance which is the subject of the  
14 release or threatened release was disposed of on, in  
15 or at the site. For purposes of this subparagraph,  
16 the owner must have undertaken, at the time of  
17 acquisition, all appropriate inquiries into the  
18 previous ownership and uses of the property  
19 consistent with good commercial or customary practice  
20 in an effort to minimize liability. The department  
21 shall take into account specialized knowledge or  
22 experience on the part of the owner, the relationship  
23 of the purchase price to the value of the property if  
24 uncontaminated, commonly known or reasonably  
25 ascertainable information about the property, the  
26 obviousness of the presence or likely presence of  
27 contamination at the property and the ability to  
28 detect the contamination by appropriate inspection.

29 (B) The owner is a government entity which  
30 acquired the site by escheat, through any other

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1 involuntary transfer or acquisition or through the  
2 exercise of eminent domain authority by purchase or  
3 condemnation.

4 (C) The owner acquired the site by inheritance  
5 or bequest.

6 (D) The owner is a financial institution or an

8 instrumentality of the Federal Government which  
9 acquired the site by foreclosure or by acceptance of  
10 a deed in lieu of foreclosure.

11 (vii) The only basis of liability for the landowner  
12 is ownership of the land.

13 (2) Liability under subsection (a) shall not apply to an  
14 owner of real property if the real property is exclusively  
15 used as single or multi-family housing of four units or less  
16 or for private noncommercial recreational purposes, and the  
17 owner did not place the hazardous substance on the property,  
18 or the owner did not know and had no reason to know that a  
19 hazardous substance which is the subject of the release or  
20 threatened release was disposed on, in or at the site.

21 (3) Liability under subsection (a) shall not apply to  
22 persons who generate household hazardous waste as defined in  
23 section 1512 of the act of July 28, 1988 (P.L.556, No.101),  
24 known as the Municipal Waste Planning, Recycling and Waste  
25 Reduction Act.

26 (4) Except for activities of the owner or operator  
27 unrelated to the recovery or processing of methane,  
28 subsection (a) does not apply to a person who owns or  
29 operates equipment for the recovery or processing, including  
30 recirculation of condensate, of methane unless the release of

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1 threatened release is caused by the negligent activities of  
2 the person. If the release or threatened release is caused by  
3 the negligent activities of a person who owns or operates  
4 equipment for the recovery or processing, including  
5 recirculation of condensate, of methane, the person's  
6 responsibility shall be limited to costs and damages caused  
7 by the person's negligent activities.

9 transferred to a facility owned or operated by another person  
10 for the purpose of reclamation or reuse of the metallic  
11 content thereof through melting, smelting or refining shall  
12 not be considered to have arranged for the disposal,  
13 treatment or transport for disposal or treatment at that  
14 facility of a hazardous substance present in the scrap  
15 materials, provided that the generator demonstrates that all  
16 of the following are true:

17 (i) The scrap materials consisted of:

18 (A) obsolete metallic items, such as automobiles  
19 or appliances;

20 (B) new solid metallic by-products, such as  
21 trimmings, turnings, cuttings or punchings;

22 (C) prepared grades of scrap metal produced in  
23 accordance with recognized industry specifications by  
24 processing obsolete items or metallic by-products  
25 through shredding, cutting, compressing, or other  
26 mechanical means; or

27 (D) intact, nonleaking spent lead-acid storage  
28 batteries.

29 (ii) The generator did not introduce the hazardous  
30 substance into the scrap materials.

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1 (iii) The generator handled and transported the  
2 scrap materials in accordance with all applicable laws  
3 and regulations.

4 (iv) The generator transferred the scrap materials  
5 for valuable consideration.

6 (v) If the generator selected the facility, the  
7 generator reasonably believed that the facility was then  
8 in substantial compliance with all applicable laws and



10 reclamation or reuse of the scrap materials.

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

14 (1) The employee is subject to liability under this  
15 section only when the employee's conduct with respect to the  
16 hazardous substance was negligent under circumstances in  
17 which the employee knew that the substance was hazardous and  
18 that the employee's conduct could result in serious harm.

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

23 Section 702. Scope of liability.

24 (a) General rule.--A person who is responsible for a release  
25 or threatened release of a hazardous substance from a site as  
26 specified in section 701 is strictly liable for the following  
27 response costs and damages which result from the release or  
28 threatened release or to which the release or threatened release  
29 significantly contributes:

30 (1) Costs of interim response which are reasonable in

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1 light of the information available to the department at the  
2 time the interim response action was taken.

3 (2) Reasonable and necessary or appropriate costs of  
4 remedial response incurred by the United States, the  
5 Commonwealth or a political subdivision.

6 (3) Other reasonable and necessary or appropriate costs  
7 of response incurred by any other person.

8 (4) Damages for injury to, destruction of, or loss of  
9 natural resources within this Commonwealth or belonging to,

11 States, the Commonwealth or a political subdivision. This  
12 paragraph includes the reasonable costs of assessing injury,  
13 destruction or loss resulting from such a release.

14 (5) The cost of a health assessment or health effects  
15 study.

16 (b) Interest.--

17 (1) The amounts recoverable in an action under sections  
18 507 and 1101 include interest on the amounts recoverable  
19 under subsection (a). Interest shall accrue from the later  
20 of:

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

23 (ii) the date of the expenditure concerned.

24 (2) The rate of interest on the outstanding unpaid  
25 balance of the amounts recoverable under sections 507 and  
26 1101 shall be 6% annually.

27 (c) Contractors.--A person or company who has entered into a  
28 contract with the department to assist the department in  
29 implementing this act, or a response action contractor under  
30 section 119 of the Federal Superfund Act, shall not be held

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1 liable under this act for a release of a hazardous substance  
2 arising out of performance of a response action when the release  
3 is not caused by the contractor's negligence.

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

9 Section 703. Defenses to liability.

10 (a) Grounds.--There shall be no liability under section 701

12 the release or threat of release of a hazardous substance and  
13 the damages resulting therefrom were caused solely by any of the  
14 following:

15 (1) An act of God.

16 (2) An act of war.

17 (3) An act or omission of a third party other than an  
18 employee, agent or contractor of the responsible person or  
19 one whose act or omission occurs in connection with an  
20 agreement or contractual relationship (except where the sole  
21 contractual arrangements arise either from a published tariff  
22 and acceptance for carriage by a common carrier by rail, or  
23 an exempt circular or transportation contract in lieu of a  
24 published tariff for carriage by a common carrier by rail),  
25 if the responsible person:

26 (i) exercised due care with respect to the hazardous  
27 substance concerned, taking into consideration the  
28 characteristics of such hazardous substance, in light of  
29 all relevant facts and circumstances; and

30 (ii) took precautions against foreseeable acts or

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1 omissions of any such third party and the consequences  
2 that could foreseeably result from those acts or  
3 omissions.

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

13 the part of the person.

