

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 280 Session of 1989

INTRODUCED BY FISHER, MUSTO, REIBMAN, GREENWOOD, SHUMAKER, PECORA, PORTERFIELD, BELAN, MELLOW, WILT, LEMMOND, CORMAN, ANDREZESKI, LOEPER, SCANLON, JUBELIRER, SALVATORE, MADIGAN, SHAFFER, PETERSON, AFFLERBACH AND DAWIDA, JANUARY 24, 1989

SENATOR TILGHMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, FEBRUARY 6, 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.

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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

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 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 secondary containment and safety equipment; and the products to
25 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 Section 306. Registration of aboveground and underground

1 storage tanks.

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

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

10 (c) New underground storage tanks.--The owner of any new
11 underground storage tank shall register said tank with the
12 department upon applying for a permit under section 304.

13 (d) Existing underground storage tanks.--The owner of any
14 existing underground storage tank that has not registered that
15 tank with the department pursuant to Subtitle I of the Resource
16 Conservation and Recovery Act of 1976 (Public Law 94-580, 42
17 U.S.C. § 6901 et seq.) shall register said tank with the
18 department within 60 days of the effective date of this act. The
19 owner of any underground storage tank already registered with
20 the department pursuant to Federal law shall renew the
21 registration within one year of the effective date of this act
22 and comply with subsection (g) with regard to subsequent
23 registration renewals.

24 (e) Registration forms.--The department shall continue to
25 use the existing underground storage tank registration as
26 required by Federal law. The registration form for aboveground
27 storage tanks, including small aboveground storage tanks, shall
28 be substantially similar to the underground storage tank
29 registration form.

30 (f) Initial registration fees.--Until such time that

1 regulations on registration fees are promulgated under section
2 311, each registration application shall be accompanied with a
3 registration fee that shall be \$600 for each aboveground storage
4 tank, \$300 for each small aboveground storage tank and \$50 for
5 each underground storage tank.

6 (g) Renewal.--Each registration issued under this section
7 shall be renewed every three years as determined from the date
8 of the last registration, except underground tanks which shall
9 be renewed annually. Renewals shall continue until the time that
10 the department receives written notification from the owner that
11 the storage tank has been permanently closed.

12 Section 307. Inspection of aboveground storage tanks.

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

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

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

22 (2) Any changes outside the permitted usage of the
23 system.

24 (3) Any changes in the monitoring program.

25 (4) Any unaccounted inventory occurrences.

26 (c) Aboveground storage tank testing requirements.--Any
27 owner of an aboveground storage tank, excluding a small
28 aboveground storage tank, shall conduct a hydrostatic test on
29 new aboveground storage tanks or substantially modified
30 aboveground storage tanks. Each existing aboveground storage

1 tank, excluding a small aboveground storage tank, shall undergo
2 an out-of-service inspection at least once every ten years.

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

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

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

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

16 Section 309. Certification of storage tank installers and
17 private tank inspectors.

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

27 Section 310. Small operator assistance program for underground
28 storage tanks.

29 The department shall establish, implement and administer a
30 small operator assistance program within 180 days of the

1 effective date of this act. The small operator assistance
2 program shall provide information on compliance with this act
3 and other technical assistance to small operators located in
4 rural areas who pump, on a monthly basis, less than 3,000
5 gallons retail motor fuel sales.

6 Section 311. Environmental Quality Board.

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

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

25 (2) No person shall install a new or reconstructed
26 aboveground storage tank or modify an aboveground storage
27 tank unless the tank meets all applicable technical
28 requirements set forth by the American Petroleum Institute in
29 the following (including any appendices):

30 (i) API-12B - Bolted Tanks for Storage of Production

- 1 Liquids.
- 2 (ii) API-12D - Field Welded Tanks for Storage of
- 3 Production Liquids.
- 4 (iii) API-12F - Shop Welded Tanks for Storage of
- 5 Production Liquids.
- 6 (iv) API-12H - New Bottoms for Old Tanks.
- 7 (v) API-12P - Fiberglass Tanks for Storage of
- 8 Production Liquids.
- 9 (vi) API-620 - Large Welded Low Pressure Storage
- 10 Tanks.
- 11 (vii) API-650 - Large Welded Storage Tanks
- 12 (Atmospheric).

