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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 OR INTRASTATE pipeline facility

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1 regulated under the State laws comparable to provisions of
2 law in paragraph (8).

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

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

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

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

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

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

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

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

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

29 "Corrective action." The:

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

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

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

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

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

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

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

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

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

28 "Person." Any individual, partnership, corporation,
29 association, joint venture, consortium, institution, trust,
30 firm, joint-stock company, cooperative enterprise, municipality,

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

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

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

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

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

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

1 Subtitle C of the Resource Conservation and Recovery Act of
2 1976 (Public Law 94-580, 42 U.S.C. § 6901 et seq.).

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

10 (3) ANY OTHER SUBSTANCE DETERMINED BY THE DEPARTMENT BY
11 REGULATION WHOSE CONTAINMENT, STORAGE, USE OR DISPENSING MAY
12 PRESENT A HAZARD TO THE PUBLIC HEALTH AND SAFETY OR THE
13 ENVIRONMENT. ←

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

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

19 "Secondary containment." An additional layer of impervious
20 material creating a space in which a leak of a regulated
21 substance from a storage tank may be detected before it enters
22 the environment.

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

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

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

29 "Substantially modify." The construction, refurbishment or
30 restoration of an existing storage tank which alters the

1 physical integrity of the tank.

2 "Tank facility." An area in which one or more aboveground
3 storage tanks are located, excluding small aboveground storage
4 tanks.

5 "Underground storage tank." Any one or combination of
6 underground tanks (including underground pipes connected
7 thereto) which are used to contain an accumulation of regulated
8 substances, and the volume of which (including the volume of the
9 underground pipes connected thereto) is 10% or more beneath the
10 surface of the ground. This definition and regulations
11 promulgated under this act shall not include:

12 (1) Farm or residential tanks of 1,100 gallons or less
13 capacity used for storing motor fuel for noncommercial
14 purposes.

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

17 (3) Septic tanks.

18 (4) A pipeline facility (including gathering lines)
19 regulated under:

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

22 (ii) The Hazardous Liquid Pipeline Safety Act of
23 1979 (Public Law 96-129, 93 Stat. 1003).

24 (5) An interstate or intrastate pipeline facility
25 regulated under State laws comparable to the provisions of
26 law in paragraph (4).

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

28 (7) Storm water or wastewater collection systems.

29 (8) Flow-through process tanks.

30 (9) Liquid traps or associated gathering lines directly

1 related to oil or gas production and gathering operations.

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

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

8 Section 104. Construction.

9 This act and the regulations promulgated under this act shall
10 be liberally construed in order to fully protect the public
11 health, welfare and safety of the residents of this
12 Commonwealth.

13 Section 105. API.

14 A reference in this act to "API" in relation to publications
15 shall be deemed to be a reference to the appropriate technical
16 publication, including appendices, of the American Petroleum
17 Institute.

18 CHAPTER 3

19 STORAGE TANK PROTECTION PROGRAM

20 Section 301. Establishment of program.

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

27 (b) Rules and regulations for aboveground and underground
28 storage tanks.--The department shall develop separate regulatory
29 programs pursuant to provisions of sections 310 and 311
30 governing underground storage tanks and aboveground storage

1 tanks. Regulations governing underground storage tanks as
2 proposed by the department and adopted by the Environmental
3 Quality Board, shall be no more stringent than rules and
4 regulations adopted by the Federal Environmental Protection
5 Agency. The department shall develop regulations which are based
6 on industry practices and standards as embodied in the existing
7 regulations governing aboveground and underground storage tanks.
8 Section 302. Aboveground storage tank permits.

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

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

18 (1) A significant change in the location, construction,
19 reconstruction or operation of a permitted aboveground
20 storage tank. For the purpose of this subsection, significant
21 change shall be defined as the disassembly and relocation of
22 the aboveground storage tank from one site to another site.

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

24 (c) Application content.--Applications for aboveground
25 storage tank permits shall be submitted, in writing, by a
26 certified tank installer, to the department in such form and
27 with such accompanying data as shall be prescribed by
28 regulations, and shall include, to the extent that a good faith
29 effort has been made by the applicant, but not be limited to, a
30 map identifying the exact location of the tank; a description of

1 the construction of the tank, including the material out of
2 which the tank is constructed; the age and manufacturer of the
3 tank; the design of the storage tank facilities, including any
4 pumping, venting, secondary containment system and safety
5 equipment; the products to be stored in the tank; and the
6 location of the facility relative to surface water. The
7 department shall have the authority to deny permits, or include
8 in each permit general and specific conditions to insure the
9 proper operation of the aboveground storage tank.

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

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

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

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

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

3 Section 303. Small aboveground storage tanks.

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

10 (b) Application submittal.--The permit application or other
11 department-approved application for the installation of a small
12 aboveground storage tank after the effective date of this act
13 shall be submitted by a certified tank installer prior to
14 installation of the tank.

