
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1728

Session of
1999

INTRODUCED BY BROWNE, SEMMEL, ADOLPH, ARGALL, BARD, BELFANTI,
CORRIGAN, FREEMAN, GRUCELA, HENNESSEY, MANN, ROONEY,
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YUDICHAK, STEELMAN, RAYMOND AND SAMUELSON, JUNE 21, 1999

SENATOR TILGHMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, NOVEMBER 14, 2000

AN ACT

1 Amending the act of December 7, 1990 (P.L.639, No.165), entitled
2 "An act establishing a Statewide hazardous material safety
3 program; creating the Hazardous Material Response Fund;
4 providing for the creation of Hazardous Material Emergency
5 Response Accounts in each county; further providing for the
6 powers and duties of the Pennsylvania Emergency Management
7 Agency, of the Pennsylvania Emergency Management Council and
8 of the counties and local governments; imposing obligations
9 on certain handlers of hazardous materials; and imposing
10 penalties," further providing for additional powers and
11 duties for the Pennsylvania Emergency Management Agency, for
12 definitions, for establishment and functions of local
13 emergency planning committees, for hazardous material safety
14 program, for emergency reporting and notification
15 requirements, for establishment of funds, for emergency
16 management grants, for facility and vehicle inspection and
17 testing, for immunity from civil liability and for
18 enforcement; and making editorial changes.

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

21 Section 1. Sections 102, 103, 201, 203, 204, 205, 206, 207,
22 208, 209, 210, 211, 212, 213, 301 and 303 of the act of December
23 7, 1990 (P.L.639, No.165), known as the Hazardous Material

1 Emergency Planning and Response Act, are amended to read:

2 Section 102. Legislative findings and purpose.

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

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

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

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

28 (3) Establish and maintain a comprehensive hazardous
29 material safety program for the Commonwealth and its
30 counties.

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

6 (5) Establish an emergency notification system whereby
7 the release of hazardous materials occurring at a facility or
8 resulting from a transportation accident will be promptly
9 reported to the [proper Commonwealth] Pennsylvania Emergency
10 Management Agency and county emergency [response officials]
11 management agency.

12 (6) Assign responsibilities to various Commonwealth
13 agencies and local agencies to ensure the development and
14 furtherance of a comprehensive hazardous material safety
15 program.

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

21 (8) Require persons responsible for the release of
22 hazardous materials to pay the costs incurred by certified
23 hazardous material response teams [or] and supporting paid
24 and volunteer emergency service organizations for emergency
25 response activities [necessitated] caused by the hazardous
26 material release.

27 Section 103. Definitions.

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

1 "Certified hazardous material response team." A team of
2 individuals who are certified and organized by a Commonwealth
3 agency, a local agency, a regional hazardous material
4 organization, a transporter, a manufacturer, supplier or user of
5 hazardous materials, or a volunteer service organization, or a
6 private contractor, for the primary purpose of providing
7 emergency response services to mitigate actual or potential
8 immediate threats to public health and the environment in
9 response to the release or threat of a release of a hazardous
10 material, which is certified, trained and equipped in accordance
11 with this act [or regulations promulgated under this act].

12 Hazardous material response teams may also be certified to
13 perform stabilization actions needed to remove threats to public
14 health and the environment from hazardous material releases.

15 "Commonwealth agency." An executive agency or independent
16 agency.

17 "Council." The Pennsylvania Emergency Management Council.

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

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

27 "County emergency management coordinator." The person
28 designated to perform emergency management functions by the
29 county under 35 Pa.C.S. Part V (relating to emergency management
30 services).

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

6 "Emergency Service Organization." A team of individuals
7 organized by a Commonwealth agency, a local agency or any other
8 entity for the primary purpose of providing emergency services
9 as defined in 35 Pa.C.S. § 7102 (relating to definitions).

10 "Executive agency." [The Governor and the departments,
11 boards, commissions, authorities and other nonlegislative
12 officers and agencies of the Commonwealth, except any court or
13 other officer or agency of the unified judicial system or the
14 General Assembly and its officers and agencies or any
15 independent agency] A department, board, commission, authority,
16 officer or agency of the Executive Department, subject to the
17 policy, supervision and control of the Governor.

18 "Extremely hazardous substance." A substance appearing on
19 the list of extremely hazardous substances published by the
20 administrator of the Federal Environmental Protection Agency
21 under the authority of section 302 of the Federal Emergency
22 Planning and Community Right-To-Know Act of 1986 (Title III,
23 Public Law 99-499, 42 U.S.C. § 11002), as set forth at 40 CFR
24 Part 355 ("Appendix A - The List of Extremely Hazardous
25 Substances and Their Threshold Planning Quantities"), or
26 appearing on any successor list of extremely hazardous
27 substances published by the Administrator of the Federal
28 Environmental Protection Agency under the authority of section
29 302 of SARA, Title III.

30 "Facility." All buildings, structures and other stationary

1 items which are located on a single site or a contiguous or
2 adjacent site which are owned or operated by the same person and
3 which actually manufacture, produce, use, transfer, store,
4 supply or distribute any hazardous material. The term includes
5 railroad yards and truck terminals but does not include
6 individual trucks, rolling stock, water vessels, airplanes or
7 other transportation vehicles.

8 "Family farm enterprise." A natural person, family farm
9 corporation or family farm partnership engaged in farming which
10 processes and markets its agricultural commodities in either
11 intrastate or interstate commerce.

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

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

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

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

24 (4) Any substance to the extent that it is used in a
25 research laboratory or a hospital or other medical facility
26 under the direct supervision of a technically qualified
27 individual.

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

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

- (1) A hazardous substance.
- (2) An extremely hazardous substance.
- (3) A hazardous chemical.
- (4) A toxic chemical.

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

"Hazardous substance." A substance appearing on the list of hazardous substances prepared under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767), as set forth at 40 CFR Part 302 ("Table 302.4 - List of Hazardous Substances and Reportable Quantities"), or appearing on any successor list of hazardous substances prepared under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"Independent agency." [Boards, commissions, authorities and other agencies and officers of the Commonwealth which are] A board, commission, authority or officer of the Executive Department which is not subject to the policy, supervision and control of the Governor[, except]. The term does not include any court or other officer or agency of the unified judicial system or the General Assembly and its officers and agencies.

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

"Local emergency planning committee" or "local committee."

1 The local committee within each emergency planning district
2 responsible for preparing hazardous material plans and
3 performing other functions under the Emergency Planning and
4 Community Right-To-Know Act of 1986 (Title III, Public Law 99-
5 499, 42 U.S.C. § 11001 et seq.).