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

19 (d) Residential housing.--There shall be no liability under  
20 section 701 for the owner of real property which is exclusively  
21 used or under construction as residential housing who can  
22 establish that the release or threatened release of a hazardous  
23 substance and the damages resulting therefrom were caused solely  
24 by an act or omission of a third party, other than an employee,  
25 agent or contractor of the owner or one whose act or omission  
26 occurs in connection with an agreement or contractual  
27 relationship, if the owner:

28 (1) at the time of acquisition, did not know and had no  
29 reason to know, that a hazardous substance which is the  
30 subject of the release or threatened release was disposed on,

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1 in or at the site. For purposes of this paragraph, the owner  
2 must have undertaken, at the time of acquisition, all  
3 appropriate inquiries into the previous ownership and uses of  
4 the property consistent with good commercial or customary  
5 practice in an effort to minimize liability. The department  
6 shall take into account specialized knowledge or experience  
7 on the part of the owner, the relationship of the purchase  
8 price to the value of the property if uncontaminated,  
9 commonly known or reasonably ascertainable information about  
10 the property, the obviousness of the presence or likely  
11 presence of contamination at the property and the ability to  
12 detect the contamination by appropriate inspection; and

14 a hazardous substance on, in or at the site, exercised due  
15 care with respect to the hazardous substance concerned,  
16 taking into consideration the characteristics of the  
17 hazardous substance, in light of all relevant facts and  
18 circumstances and took precautions against foreseeable acts  
19 or omissions of any such third party and the consequences  
20 that could foreseeably result from those acts or omissions.

21 (e) Limited liability.--Liability under the provisions of  
22 section 701 shall not apply to municipal waste transporters for  
23 that portion of municipal waste which is defined as household  
24 hazardous waste under section 1512 of the act of July 28, 1988  
25 (P.L.556, No.101), known as the Municipal Waste Planning,  
26 Recycling and Waste Reduction Act and which is collected from  
27 generators and transported to permitted municipal waste disposal  
28 facilities.

29 (f) Burden of proof.--A person claiming a defense provided  
30 in this section has the burden to prove all elements of the

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1 defense by a preponderance of the evidence.

2 Section 704. Subrogation and insurance.

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

8 (b) Construction.--Nothing in this section shall be  
9 construed to do any of the following:

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

15 harmless or an indemnification agreement.

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

19 Section 705. Contribution.

20 (a) General rule.--A person may seek contribution from a  
21 responsible person under section 701, during or following a  
22 civil action under sections 507 or 1101. Claims for contribution  
23 shall be brought in accordance with this section and the  
24 Pennsylvania Rules of Civil Procedure. Nothing in this section  
25 shall diminish the right of a person to bring an action for  
26 contribution in the absence of a civil action under sections 507  
27 or 1101.

28 (b) Allocation.--In a civil action in which a liable party  
29 seeks a contribution claim, the court, or the board in an action  
30 brought under section 507 or 1101, shall enter judgment

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1 allocating liability among the liable parties. Allocation shall  
2 not affect the parties' liability to the department. The burden  
3 is on each party to show how liability should be allocated. In  
4 determining allocation under this section, the court or the  
5 board may use such equitable factors as it deems appropriate.  
6 The trier of fact shall consider the following factors:

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

9 (2) The amount of hazardous substance involved.

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

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

16 Federal, State or local officials to prevent harm to the  
17 public health or the environment.

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

20 (c) Settlements.--

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

29 (2) A person who has resolved its liability to the  
30 department in an administrative or judicially approved

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1 settlement shall not be liable for claims for contribution  
2 regarding matters addressed in the settlement unless the  
3 terms of the settlement provide otherwise. The settling party  
4 may seek contribution from a nonsettling party to recover the  
5 consideration paid in excess of its allocated share of  
6 liability as determined by the court or the board.

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

14 (d) Federal funds; cooperative agreements.--The Commonwealth  
15 shall actively seek to obtain Federal funds to which it is

17 necessary to enter into contractual or cooperative agreements  
18 under section 104(c)(3) and (d)(1) of the Federal Superfund Act  
19 (42 U.S.C. § 9604(c)(3) and (d)(a)).

20 Section 706. Covenants not to sue.

21 (a) General rule.--To encourage the voluntary and timely  
22 cooperation of responsible parties in the cleanup of certain  
23 hazardous waste sites, the department may provide a responsible  
24 person with a covenant not to sue concerning liability to the  
25 Commonwealth under this act, including future liability,  
26 resulting from a release or threatened release of a hazardous  
27 substance addressed by a remedial action where:

28 (1) The covenant not to sue is in the public interest.

29 (2) The covenant not to sue would expedite response  
30 action.

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1 (3) The responsible person is in full compliance with  
2 any consent decree under the Solid Waste Management Act or  
3 this act for response to the release or threatened release  
4 concerned.

5 (4) The response action has been approved by the  
6 department.

7 (b) Special covenants.--The department may provide a person  
8 with a covenant not to sue with respect to future liability to  
9 the Commonwealth under this act for a future release or  
10 threatened release of hazardous substances from such site for  
11 the portion of remedial action which involves the treatment of  
12 hazardous substances so as to destroy, eliminate or permanently  
13 immobilize the hazardous constituents of such substances, so  
14 that, in the judgment of the department, the substances no  
15 longer present a current or currently foreseeable future  
16 significant risk to public health and welfare or the



18 process presents any significant hazard to public health and  
19 welfare or the environment; and a person provided such covenant  
20 not to sue shall not be liable to the Commonwealth under this  
21 act with respect to such a release or threatened release at a  
22 future time.

23 (c) Effective date of covenants not to sue.--A covenant not  
24 to sue concerning future liability to the Commonwealth shall not  
25 take effect until the department certifies that remedial action  
26 has been completed in accordance with the requirements of this  
27 act and any consent decree entered into between the department  
28 and the responsible person at the site that is the subject of  
29 such covenant.

30 (d) Factors.--In assessing the appropriateness of a covenant

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1 not to sue under subsection (a) and any condition to be included  
2 in a covenant not to sue under subsection (a) or (b), the  
3 department shall consider whether the covenant or condition is  
4 in the public interest on the basis of such factors as the  
5 following:

6 (1) The effectiveness and reliability of the remedy, in  
7 light of the other alternative remedies considered for the  
8 site concerned.

9 (2) The nature of the risks remaining at the site.

10 (3) The extent to which performance standards are  
11 included in the order or decree.

12 (4) The extent to which the technology used in the  
13 response action is demonstrated to be effective.

14 (5) Whether the fund or other sources of funding would  
15 be available for any additional remedial actions that might  
16 eventually be necessary at the site.

17 (6) Whether the remedial action will be carried out, in

19 themselves.

20 (e) Satisfactory performance.--Any covenant not to sue under  
21 this section shall be subject to the satisfactory performance by  
22 such party of its obligations under the agreement concerned.