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

26 (d) Review of applications.--An application submitted by a
27 certified tank installer is deemed approved by the department
28 unless the department disapproves the application within ten
29 days of submittal. The department shall review any amended
30 application filed in response to a notice of deficiency within

1 ten days of the filing of the amended application with the
2 department. Nothing in this section shall prohibit the
3 department and the applicant from agreeing to extend any
4 deadline for action provided by this section. Nothing in this
5 section shall prohibit the department from requesting and
6 accepting supplemental information, explanations and
7 clarifications regarding the content of an application prior to
8 the deadline for department action.

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

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

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

15 Section 304. Underground storage tank permits.

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

22 (b) Application submitted.--The permit application or other
23 department-approved application for the installation of any
24 underground storage tank after the effective date of this act
25 shall be submitted by a certified tank installer prior to
26 installation of the tank.

27 (c) Application content.--Applications for underground
28 storage tank shall be submitted, in writing, to the department
29 in such form and with such accompanying data as shall be
30 prescribed by regulation, and shall include, to the extent that

1 a good faith effort has been made by the applicant, but not be
2 limited to, a description of the construction of the tank,
3 including the material out of which the tank is constructed; the
4 age and manufacturer of the tank; installation procedures; and
5 safety equipment and leak detection system. The department shall
6 have the authority to deny applications or include in each
7 application general and specific conditions based on promulgated
8 regulations to insure that any new underground storage tank and
9 existing underground storage tank meet the Federal requirements
10 and deadlines for tank construction.

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

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

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

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

30 Section 305. Operation under existing permits.

1 (a) General rule.--The provisions of sections 302(a), 303(a)
2 and 304(a) shall not apply to any person who was issued a valid
3 aboveground storage tank permit or a valid underground storage
4 tank permit by the State Fire Marshal under 37 Pa. Code Ch. 11
5 (relating to preliminary provisions) or 13 (relating to storage
6 and use) or by a local fire marshal in a city of the first class
7 under the act of June 8, 1911 (P.L.705, No.281), entitled "An
8 act creating the office of Fire Marshal, to be attached to the
9 Department of Public Safety in cities of the first class;
10 prescribing his duties and powers; and providing penalties for
11 violations of the provisions of the act; and providing for the
12 method of appointment, compensation, and for the maintenance of
13 his office," or a fire marshal in a county of the second class
14 under the act of July 28, 1953 (P.L.723, No.230), known as the
15 Second Class County Code, if the person holding that permit
16 fully complies with subsection (b).

17 (b) Repermitting.--

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

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

30 ~~(3) Within three years of the effective date of this~~

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1 ~~act, every person issued a permit under subsection (a) for~~
2 ~~any underground storage tank shall apply to the department~~
3 ~~for a new permit.~~

4 Section 306. Registration of aboveground and underground
5 storage tanks.

6 (a) Existing aboveground storage tanks.--The owner of an
7 existing aboveground storage tank shall, within one year of the
8 effective date of this act, register each aboveground storage
9 tank with the department.

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

14 (c) New underground storage tanks.--The owner of any new
15 underground storage tank shall register said tank with the
16 department upon applying for a permit under section ~~303~~ 304. <—

17 (d) Existing underground storage tanks.--The owner of any
18 existing underground storage tank that has not registered that
19 tank with the department pursuant to Subtitle I of the Resource
20 Conservation and Recovery Act of 1976 (Public Law 94-580, 42
21 U.S.C. § 6901 et seq.) shall register said tank with the
22 department within 60 days of the effective date of this act. THE <—
23 OWNER OF ANY UNDERGROUND STORAGE TANK ALREADY REGISTERED WITH
24 THE DEPARTMENT PURSUANT TO FEDERAL LAW SHALL RENEW THE
25 REGISTRATION WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ACT
26 AND COMPLY WITH SUBSECTION (G) WITH REGARD TO SUBSEQUENT
27 REGISTRATION RENEWALS.

28 (e) Registration forms.--The department shall continue to
29 use the existing underground storage tank registration as
30 required by Federal law. The registration form for aboveground

1 storage tanks, including small aboveground storage tanks, shall
2 be substantially similar to the underground storage tank
3 registration form.

4 (f) Initial registration fees.--Until such time that
5 regulations on registration fees are promulgated under section
6 311, each registration application shall be accompanied with a
7 registration fee that shall be \$600 for each aboveground storage
8 tank, \$300 for each small aboveground storage tank and ~~\$150~~ \$50 <—
9 for each underground storage tank.

10 (g) Renewal.--Each registration issued under this section
11 shall be renewed every three years as determined from the date
12 of the last registration, EXCEPT UNDERGROUND TANKS WHICH SHALL <—
13 BE RENEWED ANNUALLY. Renewals shall continue until the time that
14 the department receives written notification from the owner that
15 the storage tank has been permanently closed.

16 Section 307. Inspection of aboveground storage tanks.

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

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

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

26 (2) Any changes outside the permitted usage of the
27 system.

28 (3) Any changes in the monitoring program.

29 (4) Any unaccounted inventory occurrences.

30 (c) Aboveground storage tank testing requirements.--Any

1 owner of an aboveground storage tank, excluding a small
2 aboveground storage tank, shall conduct a hydrostatic test on
3 new aboveground storage tanks or substantially modified
4 aboveground storage tanks. Each existing aboveground storage
5 tank, excluding a small aboveground storage tank, shall undergo
6 an out-of-service inspection at least once every ten years.