13 (3) Unless modified by the rules and regulations of the

14 department, the owner shall, along with the registration form

15 required by this act, submit a certification by a registered

16 professional engineer that the requirements of paragraph (2)

17 have been met.

18 (4) For underground tanks, no person shall install an

19 underground storage tank unless the underground storage tank

20 meets the standards promulgated by the Administrator of the

21 Environmental Protection Agency under section 9003(e) of the

22 Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. §

23 6991b(e)), including the following requirements:

24 (i) The tank is designed to prevent releases due to

25 corrosion or structural failure for the operational life

26 of the tank.

27 (ii) The tank is cathodically protected against

28 corrosion, constructed of noncorrosive material, steel

29 clad with a noncorrosive material, or designed in a

30 manner to prevent the release or threatened release of

1 any stored substance.

2 (iii) The material used in the construction or
3 lining of the tank is compatible with the substance to be
4 stored.

5 (iv) Notwithstanding subparagraphs (i), (ii) and
6 (iii), if soil tests conducted in accordance with ASTM
7 Standard G57-78, or another standard approved by the
8 Administrator of the Environmental Protection Agency,
9 show that soil resistivity in an installation location is
10 12,000 ohm/cm or more (unless a more stringent standard
11 is prescribed by the Administrator of the Environmental
12 Protection Agency by rule), a storage tank without
13 corrosion protection may be installed in that location
14 during the period referred to above.

15 (b) Requirements for aboveground storage tanks.--The
16 Environmental Quality Board shall, by regulation, adopt
17 aboveground storage tank standards, excluding a small
18 aboveground storage tank, which shall include, but shall not be
19 limited to:

- 20 (1) Dike integrity.
- 21 (2) Liner requirements.
- 22 (3) Steel thickness based on storage capacity.
- 23 (4) Testing requirements for new and substantially
24 modified aboveground storage tanks.
- 25 (5) Closure requirements.
- 26 (6) Corrosion control features.
- 27 (7) Monitoring standards.
- 28 (8) Recordkeeping requirements.
- 29 (9) Performance and design standards for new and
30 substantially modified aboveground storage tanks.

1 (10) Inspection requirements for existing aboveground
2 storage tanks.

3 (11) Standards to protect against fire and explosion
4 hazards.

5 (c) Requirements for small aboveground storage tanks.--The
6 board shall, by regulation, adopt small aboveground storage tank
7 standards which shall include, but not be limited to:

8 (1) Testing requirements for new and substantially
9 modified small aboveground storage tanks.

10 (2) Performance and design standards consistent with the
11 manufacturer's specifications for the small aboveground
12 storage tank model.

13 (3) Monitoring standards consistent with the
14 manufacturer's specifications for the small aboveground
15 storage tank model.

16 (4) Requirements for closure.

17 (5) Recordkeeping requirements.

18 (6) Inspection requirements for existing small
19 aboveground storage tanks.

20 (7) Standards to protect against fire and explosion
21 hazards.

22 (d) Fees.--The board shall establish separate fees for
23 aboveground storage tanks, small aboveground storage tanks and
24 underground storage tanks for:

25 (1) Permit applications and amendments.

26 (2) Registration applications and transfers.

27 (3) Inspections.

28 (4) Certification fees for tank installers and private
29 tank inspectors.

30 (e) Regulations governing underground storage tanks.--The

1 board shall, by regulation, adopt underground storage tank
2 design and safety standards which shall be consistent with, and
3 not more stringent than, the Federal regulations governing
4 underground storage tanks. The regulations shall include:

5 (1) Corrosion control features, including cathodic
6 protection.

7 (2) Monitoring standards and monitoring systems
8 including electric or mechanical devices, monitoring wells,
9 tank testing or other methods of monitoring approved by the
10 department.

11 (3) Recordkeeping requirements of any monitoring or leak
12 detection systems, inventory control system or underground
13 storage tank testing system.

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

18 (5) Testing schedule requirements for the periodic
19 testing of structural integrity of the underground storage
20 tank without a monitoring system.

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

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

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

30 (9) Standards to protect against fire and explosion

1 hazards.