23 (f) Additional condition for future liability.--

24 (1) A covenant not to sue concerning future liability to  
25 the Commonwealth may include an exception to the covenant  
26 that allows the department to sue such person concerning  
27 future liability resulting from the release or threatened  
28 release that is the subject of the covenant where such  
29 liability arises out of conditions which are unknown at the  
30 time the department certifies under subsection (c) that

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1 remedial action has been completed at the site concerned.

2 (2) The department may include any provisions allowing  
3 future enforcement action under section 501 that the  
4 department determines to be necessary and appropriate to  
5 assure compliance with the terms and conditions of the  
6 agreement containing the covenant.

7 Section 707. De minimis settlements.

8 (a) Expedited final settlement.--Whenever practicable and in  
9 the public interest, the department may as promptly as possible  
10 reach a final settlement with a responsible person in an  
11 administrative or civil action if such settlement involves only  
12 a minor portion of the response costs at the site concerned and  
13 if either of the following conditions are met:

14 (1) Both of the following are minimal in comparison to  
15 other hazardous substances contributed at the site by all  
16 known and financially viable responsible persons:

17 (i) The amount of the hazardous substances  
18 contributed by that person to the site.

20 substances contributed by that person to the site.

21 (2) The responsible person:

22 (i) is the owner of the real property on or in which  
23 the site is located;

24 (ii) did not conduct or permit the generation,  
25 transportation, storage, treatment or disposal of any  
26 hazardous substance at the site; and

27 (iii) did not contribute to the release or  
28 threatened release of a hazardous substance at the site  
29 through any act or omission.

30 (3) Paragraph (2) shall not apply if the responsible

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1 person acquired the real property with actual or constructive  
2 knowledge that the property was used for the generation,  
3 transportation, storage, treatment or disposal of any  
4 hazardous substance.

5 (b) Covenant not to sue.--The department may provide a  
6 covenant not to sue pursuant to the provisions of section 706  
7 with respect to future liability at the site concerned to any  
8 person who has entered into a de minimis settlement under this  
9 section.

10 (c) Responsibility.--Any person who reaches an agreement  
11 pursuant to this section shall be responsible only for that  
12 person's proportional share of response costs and damages  
13 assessed under section 702.

14 Section 708. Allocation.

15 (a) Mediation.--Whenever the department believes that more  
16 than one person may be responsible under section 701 for a  
17 release or threatened release, the department shall prepare a  
18 nonbinding preliminary allocation of proportionate  
19 responsibility among all known responsible persons. The

21 allocation to all known responsible persons and shall invite  
22 such persons to participate in a dispute resolution procedure  
23 selected by the department which may include mediation,  
24 arbitration, or similar procedures to determine each person's  
25 proportionate share of the response costs and the appropriate  
26 response action to be taken. Within 120 days of the notice, the  
27 department and participating persons shall reach an agreement,  
28 which may include less than all issues and shall include a  
29 schedule of payment for the proportionate share contained in the  
30 agreement. If no agreement has been reached within 120 days, the

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1 dispute resolution process shall terminate unless extended by  
2 mutual agreement of the department and the participating  
3 persons. The department's nonbinding allocation shall not be  
4 deemed to be a final action subject to review under 2 Pa.C.S.  
5 (relating to administrative law and procedure) or the act of  
6 July 13, 1988 (P.L.530, No.94), known as the Environmental  
7 Hearing Board Act, nor shall it confer a right or duty upon the  
8 department or any person.

9 (b) Moratorium.--During the mediation process as provided  
10 for in this section, the department shall not commence an action  
11 to recover response costs from any participating person, nor  
12 issue an enforcement order requiring a participating person to  
13 undertake response actions, nor commence any response actions at  
14 the site, other than an interim or emergency response. Nothing  
15 in this section shall be construed to limit the department's  
16 authority to conduct investigations or to undertake any actions  
17 authorized by this act against parties not participating in the  
18 mediation process. For the purpose of this subsection,  
19 "investigations" shall include those activities necessary to  
20 gather information and data to characterize the site, define the

22 cleanup prior to the selection of a remediation option.

23 (c) Effect of dispute resolution.--Any agreement reached  
24 under the dispute resolution procedures provided in subsection  
25 (a) shall become a legally binding agreement upon all parties  
26 thereto. If some or all participating parties fail to reach  
27 agreement with the department, neither the department's  
28 nonbinding preliminary allocation nor any proposed agreement,  
29 nor the fact of any person's participating in dispute resolution  
30 shall be construed as an admission of fact or law nor be

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1 admissible in any administrative or judicial proceeding. The  
2 failure to agree shall not affect the rights of any person to  
3 pursue other administrative or judicial actions, including an  
4 action to recover contribution from any other person.

5 (d) Limit on contribution.--A person who has reached a  
6 settlement with the department pursuant to this section shall  
7 not be subject to claims for contribution regarding matters  
8 addressed in the settlement.

9 Section 709. Voluntary acceptance of responsibility.

10 Any person who voluntarily accepts responsibility under  
11 section 701 and agrees to pay his or her proportionate share, as  
12 determined under section 708, of the response costs and damages  
13 listed in section 702, as ultimately determined, plus an  
14 appropriate premium in an amount up to 50% of that person's  
15 proportionate share, but not to exceed 15% of the total costs of  
16 response and damages, shall not be subject to claims by the  
17 department, or by any other responsible person, in excess of  
18 that amount.

19

## CHAPTER 9

20

## FUND

21 Section 901. Fund.

23 established in section 602.3 of the act of March 4, 1971 (P.L.6,  
24 No.2), known as the Tax Reform Code of 1971, shall be a special  
25 fund administered by the department and shall not be subject to  
26 the act of July 13, 1987 (P.L.340, No.64), entitled "An act  
27 providing for the establishment, funding and operation of a  
28 special restricted receipt account within the General Fund to  
29 support the establishment and operation of a Statewide judicial  
30 computer system; providing for annual appropriations from the

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1 restricted funds; and providing for the payment of a portion of  
2 all fines, fees and costs collected by the judiciary into the  
3 restricted receipt account."

4 (b) Appropriation.--Money placed in the fund is appropriated  
5 to the department for the purposes set forth in this section.  
6 The department shall annually submit to the Governor for  
7 approval estimates of amounts to be expended under this act.

8 (c) Funds.--Money from the following sources shall be  
9 deposited in the fund:

10 (1) Proceeds from hazardous waste transportation and  
11 management fees imposed by section 903, including interest  
12 and penalties.

13 (2) Money recovered by the Commonwealth under sections  
14 507 and 1101.

15 (3) Interest attributable to investment of money  
16 deposited in the fund.

17 (4) Money appropriated by the General Assembly for  
18 implementation of this act.

19 (5) Money recovered by the Commonwealth pursuant to a  
20 cost recovery action under the Federal Superfund Act.

21 (6) Money received from the Federal Government under the  
22 Federal Superfund Act.