6 "Mentoring council." A voluntary organization of companies
7 which handle, manufacture, use or distribute chemicals and other
8 interested groups, formed in conjunction with a local emergency
9 planning committee with the primary purpose of improving safe
10 work practices.

11 "PEMA." The Pennsylvania Emergency Management Agency.

12 "Person." An individual, corporation, firm, association,
13 public utility, trust, estate, public or private institution,
14 group, Commonwealth or local agency, political subdivision, and
15 any legal successor, representative or agency of the foregoing.

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

25 "Release." Any spilling, leaking, pumping, pouring,
26 emitting, emptying, discharging, injecting, escaping, leaching,
27 dumping or disposing into the environment of a hazardous
28 material, including, but not limited to, the abandonment or
29 discarding of barrels, containers and other receptacles
30 containing a hazardous material.

1 "Reportable quantity." The quantity of a hazardous material
2 stated on the various lists of hazardous substances and
3 extremely hazardous substances as defined in this section, the
4 release of which shall be reported under this act.

5 "Rolling stock." Any railroad tank car, railroad boxcar or
6 other railroad freight car as defined in 49 CFR 215, or its
7 successor, that contains an extremely hazardous substance in
8 excess of the threshold planning quantity established for such
9 substance and is used as a storage site for such substance.

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

13 "Service stations." A motor vehicle service station, filling
14 station, garage or similar operation engaged in the retail sale
15 of motor fuels that are regulated by the act of July 6, 1989
16 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
17 Act, or a facility whose primary function is auto body repair.

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

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

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

1 Commonwealth.

2 Section 201. Designation and functions of Pennsylvania
3 Emergency Management Council.

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

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

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

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

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

1 business, the council shall meet at the call of the chairperson.
2 Five members of the council shall constitute a quorum for the
3 purpose of conducting the business of the council and for all
4 other purposes. All actions of the council shall be taken by a
5 majority of the council members present. The council shall be
6 subject to [the act of July 3, 1986 (P.L.388, No.212), known as <—
7 the Sunshine Act] 65 PA.C.S. CH. 7 (RELATING TO OPEN MEETINGS). <—

8 (f) Staff.--The council shall supervise PEMA as its primary
9 agent responsible for performing the functions and duties of the
10 council established under this act. For this purpose, PEMA shall
11 employ such professional, technical, administrative and other
12 staff personnel as may be deemed essential to carry out the
13 purposes of this act and the development and maintenance of a
14 comprehensive Commonwealth hazardous material safety program and
15 report directly to the council.

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

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

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

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

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

29 (5) Supervise the operation of local committees and
30 ensure that local committees meet all Federal and

1 Commonwealth standards and requirements as provided by law.

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

4 (7) Delegate authority and assign primary responsibility
5 to the Department of Labor and Industry for receiving,
6 processing and managing hazardous chemical information forms
7 and data, trade secrets and public information requests under
8 this act and in coordination with the act of October 5, 1984
9 (P.L.734, No.159), known as the Worker and Community Right-
10 to-Know Act. Emphasis should be given to electronically
11 processing the information reported under this act to
12 maximize its use in emergency response and to enhance its
13 availability to the public.

14 (8) Delegate authority and assign responsibility to the
15 Department of Environmental [Resources] Protection and the
16 Department of Health for providing technical advice and
17 assistance consistent with established departmental
18 responsibilities in the alleviation of public health and
19 environmental hazards associated with hazardous material
20 releases or threatened releases of hazardous materials,
21 including, but not limited to, dispatching emergency response
22 personnel to accident sites during emergency situations when
23 requested by PEMA. This act shall not affect any existing
24 authority these agencies have to respond to hazardous
25 material releases.

26 (9) Prescribe duties and responsibilities for
27 Commonwealth agencies, counties and local emergency planning
28 committees to conduct comprehensive emergency management
29 activities consistent with this act.

30 (10) Prescribe standards for hazardous material response

1 team training or certification, the equipping of hazardous
2 material response team units and other matters involving
3 hazardous material response activities.

4 (11) Develop a public information, education and
5 participation program for the public and facility owners
6 covering the requirements of this act and the Worker and
7 Community Right-to-Know Act and interpretation of the
8 chemical information collected under this act and the risks
9 those chemicals pose to the public health and environment.

10 (12) Develop a mechanism or guidelines for the use of
11 local emergency planning committees to act as boards of
12 arbitration for resolving cost recovery disputes concerning
13 those costs defined in section 210(c) that arise between a
14 person who causes a release of a hazardous material and the
15 organizers of any certified hazardous material response teams
16 [and/or] or emergency service organizations that responded to
17 the hazardous material release.

18 (13) Do all other acts and things necessary for the
19 exercise of the powers and duties of the council and for the
20 implementation of this act and SARA, Title III.

21 (h) Council expenses.--The council shall develop a specific
22 operating budget to implement the provisions of this act which
23 shall be submitted separately by PEMA with its regular budget
24 each year, subject to the requirements of section 207.

25 [(i) Advisory committee.--The council shall appoint a
26 Hazardous Material Emergency Planning and Response Advisory
27 Committee from the members of the council and other persons
28 representative of those groups affected by this act as the
29 council chairman may determine. Meetings of the committee shall
30 be convened by PEMA for the purpose of reviewing guidelines,

1 standards or regulations developed to implement this act. PEMA
2 shall participate in all meetings of the advisory committee and
3 provide administrative support. For the purpose of convening
4 meetings, a majority of the advisory committee members shall
5 constitute a quorum.]

6 Section 203. Establishment and functions of local emergency
7 planning committees.

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

18 (b) Membership.--A local committee shall be composed of the
19 county emergency management coordinator, one county commissioner
20 and at least one person selected from each of the following
21 groups:

22 (1) Elected officials representing local governments
23 within the county.

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

26 (3) Firefighting personnel.

27 (4) Civil defense and emergency management personnel.

28 (5) Broadcast and print media.

29 (6) Community groups not affiliated with emergency
30 service groups.

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

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

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

16 (e) Vacancies.--[Within 60 days of] As soon as practicable
17 after the occurrence of a vacancy, the council shall appoint, in
18 the manner provided in subsection (d), a successor member to a
19 local committee for the remainder of the unexpired term of the
20 member for which the vacancy exists. A vacancy shall occur upon
21 the death, resignation, disqualification or removal of a member
22 of a local committee.