2 Section 312. Industry Technical Advisory Board.

3 (a) Establishment.--There shall be created as an
4 administrative board within the department the Industry
5 Technical Advisory Board. The board shall consist of nine
6 members, all of whom shall be chosen by the Governor and shall
7 be residents of this Commonwealth. Three members shall be
8 qualified persons experienced in storage tank design and
9 installation with three years of experience in this
10 Commonwealth. One member shall be an owner or operator of an
11 aboveground storage tank. One member shall be an owner or
12 operator of an underground storage tank. One member shall be a
13 registered professional engineer with three years of experience
14 in this Commonwealth. One member shall be an engineer with three
15 years of experience in design and installation of aboveground
16 storage tanks in this Commonwealth, who shall be chosen from a
17 list of three names submitted by the Citizens Advisory Council
18 to the Governor and who shall sit as a representative of the
19 public interest. One member shall be a representative of local
20 government. One member shall be a representative of county
21 government.

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

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

30 (d) Consultation.--The department shall consult with the

1 advisory board in the formulation, drafting and presentation
2 stages of all regulations of a technical nature promulgated
3 under this act. The advisory board shall be given a reasonable
4 opportunity to review and comment on all regulations of a
5 technical nature prior to submission to the Environmental
6 Quality Board for initial consideration. The written report of
7 the board shall be presented to the Environmental Quality Board
8 with any regulatory proposal. The chairman of the advisory board
9 shall be invited to participate in the presentation of all
10 regulations of a technical nature before the Environmental
11 Quality Board to the extent allowed by procedures of the
12 Environmental Quality Board. Nothing herein shall preclude any
13 member of the advisory board from filing a petition for
14 rulemaking with the Environmental Quality Board in accordance
15 with procedures established by the Environmental Quality Board.

16 CHAPTER 5

17 SPILL PREVENTION RESPONSE PLAN

18 Section 501. Submission of spill prevention response plan.

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

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

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

5 (2) Substantial changes in emergency equipment at the
6 facility.

7 (3) Substantial changes in tank facility emergency
8 organization.

9 (4) Revision of applicable department regulations.

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

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

13 (7) Otherwise deemed necessary by the department.

14 (c) Existing plans.--All existing plans covering storage
15 tanks approved by the department pursuant to the act of June 22,
16 1937 (P.L.1987, No.394), known as The Clean Streams Law, and
17 known as preparedness, prevention and contingency plans must be
18 revised within one year of the effective date of this act.

19 Section 502. Content of spill prevention response plan.

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

28 (b) Plan implementation at facility, including emergency
29 response contractors.--The plan shall identify all individuals
30 and their duties and responsibilities for developing,

1 implementing and maintaining the plan. The plan shall describe
2 in detail the chain of command at the aboveground storage tank
3 or storage tank facility and list and describe how the owner or
4 operator will notify and coordinate spill response with off-site
5 spill response agencies and the local emergency response
6 agencies.

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

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

14 (e) Emergency spill control network.--The plan shall include
15 information obtained by the owner of the aboveground storage
16 tank facility from the county and municipal emergency management
17 agencies.

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

21 Section 503. Review of spill prevention response plan.

22 (a) Written notice.--The owner of the aboveground storage
23 tank facility located adjacent to surface waters shall provide
24 public notice to all downstream municipalities, downstream water
25 companies and downstream industrial users within 20 miles of the
26 aboveground storage tank facility site and the local
27 municipality and county in which the facility is located upon
28 submission of the plan to the department. All comments must be
29 submitted to the department within 30 days.

30 (b) Review and comment.--Upon receipt of the plan, the

1 department shall forward copies to the Pennsylvania Emergency
2 Management Agency, the Pennsylvania Fish Commission and the
3 local and county emergency management agencies for review and
4 comment. All comments must be submitted within 90 days.

5 (c) Department action.--Within 30 days after completion of
6 the comment period, the department shall approve the plan or
7 disapprove the plan and provide the owner of the storage tank or
8 tank facility with specific reasons for the disapproval. The
9 owner of the storage tank or tank facility shall submit a
10 revised plan to the department which the department shall act
11 upon within 30 days.