24 the Tax Reform Code of 1971.

25 (8) All fees collected under section 903.

26 (9) Funds available from appropriations for the same and  
27 similar purposes.

28 Section 902. Expenditures from fund.

29 (a) Purposes.--The department shall expend money in the fund  
30 for purposes including, but not limited to:

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1 (1) Preparation by the department or its agents for  
2 taking response actions, which include emergency responses,  
3 investigations, testing activities, contracting, excavation,  
4 administrative costs and enforcement efforts relating to the  
5 release or threatened release of hazardous substances or  
6 contaminants.

7 (2) Response actions taken or authorized by the  
8 department, including related enforcement and compliance  
9 efforts and the payment of the State share of the cost of  
10 remedial responses which may be carried out under an  
11 agreement or contract with the Federal Government pursuant to  
12 the Federal Superfund Act.

13 (3) Participation in response activities to the extent  
14 the department, in its discretion, finds necessary or  
15 appropriate, to carry out the purposes of this act. The  
16 department may also use the fund to promote voluntary  
17 cleanups by participating in mixed funding settlements with  
18 potentially responsible persons.

19 (4) Emergency responses, including response to spills  
20 and other uncontrolled releases and their cleanup.

21 (5) Reimbursement to a private party for expenditures  
22 made from the effective date of this act to provide  
23 alternative water supplies deemed necessary by the department

25 from the release of a hazardous substance or contaminant.

26 (6) Replacement of public or private water supplies  
27 deemed necessary by the department to protect the public  
28 health from contamination resulting from the release of a  
29 hazardous substance or contaminant.

30 (7) Rehabilitation, restoration or acquisition of

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1 natural resources to remedy injuries or losses to natural  
2 resources resulting from the release of a hazardous substance  
3 or contaminant.

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

9 (9) Intervention and environmental mediation to  
10 facilitate cleanup of hazardous sites.

11 (10) State matching funds required under the Federal  
12 Superfund Act for the response at a site on the National  
13 Priority List established under the Federal Superfund Act.

14 (11) Studies of potential or actual human health effects  
15 from the release or potential release of hazardous substances  
16 at individual sites, including, but not limited to, studies  
17 of potential pathways of human exposure, the size and  
18 potential susceptibility of the community within the likely  
19 pathways of exposure, the comparison of expected health  
20 effects associated with identified hazardous substances and  
21 available recommended exposure or tolerance limits for the  
22 hazardous substances, the comparison of existing morbidity  
23 and mortality data on diseases that may be associated with  
24 the observed levels of exposure and epidemiological and



26 (12) Grants provided to municipalities under section  
27 510.

28 (13) Reimbursement of expenses under section 505(f).

29 (b) Grants for recycling.--The department shall expend  
30 \$2,000,000, or as much thereof as may be necessary, annually

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1 from the fund for the purpose of providing grants to persons who  
2 purchase or lease recycling equipment to be used exclusively  
3 within this Commonwealth. The amount of each grant shall be 25%  
4 of the installed cost of the recycling equipment. Application  
5 for a grant must be made to the department by April 15 of each  
6 year. The application shall include a description of each item  
7 of recycling equipment purchased or leased, the date of purchase  
8 or lease, the installed cost of the recycling equipment, a  
9 statement of where the recycling equipment is to be used and  
10 other information as the department may require. The department  
11 shall review all grant applications received to determine  
12 whether the expenditures meet the requirements of this  
13 subsection and shall advise the grant applicant of the grant  
14 amount for which said person is eligible. The grant allowed by  
15 this subsection shall apply only to recycling equipment that is  
16 installed and in operation prior to April 15, 1993. This  
17 subsection shall expire December 31, 1993.

18 (c) Annual report.--Beginning October 1, 1989, and annually  
19 thereafter, the secretary shall transmit to the General Assembly  
20 a report concerning activities and expenditures made pursuant to  
21 this chapter for the preceding State fiscal year. Included in  
22 this report shall be information concerning all revenues and  
23 receipts deposited into the Hazardous Site Cleanup Fund, all  
24 expenditures, including, but not limited to, expenditures for  
25 personnel, operating expenses, the purchase of fixed assets,

27 appropriate, and information detailing the department's efforts  
28 to obtain contributions for response actions from potentially  
29 responsible parties and a listing of sites where mixed funding  
30 as described in subsection (a)(3) was utilized for cleanup. The

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1 secretary shall also supply information on both authorized and  
2 filled complement and information concerning program activities,  
3 including, but not limited to:

4 (1) The number of response actions initiated and  
5 completed, and the costs incurred, in the aggregate and for  
6 each action.

7 (2) The number of public or private water supply  
8 replacements, and the costs incurred.

9 (3) Expenditures for the rehabilitation, restoration or  
10 acquisition of natural resources.

11 (4) Expenditures for intervention and environmental  
12 mediation.

13 (5) The number of Federal Superfund sites in which the  
14 Commonwealth participates in response activities, and the  
15 State matching costs incurred.

16 (6) The number of health effect studies undertaken, and  
17 the costs incurred.

18 (7) The number of grants provided to municipalities  
19 under section 510, and the amounts granted.

20 (8) The number of reimbursements of expenses under  
21 section 505(f), and the amounts reimbursed.

22 (d) Health study report.--Upon completion of health effect  
23 studies performed pursuant to subsection (a)(11), copies of the  
24 findings and any recommendations of such studies shall be  
25 transmitted to the General Assembly and the governing bodies of  
26 the affected communities. Except for personal health records of

28 department shall provide copies to any person upon request.

29 (e) Nonliability of other funds.--Whenever the department  
30 undertakes to use the fund for a response action, whether on its

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1 own initiative or pursuant to a mixed funding settlement, no  
2 such undertaking shall constitute a liability of the General  
3 Fund or of any other special funds or accounts whether  
4 administered by the department or otherwise.

5 Section 903. Hazardous waste transportation and management  
6 fees.

7 (a) Assessment.--Fees shall be assessed for the  
8 transportation and management of hazardous waste in accordance  
9 with this section.

10 (b) Transportation fee.--A transporter of hazardous waste  
11 shall be assessed a transportation fee for hazardous waste  
12 transported within this Commonwealth, whether originating in-  
13 State or out-of-State. For purposes of computing the fee, each  
14 shipment, requiring the use of a hazardous waste manifest, to or  
15 from a Pennsylvania hazardous waste facility, or between two  
16 Pennsylvania hazardous waste facilities, shall be considered a  
17 discrete transportation activity and shall be subject to the  
18 fee.

19 (c) Management fee.--

20 (1) The operator of a hazardous waste management  
21 facility in Pennsylvania shall be assessed a management fee  
22 for hazardous waste stored, treated or disposed of at a  
23 facility. No management fee shall be charged for hazardous  
24 wastes which are reused or recycled in accordance with  
25 department regulations. For purposes of this paragraph,  
26 incineration shall be considered a form of treatment rather  
27 than disposal.