23 (f) Meetings.--For the conduct of routine or emergency
24 business, the local committee shall meet at the call of the
25 chairperson. A majority of the members of the local committee,
26 or such other number of members of the local committee as set by
27 the local committee, shall constitute a quorum for the purpose
28 of conducting the business of the local committee and for all
29 other purposes. All actions of the local committee shall be
30 taken by a majority of the local committee members present. The

1 local committee shall be subject to [the act of July 3, 1986 <—
2 (P.L.388, No.84), known as the Sunshine Act] 65 PA.C.S. CH. 7 <—
3 (RELATING TO OPEN MEETINGS)].

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

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

10 (2) Take appropriate actions to ensure the
11 implementation and updating of the local emergency response
12 [plan] plans required by this act.

13 (3) Report to the council on alleged violations of this
14 act.

15 (4) Prepare reports, recommendations or other
16 information related to the implementation of this act, as
17 requested by the council.

18 (5) Meet, when appropriate, with any Commonwealth agency
19 or local or regional agency which is empowered to exercise
20 the governmental functions of planning and zoning, to
21 regulate land use and land use development, or to authorize
22 the siting of a facility within the county to discuss and
23 review with the Commonwealth agency and local agency all
24 mitigation factors necessary to protect the health, safety
25 and welfare of the general public from a potential release of
26 hazardous materials from a proposed facility. Mitigation
27 factors include, but are not limited to, environmental
28 impacts, shelter and evacuation feasibility, emergency
29 warning and communications, availability of response
30 equipment and future population and economic growth in the

1 area of the proposed facility.

2 (6) Accept and deposit into its county Hazardous
3 Material Emergency Response Account any grants, gifts or
4 other funds received which are intended for the purpose of
5 carrying out this act.

6 (h) Expenses.--The administrative and operational expenses
7 of a local committee may be paid through a combination of
8 sources by the county from the fees collected by the county,
9 from grants received from the council in accordance with the
10 provisions of sections 207 and 208, respectively, or by
11 accepting private donations.

12 (i) Agency and compensation for injury.--A member of a local
13 committee shall be an agent of the council and shall be deemed a
14 duly enrolled emergency management volunteer for the purposes of
15 35 Pa.C.S. § 7706 (relating to compensation for accidental
16 injury).

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

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

22 (1) Identification of the facility subject to the
23 requirements of section 303 of SARA, Title III, within the
24 county, identification of routes likely to be used for the
25 transportation of substances on the list of extremely
26 hazardous substances and identification of additional
27 facilities contributing or subjected to additional risk due
28 to their proximity to the facility subject to the
29 requirements of this section, such as hospitals or natural
30 gas facilities.

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

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

7 (4) Procedures providing reliable, effective and timely
8 notification by the facility emergency coordinators and the
9 county emergency management coordinator to persons designated
10 in the emergency plan, and to the public, that a release has
11 occurred, consistent with the notification requirements of
12 section 304 of SARA, Title III.

13 (5) Methods for determining the occurrence of a release,
14 and the area or population likely to be affected by such
15 release.

16 (6) A description of emergency equipment [and facilities
17 in the county and] at each facility in the county subject to
18 the requirements of this section, and an identification of
19 the persons responsible for such equipment and facilities.
20 The facility's equipment list shall be included in the plan.
21 Community equipment lists may be maintained in the
22 county/municipal emergency operations centers.

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

25 (8) [Training] Refer to the location of training
26 programs, including schedules for training of local emergency
27 response and medical personnel.

28 (9) [Methods and] Refer to the location of schedules for
29 exercising the emergency plan.

30 (10) The latitude and longitude of the facility.

1 (11) The vulnerability radius for each extremely
2 hazardous substance that meets threshold planning quantity
3 requirements.

4 (12) All appropriate response organizations that would
5 likely be called to the facility in the event of an
6 emergency.

7 (13) The location, quantity and type of any extremely
8 hazardous substance that meets the threshold planning
9 quantity at the facility.

10 (14) A standard list of information to be collected for
11 each emergency in the initial notification system.

12 (15) A statement the local emergency planning committee
13 will review the results of emergency response activities and
14 hazardous material exercises to incorporate relevant
15 adjustments to the plan.

16 (1) Mentoring council.--Nothing in this act shall prohibit
17 the creation of an additional voluntary council formed for the
18 purpose of furthering education and outreach to facilities to
19 ensure awareness of and have access to safety tools and
20 resources necessary to effectively implement and comply with the
21 requirements of this act.

22 Section 204. Hazardous material safety program.

23 (a) Program components.--In conjunction with the Departments
24 of Environmental [Resources] Protection, Health, Transportation,
25 Agriculture, Labor and Industry and [Commerce] Community and
26 Economic Development, Pennsylvania Public Utility Commission,
27 Fish and Boat Commission, Pennsylvania Turnpike Commission and
28 the Pennsylvania State Police, or any other Commonwealth
29 agencies as determined by the council, PEPA shall develop a
30 hazardous material safety program for incorporation into the

1 [Pennsylvania] Commonwealth Emergency [Management] Operations
2 Plan developed by PEMA under 35 Pa.C.S. Pt. V (relating to
3 emergency management services). The hazardous material safety
4 program shall include an assessment of the potential dangers and
5 risks that hazardous material releases occurring at facilities
6 and from transportation-related accidents pose to the general
7 public and the environment. The Pennsylvania State Fire Academy
8 shall be utilized as [a primary training facility] the
9 Commonwealth's center for hazardous materials training pursuant
10 to its duties under [35 Pa.C.S. § 7316(c) (relating to
11 Pennsylvania State Fire Academy)]. The council may also utilize
12 other institutions that have in place appropriate training
13 resources, such as the Center for Hazardous Materials Research
14 at the University of Pittsburgh's Applied Research Center, to
15 fulfill its training responsibilities] the act of November 13,
16 1995 (P.L.604, No.61), known as the State Fire Commissioner Act.
17 The program shall also consider the impacts, consequences and
18 necessary protective measures required to respond to and
19 mitigate the effects of such releases and accidents. The program
20 shall include, but not be limited to:

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

26 (2) Development of comprehensive emergency management
27 guidance consistent with the Emergency Management Services
28 Code for hazardous materials that can be used by the local
29 committees to meet the requirements of Federal and
30 Commonwealth statutes and laws.

1 (3) Development of specific procedures for counties to
2 complete [the Hazardous Material Emergency Response
3 Preparedness Assessment within 30 days of the effective date
4 of this act] periodic reports conforming to the requirements
5 of subsection (b.1) as required by PEMA on the status and
6 capabilities of each county's hazardous materials safety
7 program.

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

16 (5) Development of a notification system whereby the
17 transporters of any hazardous substance or extremely
18 hazardous substance will report the occurrence of any
19 hazardous material release to the Commonwealth agencies,
20 local agencies and Commonwealth and local officials
21 designated in the Commonwealth and local plans. The reporting
22 requirements for this notification system are set forth in
23 section 206.