7 Section 308. Inspection and inventory records of underground
8 storage tanks.

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

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

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

20 Section 309. Certification of storage tank installers and
21 private tank inspectors.

22 The department shall have the authority to establish a
23 certification system for tank installers and private tank
24 inspectors by regulation. The department is authorized to
25 certify through training and testing programs and shall also be
26 empowered to revoke or suspend the certification of a tank
27 installer or private tank inspector pursuant to regulations
28 promulgated under section 311. Any certification issued by the
29 department under this section shall be valid for a period of
30 five years.

1 Section 310. Small operator assistance program for underground
2 storage tanks.

3 The department shall establish, implement and administer a
4 small operator assistance program within 180 days of the
5 effective date of this act. The small operator assistance
6 program shall provide information on compliance with this act
7 and other technical assistance to small operators located in
8 rural areas who pump, on a monthly basis, less than 3,000
9 gallons retail motor fuel sales.

10 Section 311. Environmental Quality Board.

11 (a) Rules and regulations.--The Environmental Quality Board
12 shall have the power and its duty shall be to review the
13 existing regulations governing storage tanks and adopt rules and
14 regulations governing the location, siting, installation,
15 operation, monitoring, classification and permitting of storage
16 tanks as it deems necessary for the implementation of this act.
17 The Environmental Quality Board shall, in developing
18 regulations, use the recommendations and standard procedures
19 developed by the American Petroleum Institute, American Society
20 of Testing and Materials, National Association of Corrosion
21 Engineers, National Fire Protection Association, and
22 Underwriters Laboratories. Until the Environmental Quality Board
23 adopts rules and regulations:

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

29 (2) No person shall install a new or reconstructed
30 aboveground storage tank or modify an aboveground storage

1 tank unless the tank meets all applicable technical
2 requirements set forth by the American Petroleum Institute in
3 ~~each of~~ the following (including any appendices): ←

4 (i) API-12B - Bolted Tanks for Storage of Production
5 Liquids.

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

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

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

11 (v) API-12P - Fiberglass Tanks for Storage of
12 Production Liquids.

13 (vi) API-620 - Large Welded Low Pressure Storage
14 Tanks.

15 (vii) API-650 - Large Welded Storage Tanks
16 (Atmospheric).

17 (3) Unless modified by the rules and regulations of the
18 department, the owner shall, along with the registration form
19 required by this act, submit a certification by a registered
20 professional engineer that the requirements of paragraph (2)
21 have been met.

22 ~~(4) For underground tanks, until the effective date of ←~~
23 ~~standards promulgated by the Administrator of the~~
24 ~~Environmental Protection Agency under section 9003(c) of the~~
25 ~~Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. §~~
26 ~~6991), no person shall install an underground storage tank~~
27 ~~unless the underground storage tank meets all of the~~
28 ~~following requirements:~~

29 (4) FOR UNDERGROUND TANKS, NO PERSON SHALL INSTALL AN ←
30 UNDERGROUND STORAGE TANK UNLESS THE UNDERGROUND STORAGE TANK

1 MEETS THE STANDARDS PROMULGATED BY THE ADMINISTRATOR OF THE
2 ENVIRONMENTAL PROTECTION AGENCY UNDER SECTION 9003(E) OF THE
3 SOLID WASTE DISPOSAL ACT (PUBLIC LAW 89-272, 42 U.S.C. §
4 6991B(E)), INCLUDING THE FOLLOWING REQUIREMENTS:

5 (i) The tank is designed to prevent releases due to
6 corrosion or structural failure for the operational life
7 of the tank.

8 (ii) The tank is cathodically protected against
9 corrosion, constructed of noncorrosive material, steel
10 clad with a noncorrosive material, or designed in a
11 manner to prevent the release or threatened release of
12 any stored substance.

13 (iii) The material used in the construction or
14 lining of the tank is compatible with the substance to be
15 stored.

16 (iv) Notwithstanding subparagraphs (i), (ii) and
17 (iii), if soil tests conducted in accordance with ASTM
18 Standard G57-78, or another standard approved by the
19 Administrator of the Environmental Protection Agency,
20 show that soil resistivity in an installation location is
21 12,000 ohm/cm or more (unless a more stringent standard
22 is prescribed by the Administrator of the Environmental
23 Protection Agency by rule), a storage tank without
24 corrosion protection may be installed in that location
25 during the period referred to above.