29 site at which it was generated or at a captive disposal  
30 facility in Pennsylvania shall be assessed a fee for all

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1 hazardous waste disposed.

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

5 (4) No management fee shall be charged for waste stored  
6 prior to recycling at a legitimate commercial recycling  
7 facility.

8 (d) Rates.--The following rates shall apply unless the  
9 secretary adjusts the fee schedule in accordance with subsection  
10 (g):

11 (1) Transportation of hazardous waste (except as  
12 provided in paragraph (2)) - \$3 per ton.

13 (2) Transportation of hazardous waste to or from a  
14 recycler - \$1.50 per ton.

15 (3) Storage of hazardous waste at a commercial hazardous  
16 waste management facility - \$2 per ton.

17 (4) Treatment or incineration of hazardous waste at a  
18 commercial hazardous waste management facility - \$5 per ton.

19 (5) Disposal of hazardous waste at a commercial disposal  
20 facility - \$12 per ton.

21 (6) Disposal of hazardous waste on the site at which it  
22 was generated or at a captive facility - \$8 per ton.

23 (e) Conversion.--In the event that any hazardous waste is  
24 measured in units other than tonnage, the fee shall be levied on  
25 a conversion to tonnage determined by the department.

26 (f) Cumulative nature.--

27 (1) The transportation and management fees are  
28 cumulative.

30 facility, the operator shall be assessed only one management

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1 fee for each quantity of waste, which shall be the highest  
2 rate of the management activities involved.

3 (3) However, when treatment or incineration prior to  
4 disposal results in a reduction in the tonnage of waste  
5 requiring disposal, the operator shall be assessed the  
6 disposal management fee for the waste requiring disposal  
7 after treatment or incineration and the treatment management  
8 fee for the rest of the waste which underwent treatment.

9 (4) for the purposes of subsection (d)(2), the term  
10 "recycler" shall mean any verified recycling process which  
11 uses, reuses or reclaims hazardous waste or which generates  
12 hazardous waste as a by-product of the recycling process.

13 (g) Adjustments.--The secretary may, by regulation, adjust  
14 the rates as appropriate in accordance with the following  
15 formula:

16 (1) The fees shall be calculated and rates adjusted to  
17 collect projected annual revenues of \$5,000,000 plus the  
18 reasonably projected administrative cost of collecting the  
19 fee.

20 (2) Management fee rates shall encourage preferred  
21 hazardous waste management practices by establishing four fee  
22 categories with graduated fee schedule. The fee categories  
23 from lowest rate per ton to highest rate per ton shall be:

24 (i) Hazardous waste stored at a hazardous waste  
25 management facility.

26 (ii) Hazardous waste treated or incinerated at a  
27 hazardous waste management facility.

28 (iii) Hazardous waste disposed of at a hazardous  
29 waste disposal facility at the site where the waste was

1 (iv) Hazardous waste disposed of at a commercial  
2 hazardous waste disposal facility.

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

6 (4) The department may exclude small quantity generators  
7 from the fees.

8 (h) Annual disposal report.--

9 (1) By March 1, 1989, and by March 1 of each year  
10 thereafter, a person who submitted for off-site disposal or  
11 who disposed of on site more than 500 pounds of hazardous  
12 waste in this Commonwealth during the preceding calendar year  
13 shall report to the department the total amount of hazardous  
14 waste which that person has submitted for disposal or  
15 disposed of in this Commonwealth during the preceding  
16 calendar year. This subsection does not apply to a person who  
17 is already providing this information to the department.

18 (2) The total amount of hazardous waste reported under  
19 this subsection shall be the total weight, measured in tons,  
20 of all components of the waste in the form in which the waste  
21 existed at the time of submission for disposal or at the time  
22 of disposal.

23 (3) A person who fails to file the report required by  
24 this subsection shall be liable for a civil penalty not to  
25 exceed \$500 for each day the violation continues. A person  
26 who knowingly fails to file the report commits a misdemeanor  
27 of the third degree and shall, upon conviction, be sentenced  
28 to pay a fine of not more than \$25,000 or to imprisonment for  
29 not more than one year, or both.

30 (i) Waste from cleanup.--The fees assessed pursuant to this

1 section for the transportation, management or authorized  
2 disposal of hazardous waste shall not apply to hazardous waste  
3 that is derived from the cleanup of a site pursuant to this act,  
4 the Federal Superfund Act, the Solid Waste Disposal Act (Public  
5 Law 89-272, 42 U.S.C. § 6901 et seq.) or the Solid Waste  
6 Management Act.

7 Section 904. Loan fund.

8 (a) Establishment.--There is established a separate account  
9 in the State Treasury to be known as the Hazardous Sites Loan  
10 Fund, which shall be a special fund administered by the  
11 Department of Commerce.

12 (b) Purpose.--In the case of a release or threatened release  
13 of hazardous substances from a site for which the department has  
14 identified no more than two persons as potentially liable under  
15 section 702, such persons may be eligible, upon written  
16 application to the Department of Commerce, to receive long-term,  
17 low-interest loans in an amount sufficient to fund all or a  
18 portion of the response costs at the site. The Department of  
19 Commerce shall promulgate regulations establishing eligibility  
20 criteria for the loans. As part of this effort, the Department  
21 of Commerce shall include a determination of the availability of  
22 other sources of funds at reasonable rates to finance all or a  
23 portion of the response action and the need for Department of  
24 Commerce assistance to finance the response action.

25 (c) Funds.--In addition to any funds as may be appropriated  
26 by the General Assembly, at least 2% of the funds raised  
27 annually by the assessments imposed by section 903 shall be  
28 deposited into the loan fund.

29 (d) Annual report.--Beginning October 1, 1989, and annually  
30 thereafter, the Department of Commerce shall transmit to the

2 made pursuant to this section for the preceding State fiscal  
3 year. Included in this report shall be information concerning  
4 all revenues and receipts deposited into the loan fund and all  
5 loans extended to eligible applicants.

6 (e) Sunset.--The loan fund shall cease to exist on June 30,  
7 1992, unless it is reestablished by action of the General  
8 Assembly. Any funds remaining in the loan fund on June 30, 1992,  
9 shall lapse to the Hazardous Sites Cleanup Fund. Money received  
10 by the Department of Commerce as repayment of outstanding loans  
11 after June 30, 1992, shall lapse to the Hazardous Sites Cleanup  
12 Fund.

## 13 CHAPTER 11

### 14 ENFORCEMENT AND REMEDIES

15 Section 1101. Public nuisances.

16 A release of a hazardous substance or a violation of any  
17 provision, regulation, order or response approved by the  
18 department under this act shall constitute a public nuisance.  
19 Any person allowing such a release or committing such a  
20 violation shall be liable for the response costs caused by the  
21 release or the violation. The board and any court of competent  
22 jurisdiction is hereby given jurisdiction over actions to  
23 recover the response costs.