24 (6) Training and equipping local agency public safety
25 and emergency response personnel.

26 (7) Establishing training standards and a certification
27 program for the formation of Commonwealth agency, local
28 agency or regional hazardous material response teams. All
29 Commonwealth agency, supporting paid and volunteer emergency
30 service organizations, local agency or other agencies and

1 committees that establish training standards for emergency
2 service, law enforcement, firefighting or other personnel
3 shall cooperate with the council in the implementation of
4 these training standards and certification program.

5 (8) [Periodical] Periodic exercise of hazardous material
6 release scenarios at facilities and transportation sites that
7 are designed to test the response capabilities of
8 Commonwealth agency, local agency and regional public safety
9 and emergency response personnel and certified hazardous
10 materials response teams.

11 (9) Assistance in procuring of specialized hazardous
12 material response supplies and equipment to be used by local
13 and regional public safety and emergency response personnel.

14 (10) PEEMA's staffing and operation of a 24-hour State
15 emergency operations center to provide effective emergency
16 response coordination for all types of natural and manmade
17 disaster emergencies, including the ability to receive and
18 monitor the emergency notification reports required under
19 sections 205 and 206 from all facilities and transporters
20 involved with hazardous material incidents.

21 (11) Provisions for financial assistance to counties as
22 provided in sections 207 and 208 and for the payment of
23 compensation benefits awarded to duly enrolled emergency
24 management volunteers under 35 Pa.C.S. § 7706 (relating to
25 compensation for accidental injury).

26 [(b) County preparedness assessment.--

27 (1) Within one year of the completion of procedures
28 called for in subsection (a)(3), counties shall develop and
29 submit to the council a Hazardous Material Emergency Response
30 Preparedness Assessment. The assessment shall be updated

1 annually.

2 (2) The county shall assess the potential dangers and
3 risks that hazardous material releases from facilities and
4 transportation accidents pose to public health and the
5 environment, identify the county's needs and resources for
6 hazardous material response teams to deal with those dangers
7 and risks and outline its plan for implementing county and
8 local emergency planning functions under this act.

9 (3) The assessment shall include the following:

10 (i) Potential threats posed by facilities requiring
11 emergency response plans under section 303 of SARA, Title
12 III, and other concentrations of hazardous materials in
13 the county or in areas immediately adjacent to the county
14 that may pose a threat.

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

17 (iii) Identification of existing capabilities to
18 respond to hazardous material releases, including
19 personnel, equipment, training, planning and
20 identification of existing hazardous material response
21 zones.

22 (iv) Selection of an option to comply with this act
23 under section 209(e) and identification of the need for
24 personnel, equipment, training and planning needed to
25 respond to the potential threats, including the
26 designation of proposed levels of preparedness for local
27 or regional response teams and proposed local or regional
28 response zones.

29 (v) Identification of other resources needed to
30 implement the provisions of this act and to support the

1 local emergency planning committee.

2 (vi) An audit of the Hazardous Material Emergency
3 Response Account.

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

7 (5) The council shall review and approve the assessment
8 if it determines the assessment is complete and fulfills the
9 county's obligations under this act to respond to releases of
10 hazardous materials.

11 (6) If an assessment is not approved by the council, it
12 shall be returned to the county with an explanation of its
13 deficiencies. The county shall have 90 days to return the
14 assessment to the council with either changes or further
15 explanation or justification. The council shall then review
16 the assessment.]

17 (b.1) Requirements for periodic reports.--The periodic
18 reports required by subsection (a)(3) shall include the
19 following:

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

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

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

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

7 (5) Identification of other resources needed to
8 implement the provisions of this act and to support the local
9 emergency planning committee.

10 (6) An audit of the Hazardous Material Emergency
11 Response Account.

12 (7) Such other information as PEMA may deem necessary.

13 Section 205. Emergency reporting requirements.

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

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

20 (2) The owner or operator of a facility in this
21 Commonwealth covered under section 311 of SARA, Title III,
22 shall comply with the reporting requirements under sections
23 311 and 312 of SARA, Title III. ~~The reporting threshold for~~ <—
24 ~~all hazardous chemicals as defined by the Occupational Safety~~
25 ~~and Health Administration shall be 10,000 pounds and shall~~
26 ~~report information concerning any employee who required~~
27 ~~medical treatment as a result of such emergency.~~

28 (3) The owner or operator of a facility in this
29 Commonwealth subject to section 313 of SARA, Title III, shall
30 comply with the toxic chemical release form requirements

under section 313 of SARA, Title III.

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

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

~~(a.1) Report to health care provider. The owner or operator of a facility in this Commonwealth shall report to the health care provider, in the same manner as required by this section, the appropriate safety data sheet on the material necessary for medical treatment given to any employee of the facility who came into contact with a hazardous or extremely hazardous substance even though the amount of such substance may be less than the reporting threshold.~~

~~(A.1) REPORT TO HEALTH CARE PROVIDER.--WHEN AN EMPLOYEE OF A FACILITY IS EXPOSED TO A SUBSTANCE COVERED BY SARA, TITLE III AND THE SUBSTANCE IS OVER THE REPORTING THRESHOLD, THE OWNER OR OPERATOR OF THE FACILITY SHALL PROVIDE TO THE HEALTH CARE PROVIDER THE APPROPRIATE MATERIAL SAFETY DATA SHEET NECESSARY FOR APPROPRIATE MEDICAL TREATMENT.~~

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

1 State level.

2 (c) Rolling stock.--The owner or operator of a property that
3 has one or more rolling stock, whether owned or leased, located
4 within its property boundaries for any period of time in excess
5 of [30] five days continuous days and containing an extremely
6 hazardous substance in excess of the threshold planning quantity
7 shall notify the council and the appropriate local committee of
8 that fact and shall [prepare] assist the local committee in
9 preparing an emergency response plan, which contains those
10 provisions that either the council or the appropriate local
11 committee directs, in order to deal with any potential release
12 of an extremely hazardous substance from that rolling stock.

13 (d) Facility duties.--The owner or operator of any facility
14 that manufactures, produces, uses, transfers, stores, supplies
15 or distributes any hazardous material after the effective date
16 of this subsection shall:

17 (1) Provide the emergency planning notification and
18 information required by section 302(c) and 303(d) of SARA,
19 Title III, to the council and the appropriate local emergency
20 planning committee within five business days after an
21 extremely hazardous substance is first present at such
22 facility.

