
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 280 Session of
1989

INTRODUCED BY FISHER, MUSTO, REIBMAN, GREENWOOD, SHUMAKER,
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JANUARY 24, 1989

REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY,
JANUARY 24, 1989

AN ACT

1 Providing for the regulation of storage tanks and tank
2 facilities; imposing additional powers and duties on the
3 Department of Environmental Resources and the Environmental
4 Quality Board; and making appropriations.

5 TABLE OF CONTENTS

6 Chapter 1. General Provisions

7 Section 101. Short title.

8 Section 102. Legislative findings.

9 Section 103. Definitions.

10 Section 104. Construction.

11 Section 105. API.

12 Chapter 3. Storage Tank Protection Program

13 Section 301. Establishment of program.

14 Section 302. Aboveground storage tank permits.

15 Section 303. Small aboveground storage tanks.

16 Section 304. Underground storage tank permits.

17 Section 305. Operation under existing permits.

1 Section 306. Registration of aboveground and underground
2 storage tanks.

3 Section 307. Inspection of aboveground storage tanks.

4 Section 308. Inspection and inventory records of underground
5 storage tanks.

6 Section 309. Certification of storage tank installers and
7 private tank inspectors.

8 Section 310. Small operator assistance program for underground
9 storage tanks.

10 Section 311. Environmental Quality Board.

11 Section 312. Industry Technical Advisory Board.

12 Chapter 5. Spill Prevention Response Plan

13 Section 501. Submission of spill prevention response plan.

14 Section 502. Content of spill prevention response plan.

15 Section 503. Review of spill prevention response plan.

16 Section 504. Notification.

17 Chapter 7. Financial Provisions

18 Section 701. Financial responsibility.

19 Section 702. Storage Tank Fund.

20 Section 703. Underground Storage Tank Indemnification Board.

21 Section 704. Underground Storage Tank Indemnification Fund.

22 Section 705. Powers and duties of Underground Storage Tank
23 Indemnification Board.

24 Section 706. Eligibility of claimants.

25 Section 707. Audit.

26 Section 708. Sunset review.

27 Chapter 9. Siting of New Aboveground Storage Tank Facilities

28 Section 901. Siting of new aboveground storage tank facilities.

29 Section 902. Siting criteria for aboveground tank facilities.

30 Chapter 11. Enforcement and Remedies

1 Section 1101. Unlawful conduct.
2 Section 1102. Enforcement orders.
3 Section 1103. Civil penalties.
4 Section 1104. Criminal penalties.
5 Section 1105. Production of materials; recordkeeping
6 requirements.
7 Section 1106. Collection of fines, fees, etc.
8 Section 1107. Public information.
9 Section 1108. Relationship to other laws.

10 Chapter 21. Miscellaneous Provisions

11 Section 2101. Appropriations.
12 Section 2102. Severability.
13 Section 2103. Repeals.
14 Section 2104. Effective date.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 CHAPTER 1

18 GENERAL PROVISIONS

19 Section 101. Short title.

20 This act shall be known and may be cited as the Storage Tank
21 and Spill Prevention Act.

22 Section 102. Legislative findings.

23 (a) General.--The General Assembly of the Commonwealth finds
24 and declares that:

25 (1) The lands and waters of this Commonwealth constitute
26 a unique and irreplaceable resource from which the well-being
27 of the public health and economic vitality of this
28 Commonwealth is assured.

29 (2) These resources have been contaminated by releases
30 and ruptures of regulated substances from both active and

1 abandoned storage tanks.

2 (3) Once contaminated, the quality of the affected
3 resources may not be completely restored to their original
4 state.

5 (4) When remedial action is required or undertaken, the
6 cost is extremely high.

7 (5) Contamination of groundwater supplies caused by
8 releases from storage tanks constitutes a grave threat to the
9 health of affected residents.

10 (6) Contamination of these resources must be prevented
11 through improved safeguards on the installation and
12 construction of storage tanks.

13 (b) Declaration.--The General Assembly declares these leaks
14 to be a threat to the public health and safety of this
15 Commonwealth and hereby exercises the power of the Commonwealth
16 to prevent the occurrence of these leaks through the
17 establishment of a regulatory scheme for the storage of
18 regulated substances in new and existing storage tanks and to
19 provide liability for damages sustained within this Commonwealth
20 as a result of a discharge by requiring prompt cleanup and
21 removal of such pollution and discharged regulated substance.
22 Section 103. Definitions.

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

26 "Abandoned tank." A storage tank, other than nonoperational,
27 which was no longer in use for storage of regulated substances
28 on the effective date of this act.

29 "Aboveground tank." Any stationary storage tank constructed
30 primarily of nonearthen materials which provides structured

1 support and whereby more than 90% of the tank volume is not
2 buried below the ground surface. This definition and regulations
3 promulgated under this act shall not include:

4 (1) A farm or residential tank of 1,100 gallons or less
5 capacity used for storing motor fuel for noncommercial
6 purposes.

7 (2) Aboveground tanks regulated under the act of May 31,
8 1945 (P.L.1198, No.418), known as the Surface Mining
9 Conservation and Reclamation Act.

10 (3) Aboveground storage tanks which are used to store
11 brines, crude oil, drilling or frac fluids and similar
12 substances or materials and directly related to the
13 exploration, development or production of crude oil or
14 natural gas regulated under the act of December 19, 1984
15 (P.L.1140, No.223), known as the Oil and Gas Act.

16 (4) Septic tanks.

17 (5) Piping, surface impoundments, pits, ponds and
18 lagoons.

19 (6) Storm water or wastewater collection or treatment
20 systems.

21 (7) Process vessels and pressure vessels including oil
22 and water separators.

23 (8) A pipeline facility (including gathering lines)
24 regulated under:

25 (i) the Natural Gas Safety Act of 1968 (Public Law
26 90-481, 82 Stat. 720, 49 U.S.C. App. § 1671 et seq.); or

27 (ii) the Hazardous Liquid Pipeline Safety Act of
28 1979 (Public Law 96-129, 93 Stat. 1003, 49 U.S.C. § 2001
29 et seq.).

30 (9) An interstate pipeline facility regulated under the

1 State laws comparable to provisions of law in paragraph (8).

2 (10) Tanks used for storage and storing heating oil for
3 consumptive use on the premises where stored.

4 (11) Nonstationary tanks, liquid traps or associated
5 gathering lines directly related to oil or gas production and
6 gathering operations.

7 (12) Sumps, drip pots and other vessels designed to
8 catch drips, spills, leaks or other releases before such
9 releases enter the environment.

10 (13) Tanks located indoors above the surface of the
11 floor.

12 (14) Tanks used for storage of products meeting the
13 United States Food and Drug Administration regulations under
14 the Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21
15 U.S.C. § 301 et seq.).

16 (15) Any other tank excluded by regulations or policy
17 promulgated pursuant to this act.

18 Unless specifically excluded, the term includes small
19 aboveground storage tanks.

20 "Cathodic protection." A technique to prevent corrosion of a
21 metal surface by making that surface the cathode of an
22 electrochemical cell, including, but not limited to, the
23 application of either galvanic anodes or impressed current.

24 "Certified tank installer." A person certified by the
25 Department of Environmental Resources to install, erect,
26 construct, modify or remove storage tanks. The term includes an
27 employee of a tank owner or operator.

28 "Corrective action." The:

29 (1) Containment or attempted containment of a discharge.

30 (2) Removal or attempted removal of a discharge.

1 (3) Taking of reasonable measures to prevent or mitigate
2 damages to the public health, safety or welfare, including,
3 but not limited to, public and private property, shorelines,
4 beaches, surface waters, water columns and bottom sediments,
5 soils and other affected property, including wildlife and
6 other natural resources.

7 "Corrective action costs." All costs associated with the
8 cleanup and removal of a discharge incurred by this Commonwealth
9 or its political subdivisions or their agents with approval of
10 the Department of Environmental Resources.

11 "Department." The Department of Environmental Resources of
12 the Commonwealth.

13 "Monitoring system." A system capable of detecting leaks or
14 discharges in connection with an underground storage tank.

15 "Nonoperated tank." Any storage tank that is empty and
16 represents excess storage capacity that may be brought up to
17 standards consistent with the regulatory requirements at the
18 time the tank is brought into service.

19 "Operator." Any person in control of, or having
20 responsibility for, the daily operation of the storage tank.

21 "Owner." Any person owning a storage tank. The term shall
22 include the current owner of any underground storage tank
23 holding regulated substances on or after November 8, 1984, and
24 the owner of an underground storage tank at the time all
25 regulated substances were removed when removal occurred prior to
26 November 8, 1984.