24 Section 1102. Enforcement orders.

25 (a) General rule.--The department shall issue orders to  
26 persons as it deems necessary to aid in the enforcement of the  
27 provisions of this act. Orders shall include, but shall not be  
28 limited to, orders requiring response actions, studies and  
29 access and orders modifying, suspending or ceasing a response  
30 action by a responsible person even though the response may have

1 been initially approved by the department. An order issued under



3 specifies otherwise. The power of the department to issue an  
4 order under this section is in addition to any other remedy  
5 which may be afforded to the department under this act or any  
6 other statute.

7 (b) Types.--The department, when it deems necessary for the  
8 response to a release or for the protection of public health,  
9 safety or welfare or the environment, shall order, orally or in  
10 writing, a person to immediately initiate, continue, suspend or  
11 modify a response action; conduct investigations; or provide  
12 access to property or information. The order shall be effective  
13 upon issuance and may only be superseded by further department  
14 action or, after an appeal has been perfected, by the board  
15 after notice and hearing. The order may require whatever  
16 alternative response actions are necessary for the abatement of  
17 the release. Within two business days after the issuance of the  
18 oral order, the department shall issue a written order reciting  
19 and modifying, where appropriate, the terms and conditions  
20 contained in the oral order.

21 (c) Compliance.--It shall be the duty of any person to  
22 proceed diligently to comply with an order issued under this  
23 section. When the person fails to proceed diligently or fails to  
24 comply with the order within the time specified, the person  
25 shall be guilty of contempt and shall be punished by the court  
26 in an appropriate manner. For this purpose, application may be  
27 made by the department to the Commonwealth Court.

28 (d) Appeal.--An order issued under this section may be  
29 appealed to the board under the act of July 13, 1988 (P.L.530,  
30 No.94), known as the Environmental Hearing Board Act. An appeal

1 to the board shall not act as a supersedeas.

2 Section 1103. Restraining violations.

4 this act, the department may institute a suit in equity in the  
5 name of the Commonwealth, where a violation of law or nuisance  
6 exists, for an injunction to restrain a violation of this act or  
7 the regulations, standards or orders promulgated or issued  
8 hereunder and to restrain the maintenance or threat of a public  
9 nuisance. In a proceeding under this subsection, the court  
10 shall, upon motion of the Commonwealth, issue a prohibitory or  
11 mandatory preliminary injunction when it finds that the  
12 defendant is engaging in unlawful conduct as defined by this act  
13 or is engaged in conduct which is causing immediate and  
14 irreparable harm to the public. The Commonwealth shall not be  
15 required to furnish bond or other security in connection with  
16 the proceedings. In addition to an injunction, the court may  
17 levy civil penalties under section 1104.

18 (b) Local government.--In addition to any other remedies  
19 provided for in this act, upon relation of a district attorney  
20 of an affected county or upon relation of the solicitor of an  
21 affected municipality, an action in equity may be brought in a  
22 court of competent jurisdiction for an injunction to restrain  
23 any and all violations of this act or regulations promulgated  
24 under it or to restrain a public nuisance or detriment to public  
25 health, safety or welfare or the environment.

26 (c) Concurrent remedies.--The penalties and remedies  
27 prescribed by this act shall be deemed concurrent. The existence  
28 of or exercise of one remedy shall not prevent the department  
29 from exercising any other remedy under this act, at law or in  
30 equity.

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1 (d) Jurisdiction.--Actions instituted under this section may  
2 be filed in the appropriate court of common pleas or in the  
3 Commonwealth Court. Actions may also be filed in a Federal Court

5 Section 1104. Civil penalties.

6 (a) General rule.--In addition to proceeding with any other  
7 remedy available at law or in equity for a violation of a  
8 provision of this act, a regulation or order of the department  
9 or a term or condition of a response approved by the department,  
10 the department may assess a civil penalty upon a person for the  
11 violation. A penalty may be assessed whether or not the  
12 violation was willful or negligent. In determining the amount of  
13 the penalty, the department shall consider the willfulness of  
14 the violation; damage to air, water, land or other natural  
15 resources of this Commonwealth or their uses; cost of  
16 restoration and abatement; savings resulting to the person in  
17 consequence of such violation; and other relevant factors.

18 (b) Procedure.--When the department proposes to assess a  
19 civil penalty, it shall inform the person of the proposed amount  
20 of the penalty. The person charged with the penalty shall then  
21 have 30 days to pay the proposed penalty in full. When the  
22 person wishes to contest either the amount of the penalty or the  
23 fact of the violation, the person must, within the 30-day  
24 period, file an appeal of the action with the board. Failure to  
25 appeal within 30 days shall result in a waiver of all legal  
26 rights to contest the violation or the amount of the penalty.

27 (c) Amount.--The maximum civil penalty which may be assessed  
28 under this section is \$25,000 per offense. Each violation for  
29 each separate day and each violation of a provision of this act,  
30 a regulation under this act, an order of the department or any

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1 term or condition of an approved response shall constitute a  
2 separate and distinct offense under this section.

3 (d) Minimum.--A person who fails to comply with an order  
4 issued under section 503 shall be subject to a minimum penalty

6 (e) Additional penalties.--The Environmental Quality Board  
7 shall have the authority to establish, by regulation, specific  
8 major violations and additional mandatory minimum civil  
9 penalties.

10 Section 1105. Criminal penalties.

11 (a) Falsity.--

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

15 (i) relates to the actual or threatened release of a  
16 hazardous substance or to a response to the actual or  
17 threatened release of a hazardous substance; or

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

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

25 (b) Altering response action.--A person who, without written  
26 authorization from the department, alters or modifies a response  
27 action approved or undertaken by the department commits a  
28 summary offense and shall, upon conviction, be sentenced to pay  
29 a fine of not less than \$100 and not more than \$1,000 for each  
30 day on which the offense occurs or, in default of payment of the

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1 fine, to imprisonment for not more than 90 days.

2 (c) Obstruction.--A person who refuses, hinders, obstructs,  
3 delays or threatens any agent or employee of the department in  
4 the course of performance of a duty under this act, including,  
5 but not limited to, entry and inspection under any

7 conviction, be sentenced to pay a fine of not less than \$100 and  
8 not more than \$1,000 for each day on which the offense occurs  
9 or, in default of payment of the fine, to imprisonment for not  
10 more than 90 days.

11 (d) Intentional or negligent.--A person who intentionally or  
12 negligently commits an offense under subsection (b) or (c)  
13 commits a misdemeanor of the third degree and shall, upon  
14 conviction, be sentenced to pay a fine of not less than \$1,000  
15 and not more than \$25,000 for each day on which the offense  
16 occurred or to imprisonment for not more than one year, or both.  
17 Section 1106. Search warrants.