12 Section 504. Notification.

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

25 (b) Notification list.--The owner of the aboveground storage
26 tank or tank facility located adjacent to surface waters shall
27 annually obtain and annually update a list from the local
28 emergency management agency of all downstream municipal water
29 users, water companies and industrial users within 20 miles of
30 the tank facility.

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

5 (d) Other emergency response plans.--Notwithstanding Chapter
6 5 to the contrary, the spill prevention response plan shall be
7 developed by the owner of the aboveground storage tank and
8 approved by the department consistent with the emergency
9 management plans developed by local emergency management
10 agencies under Title III of the Superfund Amendments and
11 Reauthorization Act of 1986 (Public Law 99-499, 100 Stat. 1613).

12 CHAPTER 7

13 FINANCIAL PROVISIONS

14 Section 701. Financial responsibility.

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

26 (b) Methods of obtaining financial responsibility.--
27 Financial responsibility required by this section may be
28 established in accordance with regulations promulgated by the
29 department by any one, or any combination of the following:
30 insurance, guarantee, surety bond, letter of credit,

1 qualification as a self insurer, indemnity contract, risk
2 retention coverage, or any other method deemed satisfactory by
3 the department. Owners of underground tanks must meet these
4 requirements by complying with sections 704, 705 and 706. In
5 regulations or policy under this section, the department is
6 authorized to specify policy or other contractual terms,
7 conditions, or defenses which are necessary or acceptable in
8 establishing such evidence of financial responsibility.

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

25 (d) Guarantor liability.--The total liability of any
26 guarantor shall be limited to the aggregate amount which the
27 guarantor has provided as evidence of financial responsibility
28 to the owner or operator under this section. Nothing in this
29 subsection shall be construed to limit any other State or
30 Federal statutory, contractual or common law liability of a

1 guarantor to its owner or operator, including, but not limited
2 to, the liability of such guarantor for bad faith either in
3 negotiating or in failing to negotiate the settlement of any
4 claim. Nothing in this subsection shall be construed to diminish
5 the liability of any person under section 107 or 111 of the
6 Comprehensive Environmental Response, Compensation and Liability
7 Act of 1980 or other applicable statutes.

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

12 Section 702. Storage Tank Fund.

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

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

1 (c) Liability for costs.--Whenever costs have been incurred
2 by the Commonwealth for taking corrective action or paying
3 damages pursuant to section 701(a) with respect to a storage
4 tank regulated by this act, any person who has caused a release
5 of a regulated substance from such tank shall be strictly
6 liable, without fault, to the Commonwealth for such costs,
7 subject to the defenses set forth as follows:

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

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

10 (3) An act of God.

11 (d) Effect of liability on property.--Any costs incurred by
12 the Commonwealth for taking corrective action or paying damages
13 pursuant to section 701(a) with respect to a release from a
14 storage tank regulated under this act shall constitute in each
15 instance a debt of the owner or operator, as may be appropriate,
16 to the Storage Tank Fund. The debt shall constitute a lien on
17 all property owned by said owner or operator when a notice of
18 lien incorporating a description of the property of the owner or
19 operator subject to the action and an identification of the
20 amount of expenditure from the fund is duly filed with the
21 prothonotary of the court of common pleas where the property is
22 located. The prothonotary shall promptly enter upon the civil
23 judgment or order docket the name and address of the owner or
24 operator, as may be appropriate, and the amount of the lien as
25 set forth in the notice of lien. Upon entry by the prothonotary,
26 the lien shall attach to the revenues and all real and personal
27 property of the owner or operator, whether or not the owner or
28 operator is solvent. The notice of lien filed pursuant to this
29 subsection which affects the property of the owner or operator
30 shall create a lien with priority over all subsequent claims or

1 liens which are filed against the owner or operator.

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

3 (1) Claims shall be filed with the department not later
4 than two years after the date of discovery of damages or not
5 later than five years after the date of the incident which
6 caused the damage. The department shall develop forms and
7 procedures for such claims.

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

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

14 (4) The department shall attempt to promote and arrange
15 settlement between the claimant and the person responsible
16 for the release. If the parties fail to agree upon a
17 settlement then the claim shall be resolved by binding
18 arbitration with a three-member panel chosen by the
19 department and based on the information filed by both
20 parties.