27 "Person." Any individual, partnership, corporation,
28 association, joint venture, consortium, institution, trust,
29 firm, joint-stock company, cooperative enterprise, municipality,
30 municipal authority, Federal Government or agency, Commonwealth

1 department, agency, board, commission or authority, or any other
2 legal entity whatsoever which is recognized by law as the
3 subject of rights and duties. In any provisions of this act
4 prescribing a fine, imprisonment or penalty, or any combination
5 of the foregoing, the term "person" shall include the officers
6 and directors of any corporation or other legal entity having
7 officers and directors.

8 "Pressure vessel." A vessel used in industrial processes
9 designated to withstand pressures above 15 psig.

10 "Private tank inspector." A person certified by the
11 Department of Environmental Resources to conduct environmental
12 audits and inspections of storage tanks. A private tank
13 inspector shall not be an employee of a tank owner.

14 "Process vessel." A vessel in industrial or commercial
15 operation in which, during use, there is a mechanical, physical
16 or chemical change of the contained substances taking place. The
17 industrial or commercial process may be mixing, separating,
18 chemically altering, dehydrating, extracting, refining or
19 polishing of the substances in the tank. The term "process
20 vessel" does not include tanks used to store substances prior to
21 sale or to store feedstock prior to additional processing.

22 "Regulated substance." An element, compound, mixture,
23 solution or substance that, when released into the environment,
24 may present substantial danger to the public health, welfare or
25 the environment. The term includes:

26 (1) Any substance defined in section 101(14) of the
27 Comprehensive Environmental Response, Compensation, and
28 Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767), not
29 including any substance regulated as a hazardous waste under
30 Subtitle C of the Resource Conservation and Recovery Act of

1 1976 (Public Law 94-580, 42 U.S.C. § 6901 et seq.).

2 (2) Petroleum, including crude oil or any fraction
3 thereof, which is liquid at standard conditions of
4 temperature and pressure (60 degrees Fahrenheit and 14.7
5 pounds per square inch absolute), including, but not limited
6 to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil
7 mixed with other wastes and crude oils, gasoline and
8 kerosene.

9 The term does not include the storage or use of animal waste in
10 normal agricultural practices.

11 "Release." Any spilling, leaking, emitting, discharging,
12 escaping, leaching or disposing from a storage tank into waters
13 of this Commonwealth or subsurface soils.

14 "Secondary containment." An additional layer of impervious
15 material creating a space in which a leak of a regulated
16 substance from a storage tank may be detected before it enters
17 the environment.

18 "Secretary." The Secretary of Environmental Resources of the
19 Commonwealth.

20 "Small aboveground storage tank." Any aboveground storage
21 tank having a capacity equal to or less than 21,000 gallons.

22 "Storage tank." Any aboveground or underground storage tank
23 which is used for the storage of any regulated substance.

24 "Substantially modify." The construction, refurbishment or
25 restoration of an existing storage tank which alters the
26 physical integrity of the tank.

27 "Tank facility." An area in which one or more aboveground
28 storage tanks are located, excluding small aboveground storage
29 tanks.

30 "Underground storage tank." Any one or combination of

1 underground tanks (including underground pipes connected
2 thereto) which are used to contain an accumulation of regulated
3 substances, and the volume of which (including the volume of the
4 underground pipes connected thereto) is 10% or more beneath the
5 surface of the ground. This definition and regulations
6 promulgated under this act shall not include:

7 (1) Farm or residential tanks of 1,100 gallons or less
8 capacity used for storing motor fuel for noncommercial
9 purposes.

10 (2) Tanks used for storing heating oil for consumptive
11 use on the premises where stored.

12 (3) Septic tanks.

13 (4) A pipeline facility (including gathering lines)
14 regulated under:

15 (i) The Natural Gas Pipeline Safety Act of 1968
16 (Public Law 90-481, 82 Stat. 720).

17 (ii) The Hazardous Liquid Pipeline Safety Act of
18 1979 (Public Law 96-129, 93 Stat. 1003).

19 (5) An interstate or intrastate pipeline facility
20 regulated under State laws comparable to the provisions of
21 law in paragraph (4).

22 (6) Surface impoundments, pits, ponds or lagoons.

23 (7) Storm water or wastewater collection systems.

24 (8) Flow-through process tanks.

25 (9) Liquid traps or associated gathering lines directly
26 related to oil or gas production and gathering operations.

27 (10) Storage tanks situated in an underground area (such
28 as a basement, cellar, mine working, drift, shaft or tunnel)
29 if the storage tank is situated upon or above the surface of
30 the floor.

1 (11) Any underground storage tank system whose capacity
2 is 110 gallons or less.

3 Section 104. Construction.

4 This act and the regulations promulgated under this act shall
5 be liberally construed in order to fully protect the public
6 health, welfare and safety of the residents of this
7 Commonwealth.

8 Section 105. API.

9 A reference in this act to "API" in relation to publications
10 shall be deemed to be a reference to the appropriate technical
11 publication, including appendices, of the American Petroleum
12 Institute.

13 CHAPTER 3

14 STORAGE TANK PROTECTION PROGRAM

15 Section 301. Establishment of program.

16 (a) Authority.--The department shall establish, implement
17 and administer a comprehensive program for storage tank
18 protection by providing for regulation of the installation,
19 location, removal and closure of storage tanks and establishing
20 an inventory review procedure and inspection program to insure
21 the structural integrity of existing and new storage tanks.

22 (b) Rules and regulations for aboveground and underground
23 storage tanks.--The department shall develop separate regulatory
24 programs pursuant to provisions of sections 310 and 311
25 governing underground storage tanks and aboveground storage
26 tanks. Regulations governing underground storage tanks as
27 proposed by the department and adopted by the Environmental
28 Quality Board, shall be no more stringent than rules and
29 regulations adopted by the Federal Environmental Protection
30 Agency. The department shall develop regulations which are based

1 on industry practices and standards as embodied in the existing
2 regulations governing aboveground and underground storage tanks.
3 Section 302. Aboveground storage tank permits.

4 (a) General rule.--Except as provided in section 305, no
5 person shall own, construct, operate, renovate, install, replace
6 or substantially modify an aboveground storage tank unless
7 authorized by the department through policies, rules or
8 regulations or by obtaining a permit from the department and
9 such person has paid the necessary fees required by this act.

10 (b) Amended permits.--The owner or operator of an
11 aboveground storage tank shall apply to the department for an
12 amended permit whenever any one of the following factors occurs:

13 (1) A significant change in the location, construction,
14 reconstruction or operation of a permitted aboveground
15 storage tank. For the purpose of this subsection, significant
16 change shall be defined as the disassembly and relocation of
17 the aboveground storage tank from one site to another site.

18 (2) The removal of a permitted aboveground storage tank.

19 (c) Application content.--Applications for aboveground
20 storage tank permits shall be submitted, in writing, by a
21 certified tank installer, to the department in such form and
22 with such accompanying data as shall be prescribed by
23 regulations, and shall include, to the extent that a good faith
24 effort has been made by the applicant, but not be limited to, a
25 map identifying the exact location of the tank; a description of
26 the construction of the tank, including the material out of
27 which the tank is constructed; the age and manufacturer of the
28 tank; the design of the storage tank facilities, including any
29 pumping, venting, secondary containment system and safety
30 equipment; the products to be stored in the tank; and the

1 location of the facility relative to surface water. The
2 department shall have the authority to deny permits, or include
3 in each permit general and specific conditions to insure the
4 proper operation of the aboveground storage tank.

5 (d) Review of applications.--The department shall make a
6 determination regarding whether an application is reasonably
7 complete within 45 days of the filing of an application with the
8 department and shall identify all areas in which an application
9 is incomplete when issuing a notice of deficiency. The
10 department shall review any amended application filed in
11 response to a notice of deficiency within 30 days of the filing
12 of the amended application with the department. Nothing in this
13 section shall prohibit the department and the applicant from
14 agreeing to extend any deadline for action provided by this
15 section. Nothing in this section shall prohibit the department
16 from requesting and accepting supplemental information,
17 explanations and clarifications regarding the content of an
18 application prior to the deadline for department action.

19 (e) Permit fee.--Each application shall be accompanied by a
20 permit fee as established by regulations under section 311 of
21 this act.

22 (f) Transfer of permit.--Written approval by the department
23 is required for the transfer of permits.

24 (g) Renewal of permit.--A permit to operate an aboveground
25 storage tank shall be renewed every ten years.

26 (h) Inspections.--The department shall require tanks to be
27 inspected prior to operation and periodically thereafter.

28 Section 303. Small aboveground storage tanks.

29 (a) General rule.--Except as provided in section 305, no
30 person shall own, construct, operate, renovate, install, replace

1 or substantially modify any small aboveground storage tank
2 unless authorized by the department through policies, rules or
3 regulations or by obtaining a permit and such person has paid
4 the necessary fees required under this act.