18 An agent or employee of the department may apply to any  
19 Commonwealth official authorized to issue a search warrant for  
20 the purposes of searching any property, building, premises, or  
21 place, of seizing any book, record or other physical evidence,  
22 of conducting tests, or of taking samples of any solid waste.  
23 Such warrant shall be issued upon probable cause. It shall be  
24 sufficient probable cause to show any of the following:

25 (1) The search, seizure, test or sampling is pursuant to  
26 a general administrative plan to determine compliance with  
27 this act.

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

30 (3) The agent or employee has been refused access to the

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1 property, building, premises or place, has been refused  
2 possession of any book, record or physical evidence, or has  
3 been prevented from conducting tests or taking samples.

4 (4) The employee has reason to believe that a release or  
5 a threat of a release of a hazardous substance or contaminant  
6 exists on the property or on a nearby property and that

8 extent of the release.

9 (5) The employee has reason to believe that there are  
10 containers or impoundments on the property which are typical  
11 of those used for containing or impounding hazardous  
12 substances and that testing, sampling or the review of  
13 records is necessary to determine whether hazardous  
14 substances are present.

15 Section 1107. Existing and cumulative rights and remedies.

16 Nothing in this act shall be construed as estopping the  
17 Commonwealth, a district attorney or solicitor or a municipality  
18 from proceeding in courts of law or equity to abate releases  
19 forbidden under this act, or to abate nuisances under existing  
20 law. It is declared to be the purpose of this act to provide  
21 additional and cumulative remedies to control the release of  
22 hazardous substances within this Commonwealth. Nothing contained  
23 in this act shall abridge or alter rights of action or remedies  
24 at law or in equity. No provision of this act, the granting of  
25 approval under this act, nor an act done by virtue of this act  
26 shall be construed as estopping the Commonwealth, persons or  
27 municipalities in the exercise of their rights at law or in  
28 equity; from proceeding in courts of law or equity to suppress  
29 nuisances or to abate a pollution; or from enforcing common law  
30 or statutory rights. No courts of this Commonwealth having

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1 jurisdiction to abate public or private nuisances shall be  
2 deprived of jurisdiction in an action to abate any private or  
3 public nuisance because the nuisance constitutes pollution of  
4 air or water or soil.

5 Section 1108. Unlawful conduct.

6 It shall be unlawful for a person to do any of the following:

7 (1) Cause or allow a release of a hazardous substance.

9 approved by the department unless authorized in writing by  
10 the department.

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

15 (4) Cause or assist in the violation of any provision of  
16 this act, a regulation of the department or an order of the  
17 department.

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

20 (6) Hinder, obstruct, prevent or interfere with host  
21 municipalities or their personnel in the performance of any  
22 duty related to the collection of the hazardous waste  
23 transportation and management fees.

24 (7) Cause or allow release of a contaminant in a manner  
25 that creates a public nuisance.

26 Section 1109. Presumption of law for civil and administrative  
27 proceedings.

28 It shall be presumed as a rebuttable presumption of law that  
29 a person who causes or allows the release of a hazardous  
30 substance shall be liable, without proof of fault, negligence,

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1 or causation, for all damages, contamination or pollution within  
2 2,500 feet of the perimeter of the area where the release has  
3 occurred. This presumption may be overcome by clear and  
4 convincing evidence that the person so charged did not  
5 contribute to the damage, contamination or pollution.

6 Section 1110. Collection of fines and penalties.

7 Fines and penalties under this act shall be collectible in  
8 the manner provided by section 509. Upon collection they shall

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

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

15 Section 1112. Whistleblower provisions.

16 (a) Adverse action prohibited.--No employer may discharge,  
17 threaten or otherwise discriminate or retaliate against an  
18 employee regarding the employee's compensation or terms,  
19 conditions, location or privileges of employment because the  
20 employee makes or is about to make a good faith report, verbally  
21 or in writing, to the employer or appropriate authority of an  
22 instance of wrongdoing under this act.

23 (b) Remedies.--The remedies, penalties and enforcement  
24 procedures for violations of this section shall be as provided  
25 in the act of December 12, 1986 (P.L.1559, No.169), known as the  
26 Whistleblower Law.

27 (c) Definitions.--As used in this section, the following  
28 words and phrases shall have the meanings given to them in this  
29 subsection:

30 "Appropriate authority." A Federal, State or local

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1 government body, agency or organization having jurisdiction over  
2 criminal law enforcement, regulatory violations, professional  
3 conduct or ethics, or waste; or a member, officer, agent,  
4 representative or supervisory employee of the body, agency or  
5 organization. The term includes, but is not limited to, the  
6 office of Attorney General, the Department of the Auditor  
7 General, the Treasury Department, the General Assembly and  
8 committees of the General Assembly having the power and duty to  
9 investigate criminal law enforcement, regulatory violations,



11 "Employee." A person who performs a service for wages or  
12 other remuneration under a contract of hire, written or oral,  
13 express or implied, for an employer, whether or not the employer  
14 is a public body.

15 "Employer." A person supervising one or more employees,  
16 including the employee in question; a superior of that  
17 supervisor; or an agent of a public body.

18 "Good faith report." A report of conduct defined in this act  
19 as wrongdoing or waste which is made without malice or  
20 consideration of personal benefit and which the person making  
21 the report has reasonable cause to believe is true.

22 "Public body." All of the following:

23 (1) A State officer, agency, department, division,  
24 bureau, board, commission, council, authority or other body  
25 in the executive branch of State government.

26 (2) A county, city, township, regional governing body,  
27 council, school district, special district or municipal  
28 corporation, or a board, department, commission, council or  
29 agency.

30 (3) Any other body which is created by Commonwealth or

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1 political subdivision authority or which is funded in any  
2 amount by or through Commonwealth or political subdivision  
3 authority or a member or employee of that body.

4 "Waste." An employer's conduct or omissions which result in  
5 substantial abuse, misuse, destruction or loss of funds or  
6 resources belonging to or derived from Commonwealth or political  
7 subdivision sources.

8 "Whistleblower." A person who witnesses or has evidence of  
9 wrongdoing or waste while employed and who makes a good faith  
10 report of the wrongdoing or waste, verbally or in writing, to

12 an appropriate authority.

13 "Wrongdoing." A violation which is not of a merely technical  
14 or minimal nature of a Federal or State statute or regulation,  
15 of a political subdivision ordinance or regulation or of a code  
16 of conduct or ethics designed to protect the interest of the  
17 public or the employer.

18 Section 1113. Notice of proposed settlement.

19 When a settlement is proposed in any proceeding brought under  
20 this act, notice of the proposed settlement shall be sent to all  
21 known responsible persons and published in the Pennsylvania  
22 Bulletin and in a newspaper of general circulation in the area  
23 of the release. The notice shall include the terms of the  
24 settlement and the manner of submitting written comments during  
25 a 60-day public comment period. The settlement shall become  
26 final upon the filing of the department's response to the  
27 significant written comments. The notice, the written comments  
28 and the department's response shall constitute the written  
29 record upon which the settlement will be reviewed. A person  
30 adversely affected by the settlement may file an appeal to the

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1 board. The settlement shall be upheld unless it is found to be  
2 arbitrary and capricious on the basis of the administrative  
3 record.