21 (F) STATUS OF FUND.--THE STORAGE TANK FUND SHALL NOT BE
22 SUBJECT TO 42 PA.C.S. CH. 37 SUBCH. C (RELATING TO JUDICIAL
23 COMPUTER SYSTEM).

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24 Section 703. Underground Storage Tank Indemnification Board.

25 (a) Establishment of board, appointment and terms.--There is
26 hereby created the Underground Storage Tank Indemnification
27 Board which shall consist of seven members. The Insurance
28 Commissioner and the Secretary of the Department of
29 Environmental Resources shall be ex officio members. Five
30 members shall be appointed by the Governor, as follows:

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

7 (i) The Associated Petroleum Industries of
8 Pennsylvania.

9 (ii) The Pennsylvania Petroleum Association.

10 (iii) The Service Station Dealers and Automotive
11 Repair Association of Pennsylvania and Delaware and the
12 Petroleum Retailers and Auto Repair Association, Inc.

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

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

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

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

25 (c) Vacancies.--Vacancies in appointed positions shall be
26 filled by the Governor in the same manner as the original
27 appointment. Members shall serve until their successors are
28 appointed and qualified.

29 (d) Compensation.--Members shall receive no compensation for
30 their service other than reimbursement for necessary expenses in

1 accordance with Commonwealth regulations.

2 (e) Conflicts.--No member shall participate in making any
3 decision in a matter involving any payment from which he or his
4 employer may benefit or which may benefit a member of his
5 immediate family.

6 (f) Meetings and quorum.--The board shall meet at least
7 quarterly. Additional meetings may be held upon reasonable
8 notice at times and locations selected by the board. The board
9 shall meet at the call of the chairman or upon written request
10 of three members of the board. Four members shall constitute a
11 quorum and a quorum may act for the board in all matters.

12 Section 704. Underground Storage Tank Indemnification Fund.

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

28 (b) Limit of payments.--Payments to eligible owners or
29 operators shall be limited to the actual costs of corrective
30 action and the amount of an award of damages by a court of

1 competent jurisdiction for bodily injury, property damage, or
2 both, not to exceed a total of \$1,000,000 per tank per
3 occurrence. Payments of claims against the fund shall be subject
4 to a deductible as provided in section 705.

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

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

12 (E) STATUS OF FUND.--THE UNDERGROUND STORAGE TANK
13 INDEMNIFICATION FUND SHALL NOT BE SUBJECT TO 42 PA.C.S. CH. 37
14 SUBCH. C (RELATING TO JUDICIAL COMPUTER SYSTEM).

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15 Section 705. Powers and duties of Underground Storage Tank
16 Indemnification Board.

17 (a) Support.--The board may employ the personnel necessary
18 to process fee payments to administer claims made against the
19 Underground Storage Tank Indemnification Fund and to carry out
20 the purposes of the board. The board may also contract for the
21 services of attorneys, consultants and actuaries necessary to
22 advise the board in establishing fees under subsection (d) and
23 deductible amounts under subsection (c).

24 (b) Claims.--The board shall establish procedures by which
25 owners and operators may make claims for costs estimated or
26 incurred in taking corrective action and for liability due to
27 bodily injury and property damage caused by an accidental
28 release from underground petroleum storage tanks. Claims
29 determined to be eligible shall be paid upon receipt of
30 information required under regulations which the board shall

1 promulgate. The board, by regulation, may establish a system for
2 prioritizing claims.

3 (c) Deductible.--

4 (1) Claims shall be subject to a deductible amount which
5 the board shall set annually. The board shall give at least
6 30 days' notice of a proposed change in deductible amounts by
7 publication in the Pennsylvania Bulletin, and the change
8 shall take effect on the date specified in the notice. Each
9 owner or operator shall be responsible for the amount of the
10 deductible as provided in section 705.

11 (2) The board shall set the initial deductible for
12 corrective action claims at \$75,000 per tank per occurrence.
13 Thereafter, the deductible shall be based on an estimate of
14 the average cost of taking corrective action due to an
15 accidental release from underground petroleum storage tanks
16 in this Commonwealth. The board shall not set a deductible in
17 an amount lower than \$50,000 per tank per occurrence.