5 (b) Application submittal.--The permit application or other
6 department-approved application for the installation of a small
7 aboveground storage tank after the effective date of this act
8 shall be submitted by a certified tank installer prior to
9 installation of the tank.

10 (c) Application content.--Applications for a small
11 aboveground storage tank shall be submitted, in writing, to the
12 department in such a form and with such accompanying data as
13 shall be prescribed by regulation, and shall include, to the
14 extent a good faith effort has been made by the applicant, but
15 not be limited to, a description of the construction of the
16 tank, including the material out of which the tank is
17 constructed; the age and manufacturer of the tank; the design of
18 the storage tank facilities, including any pumping, vending,
19 secondary containment and safety equipment; and the products to
20 be stored in the tank.

21 (d) Review of applications.--An application submitted by a
22 certified tank installer is deemed approved by the department
23 unless the department disapproves the application within ten
24 days of submittal. The department shall review any amended
25 application filed in response to a notice of deficiency within
26 ten days of the filing of the amended application with the
27 department. Nothing in this section shall prohibit the
28 department and the applicant from agreeing to extend any
29 deadline for action provided by this section. Nothing in this
30 section shall prohibit the department from requesting and

1 accepting supplemental information, explanations and
2 clarifications regarding the content of an application prior to
3 the deadline for department action.

4 (e) Permit fee.--Each application shall be accompanied by a
5 permit fee as established under section 311 of this act.

6 (f) Transfer of permit.--Written approval by the department
7 is required for the transfer of permits.

8 (g) Inspections.--The department shall require tanks to be
9 inspected prior to operation and periodically thereafter.

10 Section 304. Underground storage tank permits.

11 (a) General rule.--Except as provided for in section 305, no
12 person shall own, construct, operate, renovate, install, replace
13 or substantially modify any underground storage tank unless
14 authorized by the department through department policies, rules
15 or regulations or by obtaining a permit and such person has paid
16 the necessary fees required under this act.

17 (b) Application submitted.--The permit application or other
18 department-approved application for the installation of any
19 underground storage tank after the effective date of this act
20 shall be submitted by a certified tank installer prior to
21 installation of the tank.

22 (c) Application content.--Applications for underground
23 storage tank shall be submitted, in writing, to the department
24 in such form and with such accompanying data as shall be
25 prescribed by regulation, and shall include, to the extent that
26 a good faith effort has been made by the applicant, but not be
27 limited to, a description of the construction of the tank,
28 including the material out of which the tank is constructed; the
29 age and manufacturer of the tank; installation procedures; and
30 safety equipment and leak detection system. The department shall

1 have the authority to deny applications or include in each
2 application general and specific conditions based on promulgated
3 regulations to insure that any new underground storage tank and
4 existing underground storage tank meet the Federal requirements
5 and deadlines for tank construction.

6 (d) Review of applications.--An application submitted by a
7 certified tank installer is deemed approved by the department
8 unless the department disapproves the application within ten
9 days of submission. The department shall review any amended
10 application filed in response to a notice of deficiency within
11 ten days of the filing of the amended application with the
12 department. Nothing in this section shall prohibit the
13 department and the applicant from the agreeing to extend any
14 deadline for action provided by this section. Nothing in this
15 section shall prohibit the department from requesting and
16 accepting supplemental information, explanations and
17 clarifications regarding the content of an application prior to
18 the deadline for department action.

19 (e) Permit fee.--Each application shall be accompanied by a
20 permit fee as established under section 311 of this act.

21 (f) Transfer of permit.--Written approval by the department
22 is required for the transfer of permits.

23 (g) Inspections.--The department shall require tanks to be
24 inspected prior to operation and periodically thereafter.

25 Section 305. Operation under existing permits.

26 (a) General rule.--The provisions of sections 302(a), 303(a)
27 and 304(a) shall not apply to any person who was issued a valid
28 aboveground storage tank permit or a valid underground storage
29 tank permit by the State Fire Marshal under 37 Pa. Code Ch. 11
30 (relating to preliminary provisions) or 13 (relating to storage

1 and use) or by a local fire marshal in a city of the first class
2 under the act of June 8, 1911 (P.L.705, No.281), entitled "An
3 act creating the office of Fire Marshal, to be attached to the
4 Department of Public Safety in cities of the first class;
5 prescribing his duties and powers; and providing penalties for
6 violations of the provisions of the act; and providing for the
7 method of appointment, compensation, and for the maintenance of
8 his office," or a fire marshal in a county of the second class
9 under the act of July 28, 1953 (P.L.723, No.230), known as the
10 Second Class County Code, if the person holding that permit
11 fully complies with subsection (b).

12 (b) Repermitting.--

13 (1) Within two years of the effective date of this act,
14 every person issued a permit under subsection (a) for any
15 aboveground storage tank, including a small aboveground
16 storage tank, which is certified by that person to be ten
17 years of age or older shall apply to the department for a new
18 permit.

19 (2) Within three years of the effective date of this
20 act, every person issued a permit under subsection (a) for
21 any aboveground storage tank, including a small aboveground
22 storage tank, which is certified by that person to be less
23 than ten years of age shall apply to the department for a new
24 permit.

25 (3) Within three years of the effective date of this
26 act, every person issued a permit under subsection (a) for
27 any underground storage tank shall apply to the department
28 for a new permit.

29 Section 306. Registration of aboveground and underground
30 storage tanks.

1 (a) Existing aboveground storage tanks.--The owner of an
2 existing aboveground storage tank shall, within one year of the
3 effective date of this act, register each aboveground storage
4 tank with the department.

5 (b) New aboveground storage tanks.--The owner of any
6 aboveground storage tanks constructed after the effective date
7 of this act shall register the aboveground storage tank with the
8 department in addition to obtaining a permit under section 302.

9 (c) New underground storage tanks.--The owner of any new
10 underground storage tank shall register said tank with the
11 department upon applying for a permit under section 303.

12 (d) Existing underground storage tanks.--The owner of any
13 existing underground storage tank that has not registered that
14 tank with the department pursuant to Subtitle I of the Resource
15 Conservation and Recovery Act of 1976 (Public Law 94-580, 42
16 U.S.C. § 6901 et seq.) shall register said tank with the
17 department within 60 days of the effective date of this act.

18 (e) Registration forms.--The department shall continue to
19 use the existing underground storage tank registration as
20 required by Federal law. The registration form for aboveground
21 storage tanks, including small aboveground storage tanks, shall
22 be substantially similar to the underground storage tank
23 registration form.

24 (f) Initial registration fees.--Until such time that
25 regulations on registration fees are promulgated under section
26 311, each registration application shall be accompanied with a
27 registration fee that shall be \$600 for each aboveground storage
28 tank, \$300 for each small aboveground storage tank and \$150 for
29 each underground storage tank.

30 (g) Renewal.--Each registration issued under this section

1 shall be renewed every three years as determined from the date
2 of the last registration. Renewals shall continue until the time
3 that the department receives written notification from the owner
4 that the storage tank has been permanently closed.

5 Section 307. Inspection of aboveground storage tanks.

6 (a) General rule.--The department shall have the authority
7 to inspect all aboveground storage tanks in accordance with
8 procedures and standards promulgated by the department.

9 (b) Inspection report.--As a condition to operate any
10 permitted storage tank, including aboveground storage tanks, the
11 permittee shall maintain records and complete an annual report
12 form as prescribed by the Environmental Quality Board which will
13 include, but not be limited to, the following information:

14 (1) The results of the most recent hydrostatic test.

15 (2) Any changes outside the permitted usage of the
16 system.

17 (3) Any changes in the monitoring program.

18 (4) Any unaccounted inventory occurrences.

19 (c) Aboveground storage tank testing requirements.--Any
20 owner of an aboveground storage tank, excluding a small
21 aboveground storage tank, shall conduct a hydrostatic test on
22 new aboveground storage tanks or substantially modified
23 aboveground storage tanks. Each existing aboveground storage
24 tank, excluding a small aboveground storage tank, shall undergo
25 an out-of-service inspection at least once every ten years.

26 Section 308. Inspection and inventory records of underground
27 storage tanks.

28 (a) General rule.--The department shall have the authority
29 to inspect all underground tanks in accordance with procedures
30 and standards set forth in department regulations.

1 (b) Inventory records.--The owner or operator of any
2 underground storage tanks shall maintain inventory records for
3 each underground storage tank which shall be maintained at the
4 site of the facility for at least one year.

5 (c) Monitoring systems.--The owner or operator of an
6 underground storage tank shall install, maintain and operate
7 monitoring systems in accordance with manufacturer's
8 requirements and department regulations.