23 (2) Submit its material safety data sheets or chemical
24 lists and emergency hazardous chemical inventory forms to the
25 Department of Labor and Industry, the appropriate local
26 emergency planning committee, and the fire department with
27 jurisdiction over the facility within five business days
28 after the hazardous chemical is first present at the
29 facility. The owner or operator shall also comply with the
30 requirements of section 311(d)(2) of SARA, Title III within

1 five business days.

2 Section 206. Emergency notification requirements.

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

16 (1) Two notifications shall be made by the owner or
17 operator of a facility. The first call shall be to the 24-
18 hour response telephone number of the county office
19 designated and acting as the emergency response coordinator
20 for the local committee, which may be known as the county
21 emergency management office 24-hour response number. The
22 second call shall be made to the PEMA 24-hour response
23 number.

24 (2) Notification shall be made by the owner or operator
25 of a vehicle by dialing 911 or, in the absence of a 911
26 emergency telephone number, calling the operator in order to
27 notify the county emergency management office 24-hour
28 response number within whose jurisdiction the transportation
29 accident or incident has occurred, and reporting that a
30 hazardous substance or an extremely hazardous substance

1 release has occurred. The county emergency management office
2 shall report any notification made under this subsection to
3 the PEMA 24-hour response number within one hour of its
4 receipt.

5 (a.1) Additional notice.--A county emergency management
6 agency which receives notification under subsection (a) must
7 immediately provide information to the fire chief in the
8 appropriate jurisdiction relating to the details of the release,
9 including, but not limited to, the substance involved.

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

14 (1) The name and telephone number of the person making
15 the notification.

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

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

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

29 (5) An estimate of the quantity of the substance that
30 was released into the environment.

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

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

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

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

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

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

(c) PEMA notice.--The notification to PEMA shall be made to the PEMA 24-hour response number. This notification shall contain the information required by subsection (b). The notice to PEMA shall fulfill the requirements in SARA, Title III, to notify the council[. Notice under this section shall not] and shall fulfill any requirements in other State laws to notify the Department of Environmental [Resources or any other State agency of a spill or release of a hazardous chemical.] Protection about the same hazardous chemical spill or release. PEMA shall provide notice of the spill or release to the Department of Environmental Protection.

(d) Written report.--Within 14 calendar days after a release which required notice under this section, the owner or operator of a facility and the owner or operator of a vehicle shall provide a written follow-up [emergency notice, or notices]

1 report or reports if more information becomes available, to PEMA
2 and the county emergency management office setting forth and
3 updating the information required under subsection (b), and
4 including additional information with respect to:

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

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

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

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

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

17 (f) Coordinated notification system.--

18 (1) The council shall, within one year of the effective
19 date of this act, complete a study of current notification
20 procedures to determine the feasibility of establishing a
21 single notification center and simplified alternative
22 notification processes for State agencies to receive
23 notification of all emergencies involving hazardous or
24 potentially hazardous substances or releases into the air or
25 water or on the land. The council shall study the feasibility
26 of replacing notification of individual State agencies with a
27 single point of contact and simplified alternative
28 notification procedures covering substances regulated by this
29 act, by the act of June 22, 1937 (P.L.1987, No.394), known as
30 The Clean Streams Law, the act of January 8, 1960 (1959

1 P.L.2119, No.787), known as the Air Pollution Control Act,
2 the act of July 7, 1980 (P.L.380, No.97), known as the Solid
3 Waste Management Act, the act of October 18, 1988 (P.L.756,
4 No.108), known as the Hazardous Sites Cleanup Act, the act of
5 July 6, 1989 (P.L.169, No.32), known as the Storage Tank and
6 Spill Prevention Act, or by any other State statute requiring
7 notification of any State agency of spills and releases into
8 the environment. The study shall consider any impact a single
9 point of contact and alternative notification procedures may
10 have on the regulated community, any enforcement programs
11 within the Department of Environmental [Resources] Protection
12 or other agencies and notification requirements established
13 in Federal law and make specific recommendations for
14 implementing its findings, including recommended changes to
15 State law. The Hazardous Material Emergency Planning and
16 Response Advisory Committee shall be involved in the
17 development of the study.

18 (2) The council shall forward a copy of the final study,
19 including a recommended timetable for implementing any
20 recommendations, to the House Conservation Committee and the
21 Senate Environmental Resources and Energy Committee.

22 Section 207. Establishment of funds.

23 (a) Hazardous Material Response Fund.--

24 (1) There is hereby created in the State Treasury a
25 nonlapsing restricted account to be known as the Hazardous
26 Material Response Fund. The fund shall consist of the fees
27 collected under subsections (c), (d) and (e), civil penalties
28 and fines and funds appropriated by the General Assembly.
29 Moneys in the fund and the interest [it] which accrues shall
30 be appropriated annually to PEMA [to be disbursed by the

council through PEMA] for disbursement and shall be used to carry out the purposes, goals and objectives of SARA, Title III, and the Commonwealth's hazardous material safety program.

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

(i) Up to 10% [shall] may be expended on training programs [for hazardous material response teams].

(ii) Up to 10% [shall] may be expended for public and facility owner education, information and participation programs.

(iii) [No more than 10% shall] Up to 10% may be used for the general administrative and operational expenses of this act[, excluding the expenses of the Hazardous Material Emergency Planning and Response Advisory Committee].

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

(b) County emergency response financing.--

(1) The treasurer of each county shall establish a nonlapsing restricted account to be known as the Hazardous Material Emergency Response Account. The account shall consist of revenue from fees authorized by this section, county, Federal or State funds, grants, loans or penalties and any private donations provided to finance the hazardous material safety program. Expenditures from the account shall be authorized by the county consistent with the needs identified in the [county Hazardous Material Emergency

Response Preparedness Assessment approved by the council]
periodic report prepared in accordance with guidelines
established by PEMA. The Hazardous Material Emergency
Response Account shall also be utilized by the local
emergency planning committee to resolve cost recovery
disputes that arise between a person who causes a release of
a hazardous material and a volunteer emergency services
organization when acting [as part] in support of a certified
hazardous material response team in accordance with this act.
Each volunteer services organization [shall be] is eligible
to receive [no more than \$300] from the Hazardous Material
Emergency Response Account up to \$1,000 per response to cover
expenses related to a response [from the Hazardous Material
Emergency Response Account], if the person who causes a
release of a hazardous material cannot be identified or is
financially unable to pay costs as defined in section 210(b).