26 (b) Requirements for aboveground storage tanks.--The
27 Environmental Quality Board shall, by regulation, adopt
28 aboveground storage tank standards, excluding a small
29 aboveground storage tank, which shall include, but shall not be
30 limited to:

- 1 (1) Dike integrity.
- 2 (2) Liner requirements.
- 3 (3) Steel thickness based on storage capacity.
- 4 (4) Testing requirements for new and substantially
- 5 modified aboveground storage tanks.
- 6 (5) Closure requirements.
- 7 (6) Corrosion control features.
- 8 (7) Monitoring standards.
- 9 (8) Recordkeeping requirements.
- 10 (9) Performance and design standards for new and
- 11 substantially modified aboveground storage tanks.
- 12 (10) Inspection requirements for existing aboveground
- 13 storage tanks.
- 14 (11) Standards to protect against fire and explosion
- 15 hazards.
- 16 (c) Requirements for small aboveground storage tanks.--The
- 17 board shall, by regulation, adopt small aboveground storage tank
- 18 standards which shall include, but not be limited to:
- 19 (1) Testing requirements for new and substantially
- 20 modified small aboveground storage tanks.
- 21 (2) Performance and design standards consistent with the
- 22 manufacturer's specifications for the small aboveground
- 23 storage tank model.
- 24 (3) Monitoring standards consistent with the
- 25 manufacturer's specifications for the small aboveground
- 26 storage tank model.
- 27 (4) Requirements for closure.
- 28 (5) Recordkeeping requirements.
- 29 (6) Inspection requirements for existing small
- 30 aboveground storage tanks.

1 (7) Standards to protect against fire and explosion
2 hazards.

3 (d) Fees.--The board shall establish separate fees for
4 aboveground storage tanks, small aboveground storage tanks and
5 underground storage tanks for:

6 (1) Permit applications and amendments.

7 (2) Registration applications and transfers.

8 (3) Inspections.

9 (4) Certification fees for tank installers and private
10 tank inspectors.

11 (e) Regulations governing underground storage tanks.--The
12 board shall, by regulation, adopt underground storage tank
13 design and safety standards which shall be consistent with, and
14 not more stringent than, the Federal regulations governing
15 underground storage tanks. The regulations shall include:

16 (1) Corrosion control features, including cathodic
17 protection.

18 (2) Monitoring standards and monitoring systems
19 including electric or mechanical devices, monitoring wells,
20 tank testing or other methods of monitoring approved by the
21 department.

22 (3) Recordkeeping requirements of any monitoring or leak
23 detection systems, inventory control system or underground
24 storage tank testing system.

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

29 (5) Testing schedule requirements for the periodic
30 testing of structural integrity of the underground storage

1 tank without a monitoring system.

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

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

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

11 (9) Standards to protect against fire and explosion
12 hazards.

13 Section 312. Industry Technical Advisory Board.

14 (a) Establishment.--There shall be created as an
15 administrative board within the department the Industry
16 Technical Advisory Board. The board shall consist of nine
17 members, all of whom shall be chosen by the Governor and shall
18 be residents of this Commonwealth. Three members shall be
19 qualified persons experienced in storage tank design and
20 installation with three years of experience in this
21 Commonwealth. One member shall be an owner or operator of an
22 aboveground storage tank. One member shall be an owner or
23 operator of an underground storage tank. One member shall be a
24 registered professional engineer with three years of experience
25 in this Commonwealth. One member shall be an engineer with three
26 years of experience in design and installation of aboveground
27 storage tanks in this Commonwealth, who shall be chosen from a
28 list of three names submitted by the Citizens Advisory Council
29 to the Governor and who shall sit as a representative of the
30 public interest. One member shall be a representative of local

1 government. One member shall be a representative of county
2 government.

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

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

11 (d) Consultation.--The department shall consult with the
12 advisory board in the formulation, drafting and presentation
13 stages of all regulations of a technical nature promulgated
14 under this act. The advisory board shall be given a reasonable
15 opportunity to review and comment on all regulations of a
16 technical nature prior to submission to the Environmental
17 Quality Board for initial consideration. The written report of
18 the board shall be presented to the Environmental Quality Board
19 with any regulatory proposal. The chairman of the advisory board
20 shall be invited to participate in the presentation of all
21 regulations of a technical nature before the Environmental
22 Quality Board to the extent allowed by procedures of the
23 Environmental Quality Board. Nothing herein shall preclude any
24 member of the advisory board from filing a petition for
25 rulemaking with the Environmental Quality Board in accordance
26 with procedures established by the Environmental Quality Board.

27 CHAPTER 5

28 SPILL PREVENTION RESPONSE PLAN

29 Section 501. Submission of spill prevention response plan.

30 (a) Schedule.--Accompanying the registration form as set

1 forth in section 306, each owner of an aboveground storage tank
2 or tank facility shall submit to the department within one year
3 of the effective date of this act a plan for each aboveground
4 storage tank or tank facility. Each plan shall be site-specific
5 and be consistent with the requirements of this act. This
6 chapter shall not apply to small aboveground storage tanks.

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

12 (1) Substantial changes in design, construction,
13 operation, maintenance of the storage tank or tank facility
14 or other circumstances that increase the potential for fires,
15 explosions or releases of regulated substances.

16 (2) Substantial changes in emergency equipment at the
17 facility.

18 (3) Substantial changes in tank facility emergency
19 organization.

20 (4) Revision of applicable department regulations.

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

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

24 (7) Otherwise deemed necessary by the department.

25 (c) Existing plans.--All existing plans covering storage
26 tanks approved by the department pursuant to the act of June 22,
27 1937 (P.L.1987, No.394), known as The Clean Streams Law, and
28 known as preparedness, prevention and contingency plans must be
29 revised within one year of the effective date of this act.