9 Section 309. Certification of storage tank installers and
10 private tank inspectors.

11 The department shall have the authority to establish a
12 certification system for tank installers and private tank
13 inspectors by regulation. The department is authorized to
14 certify through training and testing programs and shall also be
15 empowered to revoke or suspend the certification of a tank
16 installer or private tank inspector pursuant to regulations
17 promulgated under section 311. Any certification issued by the
18 department under this section shall be valid for a period of
19 five years.

20 Section 310. Small operator assistance program for underground
21 storage tanks.

22 The department shall establish, implement and administer a
23 small operator assistance program within 180 days of the
24 effective date of this act. The small operator assistance
25 program shall provide information on compliance with this act
26 and other technical assistance to small operators located in
27 rural areas who pump, on a monthly basis, less than 3,000
28 gallons retail motor fuel sales.

29 Section 311. Environmental Quality Board.

30 (a) Rules and regulations.--The Environmental Quality Board

1 shall have the power and its duty shall be to review the
2 existing regulations governing storage tanks and adopt rules and
3 regulations governing the location, siting, installation,
4 operation, monitoring, classification and permitting of storage
5 tanks as it deems necessary for the implementation of this act.
6 The Environmental Quality Board shall, in developing
7 regulations, use the recommendations and standard procedures
8 developed by the American Petroleum Institute, American Society
9 of Testing and Materials, National Association of Corrosion
10 Engineers, National Fire Protection Association, and
11 Underwriters Laboratories. Until the Environmental Quality Board
12 adopts rules and regulations:

13 (1) The existing regulations governing the location,
14 siting, installation and operation, monitoring and permitting
15 of storage tanks set forth at 37 Pa. Code Chs. 11 (relating
16 to preliminary provisions) and 13 (relating to storage and
17 use) shall remain in effect.

18 (2) No person shall install a new or reconstructed
19 aboveground storage tank or modify an aboveground storage
20 tank unless the tank meets all applicable technical
21 requirements set forth by the American Petroleum Institute in
22 each of the following (including any appendices):

23 (i) API-12B - Bolted Tanks for Storage of Production
24 Liquids.

25 (ii) API-12D - Field Welded Tanks for Storage of
26 Production Liquids.

27 (iii) API-12F - Shop Welded Tanks for Storage of
28 Production Liquids.

29 (iv) API-12H - New Bottoms for Old Tanks.

30 (v) API-12P - Fiberglass Tanks for Storage of

1 Production Liquids.

2 (vi) API-620 - Large Welded Low Pressure Storage
3 Tanks.

4 (vii) API-650 - Large Welded Storage Tanks
5 (Atmospheric).

6 (3) Unless modified by the rules and regulations of the
7 department, the owner shall, along with the registration form
8 required by this act, submit a certification by a registered
9 professional engineer that the requirements of paragraph (2)
10 have been met.

11 (4) For underground tanks, until the effective date of
12 standards promulgated by the Administrator of the
13 Environmental Protection Agency under section 9003(e) of the
14 Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. §
15 6991), no person shall install an underground storage tank
16 unless the underground storage tank meets all of the
17 following requirements:

18 (i) The tank is designed to prevent releases due to
19 corrosion or structural failure for the operational life
20 of the tank.

21 (ii) The tank is cathodically protected against
22 corrosion, constructed of noncorrosive material, steel
23 clad with a noncorrosive material, or designed in a
24 manner to prevent the release or threatened release of
25 any stored substance.

26 (iii) The material used in the construction or
27 lining of the tank is compatible with the substance to be
28 stored.

29 (iv) Notwithstanding subparagraphs (i), (ii) and
30 (iii), if soil tests conducted in accordance with ASTM

1 Standard G57-78, or another standard approved by the
2 Administrator of the Environmental Protection Agency,
3 show that soil resistivity in an installation location is
4 12,000 ohm/cm or more (unless a more stringent standard
5 is prescribed by the Administrator of the Environmental
6 Protection Agency by rule), a storage tank without
7 corrosion protection may be installed in that location
8 during the period referred to above.

9 (b) Requirements for aboveground storage tanks.--The
10 Environmental Quality Board shall, by regulation, adopt
11 aboveground storage tank standards, excluding a small
12 aboveground storage tank, which shall include, but shall not be
13 limited to:

- 14 (1) Dike integrity.
- 15 (2) Liner requirements.
- 16 (3) Steel thickness based on storage capacity.
- 17 (4) Testing requirements for new and substantially
18 modified aboveground storage tanks.
- 19 (5) Closure requirements.
- 20 (6) Corrosion control features.
- 21 (7) Monitoring standards.
- 22 (8) Recordkeeping requirements.
- 23 (9) Performance and design standards for new and
24 substantially modified aboveground storage tanks.
- 25 (10) Inspection requirements for existing aboveground
26 storage tanks.
- 27 (11) Standards to protect against fire and explosion
28 hazards.

29 (c) Requirements for small aboveground storage tanks.--The
30 board shall, by regulation, adopt small aboveground storage tank

1 standards which shall include, but not be limited to:

2 (1) Testing requirements for new and substantially
3 modified small aboveground storage tanks.

4 (2) Performance and design standards consistent with the
5 manufacturer's specifications for the small aboveground
6 storage tank model.

7 (3) Monitoring standards consistent with the
8 manufacturer's specifications for the small aboveground
9 storage tank model.

10 (4) Requirements for closure.

11 (5) Recordkeeping requirements.

12 (6) Inspection requirements for existing small
13 aboveground storage tanks.

14 (7) Standards to protect against fire and explosion
15 hazards.

16 (d) Fees.--The board shall establish separate fees for
17 aboveground storage tanks, small aboveground storage tanks and
18 underground storage tanks for:

19 (1) Permit applications and amendments.

20 (2) Registration applications and transfers.

21 (3) Inspections.

22 (4) Certification fees for tank installers and private
23 tank inspectors.

24 (e) Regulations governing underground storage tanks.--The
25 board shall, by regulation, adopt underground storage tank
26 design and safety standards which shall be consistent with, and
27 not more stringent than, the Federal regulations governing
28 underground storage tanks. The regulations shall include:

29 (1) Corrosion control features, including cathodic
30 protection.

1 (2) Monitoring standards and monitoring systems
2 including electric or mechanical devices, monitoring wells,
3 tank testing or other methods of monitoring approved by the
4 department.

5 (3) Recordkeeping requirements of any monitoring or leak
6 detection systems, inventory control system or underground
7 storage tank testing system.

8 (4) Tank testing requirements pursuant to paragraph (2)
9 for underground storage tanks which considers such factors as
10 the regulated substance stored, proximity of the underground
11 storage tank to potable water supplies and soil conditions.

12 (5) Testing schedule requirements for the periodic
13 testing of structural integrity of the underground storage
14 tank without a monitoring system.

15 (6) Procedures for reporting of any release and the
16 corrective action taken in response to a discharge from an
17 underground storage tank.

18 (7) Requirements for corrective action in response to a
19 release from an underground storage tank by the owner or
20 operator of the underground storage tank.

21 (8) Performance standards for new and substantially
22 modified existing underground storage tanks including design
23 construction, installation and release detection standards.

24 (9) Standards to protect against fire and explosion
25 hazards.

26 Section 312. Industry Technical Advisory Board.

27 (a) Establishment.--There shall be created as an
28 administrative board within the department the Industry
29 Technical Advisory Board. The board shall consist of nine
30 members, all of whom shall be chosen by the Governor and shall

1 be residents of this Commonwealth. Three members shall be
2 qualified persons experienced in storage tank design and
3 installation with three years of experience in this
4 Commonwealth. One member shall be an owner or operator of an
5 aboveground storage tank. One member shall be an owner or
6 operator of an underground storage tank. One member shall be a
7 registered professional engineer with three years of experience
8 in this Commonwealth. One member shall be an engineer with three
9 years of experience in design and installation of aboveground
10 storage tanks in this Commonwealth, who shall be chosen from a
11 list of three names submitted by the Citizens Advisory Council
12 to the Governor and who shall sit as a representative of the
13 public interest. One member shall be a representative of local
14 government. One member shall be a representative of county
15 government.

16 (b) Expenses.--Advisory board members shall not receive a
17 salary but shall be reimbursed for all necessary expenses
18 incurred in the performance of their duties.

19 (c) Procedure.--All actions of the advisory board shall be
20 by majority vote. The advisory board shall meet upon the call of
21 the secretary, but not less than semiannually, to carry out its
22 duties under this act. The board shall select a chairman and
23 such other officers as it deems appropriate.