(2) By March 1 of each year, each owner or operator of a
facility shall pay to the county treasurer where the facility
is located a local hazardous chemical fee of from \$35 to \$75,
as established by the county by ordinance, for each hazardous
chemical within the meaning of 29 CFR 1910.1200(c) or its
successor which is required by section 312 of SARA, Title
III, to be listed on the hazardous chemical inventory form
(Tier II) which the owner or operator of the facility submits
to the local emergency planning committee. Counties shall
grant facility owners up to 100% credit toward their chemical
fee obligation under this section for training, equipment or
other in-kind services donated to the county to support the
hazardous material safety program if such training, equipment
or in-kind services are accepted by the county. The credit

1 shall be based on the fair market value of equipment donated
2 and the agreed-upon value of training or in-kind services
3 donated.

4 (3) Counties may establish a program to provide funding
5 through the Hazardous Material Emergency Response Account for
6 certified hazardous material response teams [within] serving
7 the county [consistent with the Hazardous Material Emergency
8 Response Preparedness Assessment]. This grant program shall
9 not be bound by any dollar limits on assistance to local fire
10 protection services imposed by other statutes.

11 (c) Hazardous chemical fee.--Each owner or operator of a
12 facility shall pay a fee, to be known as a hazardous chemical
13 fee, of \$10 by March 1 of each year to the council for each
14 hazardous chemical within the meaning of 29 CFR 1910.1200(c) or
15 its successor which is required by section 312 of SARA, Title
16 III, to be listed on the hazardous chemical inventory form (Tier
17 II) which the owner or operator of the facility submits to the
18 council. The fees collected under this subsection shall be
19 deposited by the council into the Hazardous Material Response
20 Fund.

21 (d) Toxic chemical registration fee.--Each owner or operator
22 of a facility that submits a toxic chemical release form to the
23 Department of Labor and Industry on or before July 1, 1990, as
24 required by section 313 of SARA, Title III, shall pay a \$1,000
25 registration fee to the Department of Labor and Industry. The
26 registration fees collected under this subsection shall be
27 deposited by the Department of Labor and Industry into the
28 Hazardous Material Response Fund. The Department of Labor and
29 Industry may retain up to 10% of the fees collected for
30 administration of the program and management of the data

1 collected.

2 (e) Toxic chemical release form fee.--Each owner or operator
3 of a facility shall pay a fee of \$250 on or before July 1, 1991,
4 and the first day of July of every year thereafter, to the
5 Department of Labor and Industry for each toxic chemical which
6 is required by section 313 of SARA, Title III, to be listed on
7 the toxic chemical release form which the owner or operator of
8 the facility submits to the Department of Labor and Industry.
9 The cumulative amount of this fee shall not exceed \$5,000 per
10 facility. The fees collected under this subsection shall be
11 deposited by the Department of Labor and Industry into the
12 Hazardous Material Response Fund. The Department of Labor and
13 Industry may retain up to 10% of the fees collected for
14 administration of the program and management of the data
15 collected.

16 (f) Emergency planning fee.--By March 1 of each year, each
17 owner or operator of a facility that manufactures, produces,
18 uses, stores, supplies or distributes any extremely hazardous
19 substance in quantities larger than the threshold planning
20 quantities shall be required to pay to the county treasurer
21 where the facility is located an emergency planning fee of up to
22 \$100 as established by the county by ordinance. Counties shall
23 grant facility owners up to 100% credit toward any emergency
24 planning fee obligation under this section for training,
25 equipment or other in-kind services donated to the county to
26 support the hazardous material safety program if such training,
27 equipment or in-kind services are accepted by the county, in
28 addition to those for which a credit is claimed under subsection
29 (b)(2). The credit shall be based on the fair market value of
30 equipment donated and the agreed-upon value of training or in-

1 kind services donated.

2 (g) Exemptions.--The owners or operators of family farm
3 enterprises, service stations and facilities owned by State and
4 local governments shall be exempt from payment of the fees
5 required under subsections (b), (c), (d), (e) and (f).

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

10 [(i) Changes in threshold quantities and chemicals.--For
11 purposes of the fees established in this section, the term
12 "hazardous chemical" shall mean chemicals on lists established
13 by the United States Environmental Protection Agency effective
14 on July 1, 1989. No fee may be applied to additional facilities
15 or hazardous materials because of changes made by the United
16 States Environmental Protection Agency in lists of hazardous
17 materials, threshold planning quantities or other requirements
18 under SARA, Title III, without complying with the provisions of
19 section 213.

20 (j) Termination.--The fees established in this section or
21 pursuant to section 213 shall terminate ten years after the
22 effective date of this act unless reestablished by the General
23 Assembly by statute.]

24 (k) Transportation fee study.--Within one year of the
25 effective date of this act, the council shall report to the
26 General Assembly on the feasibility of establishing a fee on the
27 transporters of hazardous materials regulated under this act.
28 The purpose of this fee would be to supplement the funds
29 provided by fixed facility owners or operators to the Hazardous
30 Material Response Fund.

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

Section 208. Emergency management grants.

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

(b) Applications.--A county [or group of counties] may apply annually to [the council] PEMA for an emergency management grant. Applications shall be made in [the manner specified by the council in regulations promulgated under section 201(g) consistent with the county preparedness assessment] accordance with the guidelines established by PEMA.

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

(1) Developing [a county Hazardous Material Emergency Response Preparedness Assessment required in section 204(b).] periodic reports conforming to the requirements of section 204(b.1).

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

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

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

(5) Developing an emergency planning and response capability for responding to hazardous material releases and

meeting the requirements of the Commonwealth's hazardous material safety program, including training, equipment, material and other supplies needed to respond to a release.

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

(7) Reimbursing certain response costs of supporting volunteer emergency service organizations in accordance with section 207(b)(1).

(d) Grant amount.--The amount of the annual grant from the Hazardous Material Response Fund shall not exceed the sum of:

(1) the funds of local revenues made available by the county for the purpose of complying with the requirements and provisions of SARA, Title III, and the Emergency Management Services Code with respect to hazardous material releases, retroactive to November 1986 [and]; and

(2) the revenues collected under section 207(b)(2) and (f)[,];

except that any county emergency management coordinator whose Hazardous Material Emergency Response Account receives less than \$10,000 annually in fees established in this section or meets the requirements of subsection (e)(3) shall be eligible for additional grants equal to county funds specifically appropriated for compliance with this act, not to exceed \$5,000.

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

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

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

5 (3) The number of facilities located within the county,
6 or the existence of unique or special circumstances that pose
7 a threat to the health and safety of the general public or
8 the environment, or both. The existence of unique or special
9 circumstances under this section as determined by PEMA shall
10 include an interstate highway, the Pennsylvania Turnpike or
11 any secondary route used by a transporter because of load
12 restrictions on primary routes.

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

16 (5) No more than 10% of the grant funds shall be
17 [expended in] allocated to any one county in any year.
18 [unless more than one county applies for funds in a joint
19 application.