30 Section 502. Content of spill prevention response plan.

1 (a) Description of facility.--The plan shall identify and
2 describe the industrial or commercial activity which occurs at
3 the site, including a specific listing and inventory of all
4 types of products stored, amount of products stored and wastes
5 generated which are stored at the aboveground storage tank or
6 tank facility. The plan shall include drawings of the
7 aboveground storage tank facility, including location of all
8 drainage pipes and water outlets.

9 (b) ~~Description of the organization structure for plan~~ <—
10 ~~implementation~~ PLAN IMPLEMENTATION AT FACILITY, INCLUDING <—
11 EMERGENCY RESPONSE CONTRACTORS.--The plan shall identify all
12 individuals and their duties and responsibilities for
13 developing, implementing and maintaining the plan. The plan
14 shall describe in detail the chain of command at the aboveground
15 storage tank or storage tank facility and list ~~all emergency~~ <—
16 ~~coordinators, emergency response contractors and local emergency~~
17 ~~response agencies.~~ AND DESCRIBE HOW THE OWNER OR OPERATOR WILL <—
18 NOTIFY AND COORDINATE SPILL RESPONSE WITH OFF-SITE SPILL
19 RESPONSE AGENCIES AND THE LOCAL EMERGENCY RESPONSE AGENCIES.

20 (c) Spill leak prevention and response.--The plan shall
21 provide a preventive maintenance program that includes
22 monitoring and inspection procedures, including identification
23 of stress points, employee training program and security system.

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

27 (e) Emergency spill control network.--The plan shall include
28 information obtained by the owner of the aboveground storage
29 tank facility from the county and municipal emergency management
30 agencies.

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

4 Section 503. Review of spill prevention response plan.

5 (a) Written notice.--The owner of the aboveground storage
6 tank facility located adjacent to surface waters shall provide
7 public notice to all downstream municipalities, downstream water
8 companies and downstream industrial users within 20 miles of the
9 aboveground storage tank facility site and the local
10 municipality and county in which the facility is located upon
11 submission of the plan to the department. All comments must be
12 submitted to the department within 30 days.

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

18 (c) Department action.--Within 30 days after completion of
19 the comment period, the department shall approve the plan or
20 disapprove the plan and provide the owner of the storage tank or
21 tank facility with specific reasons for the disapproval. The
22 owner of the storage tank or tank facility shall submit a
23 revised plan to the department which the department shall act
24 upon within 30 days.

25 Section 504. Notification.

26 (a) Procedure.--Upon the occurrence of a release at the
27 aboveground storage tank, the owner or operator of a storage
28 tank shall immediately notify the department, the Pennsylvania
29 Emergency Management Agency and the local emergency management
30 agency. All downstream water companies, downstream

1 municipalities and downstream industrial users within 20 miles
2 of the aboveground storage tank located adjacent to surface
3 waters shall be notified on a priority basis based on the
4 proximity of the release by the owner or operator or the agent
5 of the owner or operator of the aboveground storage tank within
6 two hours of any release which enters a water supply or which
7 threatens the water supply of downstream users.

8 (b) Notification list.--The owner of the aboveground storage
9 tank or tank facility located adjacent to surface waters shall
10 annually obtain and annually update a list from the local
11 emergency management agency of all downstream municipal water
12 users, water companies and industrial users within 20 miles of
13 the tank facility.

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

18 (d) Other emergency response plans.--Notwithstanding Chapter
19 5 to the contrary, the spill prevention response plan shall be
20 developed by the owner of the aboveground storage tank and
21 approved by the department consistent with the emergency
22 management ~~procedures~~ PLANS developed by local emergency ←
23 management agencies under Title III of the Superfund Amendments
24 and Reauthorization Act of 1986 (Public Law 99-499, 100 Stat.
25 1613).

26 CHAPTER 7

27 FINANCIAL PROVISIONS

28 Section 701. Financial responsibility.

29 (a) Regulations of department.--The department is authorized
30 to establish, by regulation, requirements for maintaining

1 evidence of financial responsibility as deemed necessary and
2 desirable, for taking corrective action and for compensating
3 third parties for bodily injury and property damage caused by
4 sudden and nonsudden releases arising from operation of a
5 storage tank. Standards for underground storage tanks shall be
6 identical to the coverage provided by the Underground Storage
7 Tank Indemnification Fund in sections 704, 705 and 706. Every
8 owner or operator shall meet the financial responsibility
9 requirements established by the department.

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

23 (c) Bankruptcy of owner or operator.--In any case where the
24 owner or operator is in bankruptcy, reorganization, or
25 arrangement pursuant to the Federal Bankruptcy Code or where
26 with reasonable diligence jurisdiction in any State court or the
27 Federal courts cannot be obtained over an owner or operator
28 likely to be insolvent at the time of judgment, any claim
29 arising from conduct for which evidence of financial
30 responsibility must be provided under this subsection may be

1 asserted directly against the guarantor providing such evidence
2 of financial responsibility. In the case of any action pursuant
3 to this subsection, such guarantor shall be entitled to invoke
4 all rights and defenses which would have been available to the
5 owner or operator if any action had been brought against the
6 owner or operator by the claimant and which would have been
7 available to the guarantor if an action had been brought against
8 the guarantor by the owner or operator.