24 (d) Consultation.--The department shall consult with the
25 advisory board in the formulation, drafting and presentation
26 stages of all regulations of a technical nature promulgated
27 under this act. The advisory board shall be given a reasonable
28 opportunity to review and comment on all regulations of a
29 technical nature prior to submission to the Environmental
30 Quality Board for initial consideration. The written report of

1 the board shall be presented to the Environmental Quality Board
2 with any regulatory proposal. The chairman of the advisory board
3 shall be invited to participate in the presentation of all
4 regulations of a technical nature before the Environmental
5 Quality Board to the extent allowed by procedures of the
6 Environmental Quality Board. Nothing herein shall preclude any
7 member of the advisory board from filing a petition for
8 rulemaking with the Environmental Quality Board in accordance
9 with procedures established by the Environmental Quality Board.

10 CHAPTER 5

11 SPILL PREVENTION RESPONSE PLAN

12 Section 501. Submission of spill prevention response plan.

13 (a) Schedule.--Accompanying the registration form as set
14 forth in section 306, each owner of an aboveground storage tank
15 or tank facility shall submit to the department within one year
16 of the effective date of this act a plan for each aboveground
17 storage tank or tank facility. Each plan shall be site-specific
18 and be consistent with the requirements of this act. This
19 chapter shall not apply to small aboveground storage tanks.

20 (b) Plan revisions.--Each owner of an aboveground storage
21 tank or tank facility with an approved spill prevention response
22 plan shall submit a revised plan or addendum to the plan to the
23 department in accordance with the requirements of this act if
24 any of the following occur:

25 (1) Substantial changes in design, construction,
26 operation, maintenance of the storage tank or tank facility
27 or other circumstances that increase the potential for fires,
28 explosions or releases of regulated substances.

29 (2) Substantial changes in emergency equipment at the
30 facility.

1 (3) Substantial changes in tank facility emergency
2 organization.

3 (4) Revision of applicable department regulations.

4 (5) Failure of the plan in an emergency.

5 (6) The removal or the addition of any storage tank or
6 storage tanks.

7 (7) Otherwise deemed necessary by the department.

8 (c) Existing plans.--All existing plans covering storage
9 tanks approved by the department pursuant to the act of June 22,
10 1937 (P.L.1987, No.394), known as The Clean Streams Law, and
11 known as preparedness, prevention and contingency plans must be
12 revised within one year of the effective date of this act.

13 Section 502. Content of spill prevention response plan.

14 (a) Description of facility.--The plan shall identify and
15 describe the industrial or commercial activity which occurs at
16 the site, including a specific listing and inventory of all
17 types of products stored, amount of products stored and wastes
18 generated which are stored at the aboveground storage tank or
19 tank facility. The plan shall include drawings of the
20 aboveground storage tank facility, including location of all
21 drainage pipes and water outlets.

22 (b) Description of the organization structure for plan
23 implementation.--The plan shall identify all individuals and
24 their duties and responsibilities for developing, implementing
25 and maintaining the plan. The plan shall describe in detail the
26 chain of command at the aboveground storage tank or storage tank
27 facility and list all emergency coordinators, emergency response
28 contractors and local emergency response agencies.

29 (c) Spill leak prevention and response.--The plan shall
30 provide a preventive maintenance program that includes

1 monitoring and inspection procedures, including identification
2 of stress points, employee training program and security system.

3 (d) Countermeasure.--The plan shall explain in detail the
4 specific response that emergency personnel shall take upon the
5 occurrence of any release at the facility.

6 (e) Emergency spill control network.--The plan shall include
7 information obtained by the owner of the aboveground storage
8 tank facility from the county and municipal emergency management
9 agencies.

10 (f) Other information.--The owner shall provide the
11 department with all other information required by the department
12 to carry out its duties under this act.

13 Section 503. Review of spill prevention response plan.

14 (a) Written notice.--The owner of the aboveground storage
15 tank facility located adjacent to surface waters shall provide
16 public notice to all downstream municipalities, downstream water
17 companies and downstream industrial users within 20 miles of the
18 aboveground storage tank facility site and the local
19 municipality and county in which the facility is located upon
20 submission of the plan to the department. All comments must be
21 submitted to the department within 30 days.

22 (b) Review and comment.--Upon receipt of the plan, the
23 department shall forward copies to the Pennsylvania Emergency
24 Management Agency, the Pennsylvania Fish Commission and the
25 local and county emergency management agencies for review and
26 comment. All comments must be submitted within 90 days.

27 (c) Department action.--Within 30 days after completion of
28 the comment period, the department shall approve the plan or
29 disapprove the plan and provide the owner of the storage tank or
30 tank facility with specific reasons for the disapproval. The

1 owner of the storage tank or tank facility shall submit a
2 revised plan to the department which the department shall act
3 upon within 30 days.

4 Section 504. Notification.

5 (a) Procedure.--Upon the occurrence of a release at the
6 aboveground storage tank, the owner or operator of a storage
7 tank shall immediately notify the department, the Pennsylvania
8 Emergency Management Agency and the local emergency management
9 agency. All downstream water companies, downstream
10 municipalities and downstream industrial users within 20 miles
11 of the aboveground storage tank located adjacent to surface
12 waters shall be notified on a priority basis based on the
13 proximity of the release by the owner or operator or the agent
14 of the owner or operator of the aboveground storage tank within
15 two hours of any release which enters a water supply or which
16 threatens the water supply of downstream users.

17 (b) Notification list.--The owner of the aboveground storage
18 tank or tank facility located adjacent to surface waters shall
19 annually obtain and annually update a list from the local
20 emergency management agency of all downstream municipal water
21 users, water companies and industrial users within 20 miles of
22 the tank facility.

23 (c) State agency.--Notwithstanding any Federal law to the
24 contrary, the department is hereby designated as the State
25 agency empowered to direct emergency cleanup efforts at a
26 release site upon the occurrence of a release.

27 (d) Other emergency response plans.--Notwithstanding Chapter
28 5 to the contrary, the spill prevention response plan shall be
29 developed by the owner of the aboveground storage tank and
30 approved by the department consistent with the emergency

1 management procedures developed by local emergency management
2 agencies under Title III of the Superfund Amendments and
3 Reauthorization Act of 1986 (Public Law 99-499, 100 Stat. 1613).

4 CHAPTER 7

5 FINANCIAL PROVISIONS

6 Section 701. Financial responsibility.

7 (a) Regulations of department.--The department is authorized
8 to establish, by regulation, requirements for maintaining
9 evidence of financial responsibility as deemed necessary and
10 desirable, for taking corrective action and for compensating
11 third parties for bodily injury and property damage caused by
12 sudden and nonsudden releases arising from operation of a
13 storage tank. Standards for underground storage tanks shall be
14 identical to the coverage provided by the Underground Storage
15 Tank Indemnification Fund in sections 704, 705 and 706. Every
16 owner or operator shall meet the financial responsibility
17 requirements established by the department.

18 (b) Methods of obtaining financial responsibility.--
19 Financial responsibility required by this section may be
20 established in accordance with regulations promulgated by the
21 department by any one, or any combination of the following:
22 insurance, guarantee, surety, bond, letter of credit,
23 qualification as a self insurer, indemnity contract, risk
24 retention coverage, or any other method deemed satisfactory by
25 the department. Owners of underground tanks must meet these
26 requirements by complying with sections 704, 705 and 706. In
27 regulations or policy under this section, the department is
28 authorized to specify policy or other contractual terms,
29 conditions, or defenses which are necessary or acceptable in
30 establishing such evidence of financial responsibility.

1 (c) Bankruptcy of owner or operator.--In any case where the
2 owner or operator is in bankruptcy, reorganization, or
3 arrangement pursuant to the Federal Bankruptcy Code or where
4 with reasonable diligence jurisdiction in any State court or the
5 Federal courts cannot be obtained over an owner or operator
6 likely to be insolvent at the time of judgment, any claim
7 arising from conduct for which evidence of financial
8 responsibility must be provided under this subsection may be
9 asserted directly against the guarantor providing such evidence
10 of financial responsibility. In the case of any action pursuant
11 to this subsection, such guarantor shall be entitled to invoke
12 all rights and defenses which would have been available to the
13 owner or operator if any action had been brought against the
14 owner or operator by the claimant and which would have been
15 available to the guarantor if an action had been brought against
16 the guarantor by the owner or operator.

17 (d) Guarantor liability.--The total liability of any
18 guarantor shall be limited to the aggregate amount which the
19 guarantor has provided as evidence of financial responsibility
20 to the owner or operator under this section. Nothing in this
21 subsection shall be construed to limit any other State or
22 Federal statutory, contractual or common law liability of a
23 guarantor to its owner or operator, including, but not limited
24 to, the liability of such guarantor for bad faith either in
25 negotiating or in failing to negotiate the settlement of any
26 claim. Nothing in this subsection shall be construed to diminish
27 the liability of any person under section 107 or 111 of the
28 Comprehensive Environmental Response, Compensation and Liability
29 Act of 1980 or other applicable statutes.