20 (f) Initial grant.--In addition to any other grants provided
21 for in this section, each county of the third through eighth
22 class shall, within 18 months of the effective date of this act,
23 receive an initial grant of \$1,500 for the purpose of complying
24 with the provisions of this act. The initial grant shall be made
25 from the Hazardous Material Response Fund.]

26 Section 209. Certified hazardous material response teams.

27 (a) General rule.--The council shall establish a program for
28 certifying hazardous material response teams, setting standards
29 for training, equipment, safety, operations and administration
30 of the teams. The certification program shall include, but not

1 be limited to:

2 (1) Standards for certifying response teams with several
3 preparedness levels patterned after levels established by the
4 United States Occupational Safety and Health Administration
5 at 29 CFR Part 1910.120.

6 (2) Reviewing existing hazardous material training and
7 certification programs to establish specific procedures for
8 crediting that training and certification under the program
9 established by this section.

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

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

22 (d) Compliance with guidelines and regulations.--Hazardous
23 material response teams shall comply with any guidelines,
24 regulations, directives or other documents developed by PEMA and
25 the council for incorporation into the Commonwealth's hazardous
26 material safety program [and shall be consistent with the county
27 Hazardous Material Emergency Response Preparedness Assessment
28 approved by the Council].

29 (e) Compliance with act.--Each county shall comply with the
30 hazardous material safety program and 35 Pa.C.S. Pt. V (relating

to emergency management services) by doing any of the following[, consistent with the county Hazardous Material Emergency Response Preparedness Assessment]:

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

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

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

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

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

(h) Insurance.--Each Commonwealth agency, local agency, regional hazardous material organization, volunteer service

1 organization, hazardous material transporter, manufacturer,
2 supplier or user, or other entity that organizes a certified
3 hazardous material response team as identified on the team
4 certification, shall be responsible for providing, directly or
5 by agreement with a third party, workers' compensation and
6 ordinary public liability insurance for its certified hazardous
7 material response team. The Commonwealth, a county or
8 municipality may self-insure to meet this obligation to the
9 extent it is now authorized by State law. A certified hazardous
10 material response team that meets the training standards or
11 certification requirements established under the Commonwealth's
12 hazardous material safety program shall receive a discount from
13 the applicable insurance company as that insurance company's
14 loss experience justifies based on guidelines developed by the
15 Insurance Commissioner.

16 (i) [Emergency] Incident response.--A certified hazardous
17 material response team may, when authorized by the county
18 emergency management coordinator, enter onto any private or
19 public property on which a release of a hazardous material has
20 occurred or the occurrence or the threat of a hazardous material
21 release is imminent. A certified hazardous material response
22 team may enter any adjacent or surrounding property to which the
23 hazardous material release has entered or threatens to enter. A
24 certified hazardous material response team may enter any private
25 or public property in order to respond to the release or
26 threatened release of a hazardous material, to monitor and
27 contain the hazardous material release, to perform cleanup and
28 stabilization actions and to perform any other [emergency]
29 response activities deemed necessary by the certified hazardous
30 material response team or by the representatives of PEMA, the

1 county emergency management office as established under 35
2 Pa.C.S. Pt. V or the local committee.

3 (j) State agency.--Notwithstanding any Federal law to the
4 contrary, the Department of Environmental [Resources]
5 Protection, consistent with the State emergency operations plan,
6 is designated as the State agency assigned the responsibility to
7 direct cleanup efforts at a release site upon the occurrence of
8 a release.

9 Section 210. Recovery of response costs.

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

29 (b) Amount.--In an action to recover response costs, a
30 Commonwealth agency, local agency, regional hazardous material

1 organization, supporting paid or volunteer emergency service
2 organization, or a hazardous material transporter, manufacturer,
3 supplier or user may include operational, administrative
4 personnel and legal costs incurred from its initial response
5 action up to the time that it recovers its costs. Only those
6 certified hazardous material response teams [or] and supporting
7 paid or volunteer emergency service organizations that are
8 properly trained in accordance with the standards developed
9 under this act and that are properly requested and dispatched by
10 a legally constituted authority shall be eligible to recover
11 their response costs under this act.

12 (c) Definitions.--When used in this section, the term
13 "response cost" includes, but is not limited to, the following:

14 (1) Disposable materials and supplies acquired, consumed
15 and expended specifically for the purpose of the response to
16 the hazardous material release.

17 (2) Rental or leasing of equipment used specifically for
18 the response, for example, protective equipment or clothing
19 and scientific and technical equipment.

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

24 (4) Decontamination of equipment contaminated during the
25 response.

26 (5) Compensation of paid employees or members of the
27 hazardous material response team [or] and supporting paid or
28 volunteer emergency service organization, to include regular
29 and overtime pay for permanent full-time and other than full-
30 time compensated employees or members.

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

4 (7) Laboratory and testing costs for purposes of
5 analyzing samples or specimens taken during the response.

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

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

10 (10) Costs associated with the removal and disposal of
11 hazardous materials.

12 (d) Arbitration.--

13 (1) In lieu of bringing an action at law or in equity in
14 a court of competent jurisdiction in the matter of a response
15 cost dispute under subsection (a), the party who is the
16 person who caused a release of a hazardous material and the
17 party who is the certified hazardous material response team,
18 including any volunteer emergency service organizations
19 requested and dispatched by a legally constituted authority,
20 may agree to submit the response cost dispute to binding
21 arbitration as provided in this subsection. By submitting the
22 response cost dispute to arbitration, the parties shall have
23 waived all rights to remedies available under subsection (a)
24 or to any other remedies available at law.

25 (2) Once the parties agree to submit the response cost
26 dispute to binding arbitration, the local committee shall
27 notify the council and the parties of the request for a board
28 of arbitration and shall request the recommendation of the
29 parties for persons to be appointed to the board. The board
30 of arbitration shall consist of three persons, one to be

1 selected by each of the parties and a third person to be
2 agreed upon by the arbitrators as specified in paragraph (3).
3 Within five days of the request for arbitration, the parties
4 shall submit the names of the arbitrators that they have
5 chosen and the local committee shall appoint those persons to
6 the board of arbitration.

7 (3) Within five days after their appointment, the two
8 arbitrators shall meet and select a third arbitrator who
9 shall be appointed to the board by the local committee, and
10 who will be chairman of the board of arbitration.

11 (4) If the two arbitrators fail to select a third
12 arbitrator as provided in paragraph (3), the council shall,
13 within five days, select a third arbitrator who shall be
14 appointed to the board. The person so selected shall not be a
15 member of the council, a member of any local committee or a
16 person or a relative of a person employed by the party or a
17 subsidiary of the party who caused the hazardous material
18 release or who has an ownership or equity interest in the
19 party or subsidiary of the party who caused the hazardous
20 material release.