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

22 (e) Definition.--As used in this subsection, the term
23 "guarantor" means any person, other than the owner or operator,
24 who provides evidence of financial responsibility for an owner
25 or operator under this subsection.

26 Section 702. Storage Tank Fund.

27 (a) Establishment of fund.--There is hereby created a
28 special nonlapsing fund in the State Treasury to be known as the
29 Storage Tank Fund. All fees, fines, judgments, bond forfeitures
30 and recovered costs collected by the department under this act

1 shall be paid into the Storage Tank Fund. All moneys placed in
2 the Storage Tank Fund are hereby appropriated to the department
3 for the costs of operating the aboveground and underground
4 storage tank programs, including activities necessary for the
5 elimination of releases from storage tanks and any other
6 activities necessary to meet the requirements of this act. The
7 fund shall also be available to pay third party claims as
8 required ~~by the department~~ under section 701(a) where the owner <—
9 or operator of an aboveground tank has not complied with the
10 requirements of section 701. No more than 75% of the fund shall
11 be available for departmental administration costs for this act.

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

15 (c) Liability for costs.--Whenever costs have been incurred
16 by the Commonwealth for taking corrective action or paying
17 damages PURSUANT TO SECTION 701(A) with respect to a storage <—
18 tank regulated by this act, ~~the owner or operator, as may be~~ <—
19 ~~appropriate, of~~ ANY PERSON WHO HAS CAUSED A RELEASE OF A <—
20 REGULATED SUBSTANCE FROM such tank shall be strictly liable,
21 without fault, to the Commonwealth for such costs, subject to
22 the defenses set forth as follows:

- 23 (1) An act or omission caused by war.
- 24 (2) An act or omission caused by sabotage.
- 25 (3) An act of God.

26 (d) Effect of liability on property.--Any costs incurred by
27 the Commonwealth for taking corrective action or paying damages
28 PURSUANT TO SECTION 701(A) with respect to a release from a <—
29 storage tank regulated under this act shall constitute in each
30 instance a debt of the owner or operator, as may be appropriate,

1 to the Storage Tank Fund. The debt shall constitute a lien on
2 all property owned by said owner or operator when a notice of
3 lien incorporating a description of the property of the owner or
4 operator subject to the action and an identification of the
5 amount of expenditure from the fund is duly filed with the
6 prothonotary of the court of common pleas where the property is
7 located. The prothonotary shall promptly enter upon the civil
8 judgment or order docket the name and address of the owner or
9 operator, as may be appropriate, and the amount of the lien as
10 set forth in the notice of lien. Upon entry by the prothonotary,
11 the lien shall attach to the revenues and all real and personal
12 property of the owner or operator, whether or not the owner or
13 operator is solvent. The notice of lien filed pursuant to this
14 subsection which affects the property of the owner or operator
15 shall create a lien with priority over all subsequent claims or
16 liens which are filed against the owner or operator.

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

18 (1) Claims shall be filed with the department not later
19 than two years after the date of discovery of damages or not
20 later than five years after the date of the incident which
21 caused the damage. The department shall develop forms and
22 procedures for such claims.

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

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

29 (4) The department shall attempt to promote and arrange
30 settlement between the claimant and the person responsible

1 for the ~~discharge~~ RELEASE. If the parties fail to agree upon ←
2 a settlement then the claim shall be resolved by binding
3 arbitration with a three-member panel chosen by the
4 department and based on the information filed by both
5 parties.

6 Section 703. Underground Storage Tank Indemnification Board.

7 (a) Establishment of board, appointment and terms.--There is
8 hereby created the Underground Storage Tank Indemnification
9 Board which shall consist of seven members. The Insurance
10 Commissioner and the Secretary of the Department of
11 Environmental Resources shall be ex officio members. Five
12 members shall be appointed by the Governor, as follows:

13 (1) Three members who shall be persons with particular
14 expertise in the management of underground petroleum storage
15 tanks. Two of these members shall be appointed for terms of
16 four years and one shall be appointed for a term of three
17 years. The Governor shall appoint the members, one each from
18 a list of nominees provided by each of the following:

19 (i) The Associated Petroleum Industries of
20 Pennsylvania.

21 (ii) The Pennsylvania Petroleum Association.

22 (iii) The Service Station Dealers and Automotive
23 Repair Association of Pennsylvania and Delaware and the
24 Petroleum Retailers and Auto Repair Association, Inc.

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

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

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

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

7 (c) Vacancies.--Vacancies in appointed positions shall be
8 filled by the Governor in the same manner as the original
9 appointment. Members shall serve until their successors are
10 appointed and qualified.

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

14 (e) Conflicts.--No member shall participate in making any
15 decision in a matter involving any payment from which he or his
16 employer may benefit or which may benefit a member of his
17 immediate family.

18 (f) Meetings and quorum.--The board shall meet at least
19 quarterly. Additional meetings may be held upon reasonable
20 notice at times and locations selected by the board. The board
21 shall meet at the call of the chairman or upon written request
22 of three members of the board. Four members shall constitute a
23 quorum and a quorum may act for the board in all matters.