30 (e) Definition.--As used in this subsection, the term

1 "guarantor" means any person, other than the owner or operator,
2 who provides evidence of financial responsibility for an owner
3 or operator under this subsection.

4 Section 702. Storage Tank Fund.

5 (a) Establishment of fund.--There is hereby created a
6 special nonlapsing fund in the State Treasury to be known as the
7 Storage Tank Fund. All fees, fines, judgments, bond forfeitures
8 and recovered costs collected by the department under this act
9 shall be paid into the Storage Tank Fund. All moneys placed in
10 the Storage Tank Fund are hereby appropriated to the department
11 for the costs of operating the aboveground and underground
12 storage tank programs, including activities necessary for the
13 elimination of releases from storage tanks and any other
14 activities necessary to meet the requirements of this act. The
15 fund shall also be available to pay third party claims as
16 required by the department under section 701(a) where the owner
17 or operator of an aboveground tank has not complied with the
18 requirements of section 701. No more than 75% of the fund shall
19 be available for departmental administration costs for this act.

20 (b) Supplements to fund.--The Storage Tank Fund may be
21 supplemented by appropriations from the General Assembly, the
22 Federal, State or local government or from any private source.

23 (c) Liability for costs.--Whenever costs have been incurred
24 by the Commonwealth for taking corrective action or paying
25 damages with respect to a storage tank regulated by this act,
26 the owner or operator, as may be appropriate, of such tank shall
27 be strictly liable, without fault, to the Commonwealth for such
28 costs, subject to the defenses set forth as follows:

29 (1) An act or omission caused by war.

30 (2) An act or omission caused by sabotage.

1 (3) An act of God.

2 (d) Effect of liability on property.--Any costs incurred by
3 the Commonwealth for taking corrective action or paying damages
4 with respect to a release from a storage tank regulated under
5 this act shall constitute in each instance a debt of the owner
6 or operator, as may be appropriate, to the Storage Tank Fund.
7 The debt shall constitute a lien on all property owned by said
8 owner or operator when a notice of lien incorporating a
9 description of the property of the owner or operator subject to
10 the action and an identification of the amount of expenditure
11 from the fund is duly filed with the prothonotary of the court
12 of common pleas where the property is located. The prothonotary
13 shall promptly enter upon the civil judgment or order docket the
14 name and address of the owner or operator, as may be
15 appropriate, and the amount of the lien as set forth in the
16 notice of lien. Upon entry by the prothonotary, the lien shall
17 attach to the revenues and all real and personal property of the
18 owner or operator, whether or not the owner or operator is
19 solvent. The notice of lien filed pursuant to this subsection
20 which affects the property of the owner or operator shall create
21 a lien with priority over all subsequent claims or liens which
22 are filed against the owner or operator.

23 (e) Third party claims against the fund.--

24 (1) Claims shall be filed with the department not later
25 than two years after the date of discovery of damages or not
26 later than five years after the date of the incident which
27 caused the damage. The department shall develop forms and
28 procedures for such claims.

29 (2) The department shall inform all affected parties
30 within ten days of receipt of the claim.

1 (3) Any person who knowingly gives false information as
2 part of a claim, in addition to other penalties in this act,
3 commits a misdemeanor of the third degree, punishable by a
4 fine not to exceed \$10,000.

5 (4) The department shall attempt to promote and arrange
6 settlement between the claimant and the person responsible
7 for the discharge. If the parties fail to agree upon a
8 settlement then the claim shall be resolved by binding
9 arbitration with a three-member panel chosen by the
10 department and based on the information filed by both
11 parties.

12 Section 703. Underground Storage Tank Indemnification Board.

13 (a) Establishment of board, appointment and terms.--There is
14 hereby created the Underground Storage Tank Indemnification
15 Board which shall consist of seven members. The Insurance
16 Commissioner and the Secretary of the Department of
17 Environmental Resources shall be ex officio members. Five
18 members shall be appointed by the Governor, as follows:

19 (1) Three members who shall be persons with particular
20 expertise in the management of underground petroleum storage
21 tanks. Two of these members shall be appointed for terms of
22 four years and one shall be appointed for a term of three
23 years. The Governor shall appoint the members, one each from
24 a list of nominees provided by each of the following:

25 (i) The Associated Petroleum Industries of
26 Pennsylvania.

27 (ii) The Pennsylvania Petroleum Association.

28 (iii) The Service Station Dealers and Automotive
29 Repair Association of Pennsylvania and Delaware and the
30 Petroleum Retailers and Auto Repair Association, Inc.

1 The Governor may reject any or all of the nominees contained
2 on the lists provided above, and may request that additional
3 lists of nominees be provided to him.

4 (2) One local government member who shall have knowledge
5 and expertise in underground storage tanks. The local
6 government member shall be appointed for a term of two years.

7 (3) One public member who shall not be an owner or
8 operator of storage tanks nor affiliated in any way with any
9 person regulated under this act. The public member shall be
10 appointed for a term of three years.

11 (b) Chairman.--The board shall select a chairman from its
12 members annually.

13 (c) Vacancies.--Vacancies in appointed positions shall be
14 filled by the Governor in the same manner as the original
15 appointment. Members shall serve until their successors are
16 appointed and qualified.

17 (d) Compensation.--Members shall receive no compensation for
18 their service other than reimbursement for necessary expenses in
19 accordance with Commonwealth regulations.

20 (e) Conflicts.--No member shall participate in making any
21 decision in a matter involving any payment from which he or his
22 employer may benefit or which may benefit a member of his
23 immediate family.

24 (f) Meetings and quorum.--The board shall meet at least
25 quarterly. Additional meetings may be held upon reasonable
26 notice at times and locations selected by the board. The board
27 shall meet at the call of the chairman or upon written request
28 of three members of the board. Four members shall constitute a
29 quorum and a quorum may act for the board in all matters.

30 Section 704. Underground Storage Tank Indemnification Fund.

1 (a) Establishment of fund.--There is hereby created a
2 special fund in the State Treasury to be known as the
3 Underground Storage Tank Indemnification Fund. This fund shall
4 consist of the fees assessed by the board under section 705(d),
5 amounts recovered by the board due to fraudulent or improper
6 claims or as penalties for failure to pay fees when due, and
7 funds earned by the investment and reinvestment of the moneys
8 collected. Moneys in the fund are hereby appropriated to the
9 board for the purpose of making payments to owners and operators
10 of underground petroleum storage tanks who incur liability for
11 taking corrective action or for bodily injury or property damage
12 caused by an accidental release from underground petroleum
13 storage tanks. The fund shall be the sole source of payments
14 under this act, and the Commonwealth shall have no liability
15 beyond the amount of the fund.

16 (b) Limit of payments.--Payments to eligible owners or
17 operators shall be limited to the actual costs of corrective
18 action and the amount of an award of damages by a court of
19 competent jurisdiction for bodily injury, property damage, or
20 both, not to exceed a total of \$1,000,000 per tank per
21 occurrence. Payments of claims against the fund shall be subject
22 to a deductible as provided in section 705.

23 (c) Prohibited uses.--Moneys in the fund shall not be used
24 for the repair, replacement or maintenance of underground
25 petroleum storage tanks or improvement of property on which the
26 tanks are located.

27 (d) Expenses.--All costs and expenses of the board shall be
28 paid from the fund, including, but not limited to, compensation
29 of employees and any independent contractors or consultants.
30 Section 705. Powers and duties of Underground Storage Tank

1 Indemnification Board.

2 (a) Support.--The board may employ the personnel necessary
3 to process fee payments to administer claims made against the
4 Underground Storage Tank Indemnification Fund and to carry out
5 the purposes of the board. The board may also contract for the
6 services of attorneys, consultants and actuaries necessary to
7 advise the board in establishing fees under subsection (d) and
8 deductible amounts under subsection (c).

9 (b) Claims.--The board shall establish procedures by which
10 owners and operators may make claims for costs estimated or
11 incurred in taking corrective action and for liability due to
12 bodily injury and property damage caused by an accidental
13 release from underground petroleum storage tanks. Claims
14 determined to be eligible shall be paid upon receipt of
15 information required under regulations which the board shall
16 promulgate. The board, by regulation, may establish a system for
17 prioritizing claims.