21 (5) Upon appointment of the third member, the board
22 shall commence its proceedings and within 30 days shall make
23 its determination, which shall be binding on all parties.

24 (6) Unless otherwise prescribed in the agreement to
25 arbitrate, the expenses and fees of the arbitrators and other
26 expenses, but not including counsel fees, incurred in the
27 conduct of the arbitration shall be paid as prescribed in the
28 award.

29 Section 211. Facility and vehicle inspection and testing.

30 (a) Inspection.--In order to determine compliance with this

1 act and SARA, Title III, either the qualified council or local
2 committee member or [representative] representatives, as defined
3 in subsection (e), may enter a facility or vehicle site, during
4 normal business hours, to inspect the facility or vehicle and to
5 request information or reports from the facility or vehicle
6 owner or operator concerning the chemical name, identity, amount
7 or any other information necessary for emergency planning and
8 response purposes for any substance, liquid, mixture, compound,
9 material or product manufactured, produced, used, stored,
10 supplied, imported, exported or distributed at, to or from the
11 facility or vehicle.

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

1 qualified council or local representative shall be split with
2 the facility for analysis.

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

21 (d) Trade secrets.--A person shall provide the qualified
22 representative of the council or the local committee or the
23 certified hazardous material response team with the chemical
24 name, identity or any other information requested concerning any
25 substance, liquid, mixture, compound, material or product
26 present at the facility or vehicle, whether or not the chemical
27 name, identity or other information requested is entitled to
28 protection as a trade secret under section 322 of SARA, Title
29 III, unless the manufacturer of the substance will not provide
30 the information requested to the facility owner because it has

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

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

13 (1) Training in inspection and enforcement activities
14 related to enforcing environmental or fire incident
15 investigations.

16 (2) Training in the handling and recognition of
17 hazardous materials.

18 (3) Conflict of interest standards and procedures
19 designed to prevent a local committee member or
20 representative from using the authority of this section to
21 gather information on a business competitor or other trade
22 secret information.

23 (4) Procedures for decertifying a member or
24 representative who was determined to be a qualified
25 representative of the council or local committee.

26 Section 212. Annual report.

27 [The council] PEMA shall submit an annual report to the
28 General Assembly by October 1 of each year on the activities it
29 has undertaken to implement this act. The report shall include,
30 but not be limited to:

1 (1) An accounting of revenues and expenditures from the
2 Hazardous Material Response Fund and the county Hazardous
3 Material Emergency Response Accounts along with a description
4 of the projects undertaken with these funds and a projection
5 of future activities.

6 (2) The status of local emergency planning committee
7 activities.

8 (3) The status of facilities required to comply with
9 this act, including their number, location[, number of
10 employees] and the number and amount of chemicals reported.

11 (4) The number and nature of emergency notifications
12 handled by PEMMA.

13 [Section 213. Changes in fees.

14 (a) Additional facilities.--If changes made by the United
15 States Environmental Protection Agency under SARA, Title III,
16 result in the fees established in section 207 being applied to
17 additional facilities, no fees may be collected from the owners
18 or operators of these facilities until the council subjects
19 these facilities to the fees by regulation.

20 (b) Change in requirements.--The council, by regulation, may
21 also revise the fees established in section 207, as they apply
22 to all facilities when the Environmental Protection Agency,
23 under SARA, Title III changes the threshold planning quantities,
24 the hazardous material lists or other requirements.]

25 Section 301. Immunity from civil liability.

26 (a) General.--No Commonwealth agency, local agency, regional
27 hazardous material organization, volunteer emergency service
28 organization or hazardous material transporter, manufacturer,
29 supplier or user that organized the certified hazardous material
30 response team nor their elected officers, officials, directors

1 and employees, and no certified hazardous material response team
2 member, member of an industrial hazardous material response
3 team, law enforcement officer, ambulance service or rescue squad
4 member, firefighter or other emergency response or public works
5 personnel engaged in any emergency service or response
6 activities involving a hazardous material release at a facility
7 or transportation accident site shall be liable for the death of
8 or any injury to persons or loss or damage to property or the
9 environment resulting from a response to a hazardous material
10 release, except for any acts or omissions which constitute gross
11 negligence or willful misconduct. Nothing in this section shall
12 exempt any hazardous material transporter, manufacturer,
13 supplier or user from liability for the death of or any injury
14 to persons or loss or damage to property or the environment
15 resulting from the release of any hazardous material.

16 (b) Council [and], local committees and mentoring council.--
17 No member of the council [or], a local committee or a mentoring
18 council shall be liable for the death of or any injury to
19 persons or loss or damage to property or the environment or any
20 civil damages resulting from any act or omission arising out of
21 the performance of the functions, duties and responsibilities of
22 the council [or], local committee or mentoring council, except
23 for acts or omissions which constitute willful misconduct.

24 (c) Other.--No employee, representative or agent of a
25 Commonwealth agency or local agency engaged in any emergency
26 service or response activities involving a hazardous material
27 release at a facility or transportation accident site shall be
28 liable for the death of or any injury to persons or loss or
29 damage to property resulting from that hazardous material
30 release, except for any acts or omissions which constitute

1 willful misconduct.

2 Section 303. Enforcement.

3 (a) Civil actions.--

4 ~~(1)~~ The Office of Attorney General [or]; the Office of <—
5 General Counsel or a county or municipality may commence a
6 civil action against any person for failure to comply with
7 this act or its regulations. No action may be commenced under
8 this subsection prior to 60 days after the Office of Attorney
9 General or Office of General Counsel or the appropriate
10 county or municipality has given written notice of the
11 alleged violation to the alleged violator. [The council, a] A
12 county or a municipality may commence a civil action against
13 any person for failure to comply with this act or its
14 regulations if the Office of Attorney General or the Office
15 of General Counsel has not commenced such action and more
16 than 120 days have elapsed since [the council,] a county or a
17 municipality gave notice of the alleged violation to the
18 alleged violator.

19 ~~(2) An individual may commence a civil action against <—~~
20 ~~any person for failure to comply with this act or its~~
21 ~~regulations if an action is not brought by the Office of~~
22 ~~Attorney General, the Office of General Counsel, a county or~~
23 ~~a municipality and 180 days have elapsed since a county or a~~
24 ~~municipality gave notice of the alleged violation to the~~
25 ~~alleged violator.~~

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

1 and its regulations.

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

6 Section 2. This act shall take effect in 60 days.