24 Section 704. Underground Storage Tank Indemnification Fund.

25 (a) Establishment of fund.--There is hereby created a
26 special fund in the State Treasury to be known as the
27 Underground Storage Tank Indemnification Fund. This fund shall
28 consist of the fees assessed by the board under section 705(d),
29 amounts recovered by the board due to fraudulent or improper
30 claims or as penalties for failure to pay fees when due, and

1 funds earned by the investment and reinvestment of the moneys
2 collected. Moneys in the fund are hereby appropriated to the
3 board for the purpose of making payments to owners and operators
4 of underground petroleum storage tanks who incur liability for
5 taking corrective action or for bodily injury or property damage
6 caused by an accidental release from underground petroleum
7 storage tanks. The fund shall be the sole source of payments
8 under this act, and the Commonwealth shall have no liability
9 beyond the amount of the fund.

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

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

21 (d) Expenses.--All costs and expenses of the board shall be
22 paid from the fund, including, but not limited to, compensation
23 of employees and any independent contractors or consultants.

24 Section 705. Powers and duties of Underground Storage Tank

25 Indemnification Board.

26 (a) Support.--The board may employ the personnel necessary
27 to process fee payments to administer claims made against the
28 Underground Storage Tank Indemnification Fund and to carry out
29 the purposes of the board. The board may also contract for the
30 services of attorneys, consultants and actuaries necessary to

1 advise the board in establishing fees under subsection (d) and
2 deductible amounts under subsection (c).

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

12 (c) Deductible.--

13 (1) Claims shall be subject to a deductible amount which
14 the board shall set annually. The board shall give at least
15 30 days' notice of a proposed change in deductible amounts by
16 publication in the Pennsylvania Bulletin, and the change
17 shall take effect on the date specified in the notice. Each
18 owner or operator shall be responsible for the amount of the
19 deductible as provided in section 705.

20 (2) The board shall set the initial deductible for
21 corrective action claims at \$75,000 per tank per occurrence.
22 Thereafter, the deductible shall be based on an estimate of
23 the average cost of taking corrective action due to an
24 accidental release from underground petroleum storage tanks
25 in this Commonwealth. The board shall not set a deductible in
26 an amount lower than \$50,000 per tank per occurrence.

27 (3) The board shall set the initial deductible for
28 claims due to bodily injury, property damage, or both, at
29 \$150,000 per tank per occurrence. Thereafter, the deductible
30 shall be based on an estimate of the average award for

1 settlement of third-party claims involving bodily injury,
2 property damage, or both, caused by accidental release from
3 underground petroleum storage tanks in this Commonwealth. The
4 board shall not set a deductible in an amount lower than
5 \$100,000 per tank per occurrence.

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

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

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

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

30 (2) To make bylaws for the management and regulation of

1 its affairs and to adopt, amend and repeal rules, regulations
2 and guidelines governing the administrative procedures and
3 business of the board and operation and administration of the
4 fund. Regulations of the board shall be subject to review
5 under the act of June 25, 1982 (P.L.633, No.181), known as
6 the Regulatory Review Act.

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

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

14 Section 706. Eligibility of claimants.

15 In order to receive a payment from the Underground Storage
16 Tank Indemnification Fund, a claimant shall meet the following
17 eligibility requirements:

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

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

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

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

25 (5) The claimant demonstrates to the satisfaction of the
26 board that the release that is the subject of the claim
27 occurred after the date established by the board for payment
28 of the fee required by section 705(d).

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

1 Section 707. Audit.

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

4 Section 708. Sunset review.

5 The Underground Storage Tank Indemnification Fund and the
6 board shall be subject to periodic evaluation, review and
7 termination or continuation under the act of December 22, 1981
8 (P.L.508, No.142), known as the Sunset Act, every five years
9 commencing with an initial termination date of December 31,
10 1993. Nothing in the Sunset Act or this section shall be
11 construed to invalidate any claim submitted prior to the date of
12 termination.

13 CHAPTER 9

14 SITING OF NEW ABOVEGROUND STORAGE TANK FACILITIES

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

16 (a) Procedure.--The owner or operator of an existing or
17 proposed aboveground tank facility shall provide written
18 notification to the local municipality and county in which the
19 aboveground tank facility is situated or to be located prior to
20 submitting an application for an aboveground storage permit to
21 construct or reconstruct an additional aboveground storage tank
22 at the aboveground storage tank facility or construct a new
23 aboveground storage tank facility. This chapter shall not apply
24 to small aboveground storage tanks. For purposes of this
25 chapter, the term "tank facility" means an area in which two or
26 more aboveground storage tanks are located.

27 (b) Public hearings.--Upon submission to the department of
28 the permit application to construct any new aboveground tank
29 facility, the department may hold a public hearing in the
30 municipality or county in which the aboveground tank facility is

1 proposed to be located. The department shall publish the permit
2 application in the Pennsylvania Bulletin upon receipt of the
3 permit application and provide not more than a 60-day comment
4 period.