18 (c) Deductible.--

19 (1) Claims shall be subject to a deductible amount which
20 the board shall set annually. The board shall give at least
21 30 days' notice of a proposed change in deductible amounts by
22 publication in the Pennsylvania Bulletin, and the change
23 shall take effect on the date specified in the notice. Each
24 owner or operator shall be responsible for the amount of the
25 deductible as provided in section 705.

26 (2) The board shall set the initial deductible for
27 corrective action claims at \$75,000 per tank per occurrence.
28 Thereafter, the deductible shall be based on an estimate of
29 the average cost of taking corrective action due to an
30 accidental release from underground petroleum storage tanks

1 in this Commonwealth. The board shall not set a deductible in
2 an amount lower than \$50,000 per tank per occurrence.

3 (3) The board shall set the initial deductible for
4 claims due to bodily injury, property damage, or both, at
5 \$150,000 per tank per occurrence. Thereafter, the deductible
6 shall be based on an estimate of the average award for
7 settlement of third-party claims involving bodily injury,
8 property damage, or both, caused by accidental release from
9 underground petroleum storage tanks in this Commonwealth. The
10 board shall not set a deductible in an amount lower than
11 \$100,000 per tank per occurrence.

12 (d) Fees.--The board, by regulations, shall establish fees
13 to be paid by the owner or operator, as appropriate, of
14 underground petroleum storage tanks. Fees shall be set on an
15 actuarial basis in order to provide an amount sufficient to pay
16 outstanding and anticipated claims against the Underground
17 Storage Tank Indemnification Fund in a timely manner. Fees shall
18 also include an amount sufficient to meet all other financial
19 requirements of the board. Fees shall be adjusted as deemed
20 necessary by the board, but no more than once a year.

21 (e) Payment of fees.--Fees established under subsection (d)
22 shall be paid by the owner of the tank unless a written
23 agreement between the owner and the operator provides otherwise.
24 A person who fails or refuses to pay the fee or a part of the
25 fee by the date established by the board shall be assessed a
26 penalty of 5% of the amount due which shall accrue on the first
27 day of delinquency and be added thereto. Thereafter, on the last
28 day of each month during which any part of any fee or any prior
29 accrued penalty remains unpaid, an additional 5% of the then
30 unpaid balance shall accrue and be added thereto.

1 (f) Additional powers.--The board shall have additional
2 powers as may be necessary to carry out its duties under this
3 act, including, but not limited to, the following:

4 (1) To make contracts and execute all instruments
5 necessary or convenient for carrying on of its business.

6 (2) To make bylaws for the management and regulation of
7 its affairs and to adopt, amend and repeal rules, regulations
8 and guidelines governing the administrative procedures and
9 business of the board and operation and administration of the
10 fund. Regulations of the board shall be subject to review
11 under the act of June 25, 1982 (P.L.633, No.181), known as
12 the Regulatory Review Act.

13 (3) To sue or be sued concerning claims arising as a
14 result of a release from an underground petroleum storage
15 tank and to implead and be impleaded, complain and defend in
16 all courts.

17 (4) To conduct examinations and investigations and take
18 testimony under oath or affirmation on any matter necessary
19 to the determination of approval or disapproval of any claim.

20 Section 706. Eligibility of claimants.

21 In order to receive a payment from the Underground Storage
22 Tank Indemnification Fund, a claimant shall meet the following
23 eligibility requirements:

24 (1) The claimant is the owner or operator of the
25 underground tank which is the subject of the claim.

26 (2) The fee required under section 705 has been paid.

27 (3) The tank has been registered in accordance with the
28 requirements of section 306.

29 (4) The owner or operator has obtained a permit, if
30 required under sections 304 and 305.

1 (5) The claimant demonstrates to the satisfaction of the
2 board that the release that is the subject of the claim
3 occurred after the date established by the board for payment
4 of the fee required by section 705(d).

5 (6) Additional eligibility requirements which the board
6 may adopt by regulation.

7 Section 707. Audit.

8 The board shall contract for an annual independent audit of
9 the Underground Storage Tank Indemnification Fund.

10 Section 708. Sunset review.

11 The Underground Storage Tank Indemnification Fund and the
12 board shall be subject to periodic evaluation, review and
13 termination or continuation under the act of December 22, 1981
14 (P.L.508, No.142), known as the Sunset Act, every five years
15 commencing with an initial termination date of December 31,
16 1993. Nothing in the Sunset Act or this section shall be
17 construed to invalidate any claim submitted prior to the date of
18 termination.

19 CHAPTER 9

20 SITING OF NEW ABOVEGROUND STORAGE TANK FACILITIES

21 Section 901. Siting of new aboveground storage tank facilities.

22 (a) Procedure.--The owner or operator of an existing or
23 proposed aboveground tank facility shall provide written
24 notification to the local municipality and county in which the
25 aboveground tank facility is situated or to be located prior to
26 submitting an application for an aboveground storage permit to
27 construct or reconstruct an additional aboveground storage tank
28 at the aboveground storage tank facility or construct a new
29 aboveground storage tank facility. This chapter shall not apply
30 to small aboveground storage tanks. For purposes of this

1 chapter, the term "tank facility" means an area in which two or
2 more aboveground storage tanks are located.

3 (b) Public hearings.--Upon submission to the department of
4 the permit application to construct any new aboveground tank
5 facility, the department may hold a public hearing in the
6 municipality or county in which the aboveground tank facility is
7 proposed to be located. The department shall publish the permit
8 application in the Pennsylvania Bulletin upon receipt of the
9 permit application and provide not more than a 60-day comment
10 period.

11 (c) Public comment on aboveground storage tank permit.--The
12 department shall publish the aboveground storage tank permit
13 application in the Pennsylvania Bulletin upon receipt of the
14 permit application and provide a 30-day comment period for new
15 aboveground storage tank facilities consistent with section 310.
16 Section 902. Siting criteria for aboveground tank facilities.

17 The Environmental Quality Board shall promulgate siting
18 regulations for new aboveground storage tank facilities
19 consistent with section 310 which shall contain detailed site
20 specific provisions which an applicant shall use to evaluate a
21 potential site. The regulations shall include, but not be
22 limited to, consideration for public health and safety,
23 protection of water supply sources, water quality, air quality,
24 flooding, topography, soil conditions and hydrogeology. The
25 Environmental Quality Board shall hold at least one public
26 hearing on the siting regulations and shall solicit and take
27 into consideration written public comments, prior to final
28 adoption.

29 CHAPTER 11

30 ENFORCEMENT AND REMEDIES

1 Section 1101. Unlawful conduct.

2 (a) Offenses defined.--It shall be unlawful for any person
3 to:

4 (1) Sell, distribute, provide or fill any storage tank
5 with a regulated substance unless the storage tank has a
6 valid registration issued under this act and the regulations
7 promulgated hereunder.

8 (2) Violate, or cause or assist in the violation of, any
9 provision of this act, any regulation promulgated hereunder,
10 any order issued hereunder, or the terms or conditions of any
11 spill prevention and response plan approved by the department
12 under this act.

13 (3) Fail to adhere to the schedule set forth in, or
14 pursuant to, this act for developing or submitting to the
15 department a spill prevention and response plan.

16 (4) Hinder, obstruct, prevent or interfere with the
17 department or its personnel in the performance of any duty
18 under this act.

19 (5) Violate the provisions of 18 Pa.C.S. § 4903
20 (relating to false swearing) or 4904 (relating to unsworn
21 falsification to authorities) in complying with any provision
22 of this act, including, but not limited to, providing or
23 preparing any information required by this act.

24 (b) Public nuisance.--All unlawful conduct set forth in
25 subsection (a) shall also constitute a public nuisance.

26 Section 1102. Enforcement orders.

27 (a) Issuance.--The department may issue such orders to
28 persons as it deems necessary to aid in the enforcement of the
29 provisions of this act. The orders may include, but shall not be
30 limited to, orders requiring compliance with the provisions of

1 this act and the regulations promulgated pursuant thereto. Any
2 order issued under this act shall take effect upon notice,
3 unless the order specifies otherwise. The power of the
4 department to issue an order under this act is in addition to
5 any other remedy which may be afforded to the department
6 pursuant to this act or any other act.

7 (b) Compliance.--It shall be the duty of any person to
8 proceed diligently to comply with any order issued pursuant to
9 subsection (a). If such person fails to proceed diligently or
10 fails to comply with the order within such time, if any, as may
11 be specified, such person shall be guilty of contempt and shall
12 be punished by the court in an appropriate manner, and for this
13 purpose, application may be made by the department to the
14 Commonwealth Court, which is hereby granted jurisdiction.
15 Section 1103. Civil penalties.