4 Section 1114. Limitation on action.

5 Notwithstanding the provisions of any other statute to the  
6 contrary, actions for civil or criminal penalties under this act  
7 or civil actions for releases of hazardous substances may be  
8 commenced at any time within a period of 20 years from the date  
9 the unlawful conduct or release is discovered. Actions to  
10 recover response costs may be commenced within six years of the  
11 date those costs are incurred. The initial action to recover

13 subsequent actions.

14 Section 1115. Citizen suits.

15 (a) General rule.--A person who has experienced or is  
16 threatened with personal injury or property damage as a result  
17 of a release of a hazardous substance may file a civil action  
18 against any person to prevent or abate a violation of this act  
19 or of any order, regulation, standard or approval issued under  
20 this act.

21 (b) Jurisdiction.--The courts of common pleas shall have  
22 jurisdiction over any actions authorized under this section. No  
23 action may be commenced under this section prior to 60 days  
24 after the plaintiff has given notice to the department, to the  
25 host municipality and to the alleged violator of this act, or of  
26 any regulations or orders of the department under this act; nor  
27 may such action be commenced when the department has commenced  
28 and is diligently prosecuting a civil or criminal action in a  
29 court of the United States or a state to require compliance with  
30 the statute, permit, standard, regulation, condition,

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1 requirement, prohibition or order. In any such civil action  
2 commenced by the department, any person may intervene as a  
3 plaintiff as a matter of right. The court may grant any  
4 equitable relief; may impose a civil penalty under section 1104;  
5 and may award litigation costs, including reasonable attorney  
6 and witness fees, to the prevailing or substantially prevailing  
7 party whenever the court determines such an award is  
8 appropriate.

9 (c) Departmental intervention.--The department may intervene  
10 as a matter of right in any action authorized under this  
11 section.

12

14 Section 1301. Relation to other laws.

15 (a) Application.--Notwithstanding the provisions of  
16 subsection 505(c) and section 507, an identified and responsible  
17 owner or operator of a site with a release or threatened release  
18 of a hazardous substance or a contaminant, shall not be subject  
19 to enforcement orders or the cost recovery provisions of this  
20 act, until the department has instituted administrative or  
21 judicial enforcement action against the owner or operator under  
22 other applicable environmental laws and the owner or operator  
23 has failed to comply with or is financially unable to comply  
24 with such administrative or judicial enforcement action. In the  
25 event of noncompliance with such administrative or judicial  
26 enforcement action, the provisions of this act may be applied by  
27 the department unless the owner or operator has obtained a  
28 supersedeas from the board or the court conducting any such  
29 judicial enforcement action. For the purposes of this  
30 subsection, such a supersedeas shall be based on whether there

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1 is a release or threatened release at the site, which  
2 constitutes a danger to the public health and safety or the  
3 environment. An appeal of the department's enforcement action  
4 shall not serve as a bar that prevents the department from  
5 applying the provisions of this act to the owner or operator in  
6 the absence of the issuance of a supersedeas.

7 (b) Department action.--The department may not initiate  
8 enforcement orders nor apply the cost recovery provisions of  
9 this act against a responsible person for the release or  
10 threatened release of a hazardous substance or a contaminant at  
11 a site that is the subject of subsection (a), where the owner or  
12 operator of the site is financially able to comply with an  
13 administrative or judicial enforcement action instituted under

15 appropriate action to abate the release or threatened release of  
16 the hazardous substance or contaminant, as required by the  
17 administrative or judicial enforcement action, or the owner or  
18 operator has obtained a supersedeas from the board or the court  
19 conducting any such judicial enforcement action. For the  
20 purposes of this subsection, such a supersedeas shall be based  
21 on whether there is a release or threatened release at the site,  
22 which constitutes a danger to the public health and safety or  
23 the environment. An appeal of the department's enforcement  
24 action shall not serve as a bar that prevents the department  
25 from applying the provisions of this act to the responsible  
26 person in the absence of the issuance of a supersedeas to the  
27 owner or operator.

28 (c) Authority.--Nothing in this section shall affect the  
29 authority of the department or the Governor to implement an  
30 interim response or an emergency response.

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1 Section 1302. Studies.

2 The Department of Commerce shall within one year of the  
3 effective date of the act complete a study to investigate the  
4 use of the Pennsylvania Industrial Development Authority, the  
5 Pennsylvania Economic Revitalization Fund and other economic  
6 development grants and loans to encourage the reuse, recycling,  
7 recovery, minimization and treatment which results in  
8 detoxification of hazardous waste.

9 Section 1303. Balance in fund/deposit of proceeds.

10 (a) Determination.--By October 1, 1992, and every October 1  
11 thereafter, the Secretary of the Budget shall determine the  
12 prior year's expenditures and encumbrances, including site  
13 specific encumbrances where fully executed contracts are in  
14 place, for the fiscal year. By October 1, 1992, and every

16 determine the available balance in the fund at the close of the  
17 previous fiscal year.

18 (b) Reduction in tax.--When the Secretary of the Budget  
19 finds that the available balance in the fund exceeds the prior  
20 year's expenditures and encumbrances, including site specific  
21 encumbrances where fully executed contracts are in place by two  
22 times the total of those two, the tax imposed under section 602  
23 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax  
24 Reform Code of 1971, shall be reduced by one-half mill: Provided  
25 that, no additional reduction may occur prior to an intervening  
26 increase under subsection (c).

27 (c) Increase in tax.--When the Secretary of the Budget in  
28 any year following a year where the tax has been reduced by one-  
29 half mill finds that the available balance in the fund is less  
30 than one times the prior year's expenditures and encumbrances,

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1 including site specific encumbrances where fully executed  
2 contracts are in place, the tax imposed under section 602 of the  
3 Tax Reform Code of 1971, shall be increased by one-half mill:  
4 Provided that, no additional increase may occur prior to an  
5 intervening reduction under subsection (b).

6 Section 1304. Repeals.

7 As much of subsection (a) as reads: "...through calendar  
8 year 1991 and fiscal years beginning in 1991, and at the rate of  
9 nine mills upon each dollar of the capital stock value as  
10 defined in section 601(a) for the calendar year 1992 and fiscal  
11 years beginning in 1992...." (2 occasions) and as much of  
12 subsections (b)(1) and (e) as reads: "...through calendar year  
13 1991 and fiscal years beginning in 1991, and at the rate of nine  
14 mills for calendar year 1992 and fiscal years beginning in  
15 1992...." of section 602 of the act of March 4, 1971 (P.L.6,

17 Section 1305. Effective date.

18 This act shall take effect in 60 days.

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