5 (c) Public comment on aboveground storage tank permit.--The
6 department shall publish the aboveground storage tank permit
7 application in the Pennsylvania Bulletin upon receipt of the
8 permit application and provide a 30-day comment period for new
9 aboveground storage tank facilities consistent with section ~~310~~ <—
10 311.

11 Section 902. Siting criteria for aboveground tank facilities.

12 The Environmental Quality Board shall promulgate siting
13 regulations for new aboveground storage tank facilities
14 consistent with section ~~310~~ 311 which shall contain detailed <—
15 site specific provisions which an applicant shall use to
16 evaluate a potential site. The regulations shall include, but
17 not be limited to, consideration for public health and safety,
18 protection of water supply sources, water quality, air quality,
19 flooding, topography, soil conditions and hydrogeology. The
20 Environmental Quality Board shall hold at least one public
21 hearing on the siting regulations and shall solicit and take
22 into consideration written public comments, prior to final
23 adoption.

24 CHAPTER 11

25 ENFORCEMENT AND REMEDIES

26 Section 1101. Unlawful conduct.

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

29 (1) Sell, distribute, provide or fill any storage tank
30 with a regulated substance unless the storage tank has a

1 valid registration issued under this act and the regulations
2 promulgated hereunder.

3 (2) Violate, or cause or assist in the violation of, any
4 provision of this act, any regulation promulgated hereunder,
5 any order issued hereunder, or the terms or conditions of any
6 spill prevention and response plan approved by the department
7 under this act.

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

11 (4) Hinder, obstruct, prevent or interfere with the
12 department or its personnel in the performance of any duty
13 under this act.

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

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

21 Section 1102. Enforcement orders.

22 (a) Issuance.--The department may issue such orders to
23 persons as it deems necessary to aid in the enforcement of the
24 provisions of this act. The orders may include, but shall not be
25 limited to, orders requiring compliance with the provisions of
26 this act and the regulations promulgated pursuant thereto. Any
27 order issued under this act shall take effect upon notice,
28 unless the order specifies otherwise. The power of the
29 department to issue an order under this act is in addition to
30 any other remedy which may be afforded to the department

1 pursuant to this act or any other act.

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

10 Section 1103. Civil penalties.

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

25 (b) Escrow.--When the department assesses a civil penalty,
26 it shall inform the person of the amount of the penalty. The
27 person charged with the penalty shall then have 30 days to pay
28 the penalty in full or, if the person wishes to contest either
29 the amount of the penalty or the fact of the violation, either
30 to forward the proposed amount to the department for placement

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

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

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

23 Section 1104. Criminal penalties.

24 (a) Summary offense.--Any person who initially violates any
25 provision of Chapter 3, any regulation promulgated thereunder,
26 any order issued thereunder or the terms or conditions of any
27 permit shall, upon conviction thereof in a summary proceeding,
28 be sentenced to pay a fine of not less than \$100 nor more than
29 \$1,000 and costs and, in default of the payment of such fine and
30 costs, to imprisonment for not more than 30 days.

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

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

17 (d) Violations to be separate offenses.--Each violation of
18 any provision of this act, any regulation promulgated hereunder,
19 any order issued hereunder or the terms or conditions of any
20 permit shall constitute a separate offense under subsections
21 (a), (b) and (c).

22 Section 1105. Production of materials; recordkeeping
23 requirements.

24 (a) Authority of department.--The department and its agents
25 and employees shall:

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

29 (2) Require any person holding a permit to establish and
30 maintain such records and make such reports and furnish such

1 information as the department may prescribe.

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

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

21 (1) The inspection, examination, test or sampling is
22 pursuant to a general administrative plan to determine
23 compliance with this act.

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

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

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

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

16 (b) Deposit of fines.--All fines collected pursuant to
17 sections 1103 and 1104 shall be paid into the Underground
18 Storage Tank Indemnification Fund.
19 Section 1107. Public information.

20 (a) General rule.--Except as provided in subsection (b),
21 records, reports or other information obtained BY THE DEPARTMENT <—
22 under this act shall be available to the public for inspection
23 or copying during regular business hours.

24 (b) Confidentiality.--The department may, upon request,
25 designate records, reports or information as confidential when
26 the person providing the information demonstrates all of the
27 following:

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

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

3 (c) Separation of information.--When submitting information
4 under this act, a person shall designate the information which
5 the person believes is confidential or shall submit that
6 information separately from other information being submitted.

7 Section 1108. Relationship to other laws.

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

13 CHAPTER 21

14 MISCELLANEOUS PROVISIONS

15 Section 2101. Appropriations.

16 (a) Storage Tank Fund.--The sum of \$700,000, or as much
17 thereof as may be necessary, is hereby appropriated to the
18 Storage Tank Fund for the fiscal year July 1, 1988, to June 30,
19 1989.

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

24 Section 2102. Severability.

25 The provisions of this act are severable. If any provision of
26 this act or its application to any person or circumstance is
27 held invalid, the invalidity shall not affect other provisions
28 or applications of this act which can be given effect without
29 the invalid provision or application.

30 Section 2103. Repeals.

1 The following acts and parts of acts are repealed to the
2 extent specified:

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

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

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

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

27 Section 2104. Effective date.

28 This act shall take effect in 30 days.