16 (a) Assessment.--In addition to proceeding under any other
17 remedy available at law or in equity for a violation of any
18 provision of this act, the regulations promulgated hereunder or
19 any order of the department issued hereunder, the department may
20 assess a civil penalty upon a person for the violation. The
21 penalty may be assessed whether or not the violation was willful
22 or negligent. In determining the amount of the penalty, the
23 department shall consider the willfulness of the violation;
24 damage to air, water, land or other natural resources of this
25 Commonwealth or their uses; cost of restoration and abatement;
26 savings resulting to the person in consequence of the violation;
27 deterrence of future violations; and other relevant factors. If
28 the violation leads to issuance of a cessation order, a civil
29 penalty shall be assessed.

30 (b) Escrow.--When the department assesses a civil penalty,

1 it shall inform the person of the amount of the penalty. The
2 person charged with the penalty shall then have 30 days to pay
3 the penalty in full or, if the person wishes to contest either
4 the amount of the penalty or the fact of the violation, either
5 to forward the proposed amount to the department for placement
6 in an escrow account with the State Treasurer or with a bank in
7 this Commonwealth or to post an appeal bond in the amount of the
8 penalty. The bond must be executed by a surety licensed to do
9 business in this Commonwealth and must be satisfactory to the
10 department. If, through administrative or judicial review of the
11 proposed penalty, it is determined that no violation occurred or
12 that the amount of the penalty shall be reduced, the department
13 shall, within 30 days, remit the appropriate amount to the
14 person, with an interest accumulated by the escrow deposit.
15 Failure to forward the money or the appeal bond to the
16 department within 30 days shall result in a waiver of all legal
17 rights to contest the violation or the amount of the penalty.

18 (c) Amount.--The maximum civil penalty which may be assessed
19 pursuant to this section is \$10,000 per violation. Each
20 violation for each separate day and each violation of any
21 provision of this act, any regulation promulgated hereunder or
22 any order issued hereunder shall constitute a separate offense
23 under this section.

24 (d) Statute of limitations.--Notwithstanding any other
25 provision of law to the contrary, there shall be a statute of
26 limitations of seven years upon actions brought by the
27 Commonwealth under this section.

28 Section 1104. Criminal penalties.

29 (a) Summary offense.--Any person who initially violates any
30 provision of Chapter 3, any regulation promulgated thereunder,

1 any order issued thereunder or the terms or conditions of any
2 permit shall, upon conviction thereof in a summary proceeding,
3 be sentenced to pay a fine of not less than \$100 nor more than
4 \$1,000 and costs and, in default of the payment of such fine and
5 costs, to imprisonment for not more than 30 days.

6 (b) Misdemeanor offense.--Any person who willfully violates
7 any other provision of this act, any regulation promulgated
8 hereunder, any order issued hereunder or the terms or conditions
9 of any permit commits a misdemeanor of the third degree and
10 shall, upon conviction, be sentenced to pay a fine of not less
11 than \$1,000 nor more than \$10,000 per day for each violation or
12 to imprisonment for a period of not more than one year, or both.

13 (c) Second or subsequent offense.--Any person who, within
14 two years after a conviction of a misdemeanor for any willful
15 violation of this act, willfully violates the same provision of
16 this act at the same facility, any regulation promulgated
17 hereunder, any order issued hereunder or the terms or conditions
18 of any permit commits a misdemeanor of the second degree and
19 shall, upon conviction, be sentenced to pay a fine of not less
20 than \$2,500 nor more than \$25,000 for each violation or to
21 imprisonment for a period of not more than two years, or both.

22 (d) Violations to be separate offenses.--Each violation of
23 any provision of this act, any regulation promulgated hereunder,
24 any order issued hereunder or the terms or conditions of any
25 permit shall constitute a separate offense under subsections
26 (a), (b) and (c).

27 Section 1105. Production of materials; recordkeeping
28 requirements.

29 (a) Authority of department.--The department and its agents
30 and employees shall:

1 (1) Have access to, and require the production of, books
2 and papers, documents and physical evidence pertinent to any
3 matter under investigation.

4 (2) Require any person holding a permit to establish and
5 maintain such records and make such reports and furnish such
6 information as the department may prescribe.

7 (3) Have the authority to enter any building, property,
8 premises or place where a storage tank is located for the
9 purposes of making an investigation or inspection necessary
10 to ascertain the compliance or noncompliance by any person
11 with the provisions of this act and the regulations
12 promulgated under this act. In connection with the inspection
13 or investigation, samples may be taken for analysis. If
14 analysis is made of the samples, a copy of the results of the
15 analysis shall be furnished within five business days after
16 receiving the analysis to the person having apparent
17 authority over the building, property, premises or place.

18 (b) Warrants.--An agent or employee of the department may
19 apply for a search warrant to any Commonwealth official
20 authorized to issue a search warrant for the purposes of
21 inspecting or examining any property, building, premises, place,
22 book, record or other physical evidence; of conducting tests; or
23 of taking samples. The warrant shall be issued upon probable
24 cause. It shall be sufficient probable cause to show any of the
25 following:

26 (1) The inspection, examination, test or sampling is
27 pursuant to a general administrative plan to determine
28 compliance with this act.

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

1 (3) The agent or employee has been refused access to the
2 property, building, premises, place, book, record or physical
3 evidence or has been prevented from conducting tests or
4 taking samples.

5 Section 1106. Collection of fines, fees, etc.

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

21 (b) Deposit of fines.--All fines collected pursuant to
22 sections 1103 and 1104 shall be paid into the Underground
23 Storage Tank Indemnification Fund.

24 Section 1107. Public information.

25 (a) General rule.--Except as provided in subsection (b),
26 records, reports or other information obtained under this act
27 shall be available to the public for inspection or copying
28 during regular business hours.

29 (b) Confidentiality.--The department may, upon request,
30 designate records, reports or information as confidential when

1 the person providing the information demonstrates all of the
2 following:

3 (1) The information contains the trade secrets,
4 processes, operations, style of work or apparatus of a person
5 or is otherwise confidential business information.

6 (2) The information does not relate to public health,
7 safety or welfare, or the environment.

8 (c) Separation of information.--When submitting information
9 under this act, a person shall designate the information which
10 the person believes is confidential or shall submit that
11 information separately from other information being submitted.

12 Section 1108. Relationship to other laws.

13 The department shall take enforcement actions and actions to
14 recover the Commonwealth's costs for undertaking corrective
15 actions under this act before taking actions pursuant to the act
16 of October 18, 1988 (P.L.756, No.108), known as the Hazardous
17 Sites Cleanup Act.

18 CHAPTER 21

19 MISCELLANEOUS PROVISIONS

20 Section 2101. Appropriations.

21 (a) Storage Tank Fund.--The sum of \$700,000, or as much
22 thereof as may be necessary, is hereby appropriated to the
23 Storage Tank Fund for the fiscal year July 1, 1988, to June 30,
24 1989.

25 (b) Underground Storage Tank Indemnification Fund.--The sum
26 of \$300,000, or as much thereof as may be necessary, is hereby
27 appropriated to the Underground Storage Tank Indemnification
28 Fund for the fiscal year July 1, 1988, to June 30, 1989.

29 Section 2102. Severability.

30 The provisions of this act are severable. If any provision of

1 this act or its application to any person or circumstance is
2 held invalid, the invalidity shall not affect other provisions
3 or applications of this act which can be given effect without
4 the invalid provision or application.

5 Section 2103. Repeals.

6 The following acts and parts of acts are repealed to the
7 extent specified:

8 Act of June 8, 1911 (P.L.705, No.281), entitled "An act
9 creating the office of Fire Marshal, to be attached to the
10 Department of Public Safety in cities of the first class;
11 prescribing his duties and powers; and providing penalties for
12 violations of the provisions of the act; and providing for the
13 method of appointment, compensation, and for the maintenance of
14 his office," insofar as it is inconsistent with this act, only
15 to the extent that this act provides coverage over the same
16 class of storage tanks and materials.

17 Act of April 27, 1927 (P.L.450, No.291), referred to as the
18 State Fire Marshal Law, insofar as the authority of the State
19 Fire Marshal and the Pennsylvania State Police are to adopt and
20 enforce rules and regulations governing the use, storage and
21 sale and retention of gasoline, naphthalene, kerosene, fuel oil
22 or other substances of like character, only to the extent that
23 this act provides coverage over the same class of storage tanks
24 and materials.

25 Act of July 28, 1953 (P.L.723, No.230), known as the Second
26 Class County Code, insofar as it is inconsistent with this act,
27 only to the extent that this act provides coverage over the same
28 class of storage tanks and materials.

29 Act of November 26, 1978 (P.L.1300, No.314), known as the
30 Underground Storage Act, insofar as it is inconsistent with this

1 act.

2 Section 2104. Effective date.

3 This act shall take effect in 30 days.