18 (3) The board shall set the initial deductible for
19 claims due to bodily injury, property damage, or both, at
20 \$150,000 per tank per occurrence. Thereafter, the deductible
21 shall be based on an estimate of the average award for
22 settlement of third-party claims involving bodily injury,
23 property damage, or both, caused by accidental release from
24 underground petroleum storage tanks in this Commonwealth. The
25 board shall not set a deductible in an amount lower than
26 \$100,000 per tank per occurrence.

27 (d) Fees.--The board, by regulations, shall establish fees
28 to be paid by the owner or operator, as appropriate, of
29 underground petroleum storage tanks. Fees shall be set on an
30 actuarial basis in order to provide an amount sufficient to pay

1 outstanding and anticipated claims against the Underground
2 Storage Tank Indemnification Fund in a timely manner. Fees shall
3 also include an amount sufficient to meet all other financial
4 requirements of the board. Fees shall be adjusted as deemed
5 necessary by the board, but no more than once a year.

6 (e) Payment of fees.--Fees established under subsection (d)
7 shall be paid by the owner of the tank unless a written
8 agreement between the owner and the operator provides otherwise.
9 A person who fails or refuses to pay the fee or a part of the
10 fee by the date established by the board shall be assessed a
11 penalty of 5% of the amount due which shall accrue on the first
12 day of delinquency and be added thereto. Thereafter, on the last
13 day of each month during which any part of any fee or any prior
14 accrued penalty remains unpaid, an additional 5% of the then
15 unpaid balance shall accrue and be added thereto.

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

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

21 (2) To make bylaws for the management and regulation of
22 its affairs and to adopt, amend and repeal rules, regulations
23 and guidelines governing the administrative procedures and
24 business of the board and operation and administration of the
25 fund. Regulations of the board shall be subject to review
26 under the act of June 25, 1982 (P.L.633, No.181), known as
27 the Regulatory Review Act.

28 (3) To sue or be sued concerning claims arising as a
29 result of a release from an underground petroleum storage
30 tank and to implead and be impleaded, complain and defend in

1 all courts.

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

5 Section 706. Eligibility of claimants.

6 In order to receive a payment from the Underground Storage
7 Tank Indemnification Fund, a claimant shall meet the following
8 eligibility requirements:

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

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

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

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

16 (5) The claimant demonstrates to the satisfaction of the
17 board that the release that is the subject of the claim
18 occurred after the date established by the board for payment
19 of the fee required by section 705(d).

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

22 Section 707. Audit.

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

25 Section 708. Sunset review.

26 The Underground Storage Tank Indemnification Fund and the
27 board shall be subject to periodic evaluation, review and
28 termination or continuation under the act of December 22, 1981
29 (P.L.508, No.142), known as the Sunset Act, every five years
30 commencing with an initial termination date of December 31,

1 1993. Nothing in the Sunset Act or this section shall be
2 construed to invalidate any claim submitted prior to the date of
3 termination.

4 CHAPTER 9

5 SITING OF NEW ABOVEGROUND STORAGE TANK FACILITIES

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

7 (a) Procedure.--The owner or operator of an existing or
8 proposed aboveground tank facility shall provide written
9 notification to the local municipality and county in which the
10 aboveground tank facility is situated or to be located prior to
11 submitting an application for an aboveground storage permit to
12 construct or reconstruct an additional aboveground storage tank
13 at the aboveground storage tank facility or construct a new
14 aboveground storage tank facility. This chapter shall not apply
15 to small aboveground storage tanks. For purposes of this
16 chapter, the term "tank facility" means an area in which two or
17 more aboveground storage tanks are located.

18 (b) Public hearings.--Upon submission to the department of
19 the permit application to construct any new aboveground tank
20 facility, the department may hold a public hearing in the
21 municipality or county in which the aboveground tank facility is
22 proposed to be located. The department shall publish the permit
23 application in the Pennsylvania Bulletin upon receipt of the
24 permit application and provide not more than a 60-day comment
25 period.

26 (c) Public comment on aboveground storage tank permit.--The
27 department shall publish the aboveground storage tank permit
28 application in the Pennsylvania Bulletin upon receipt of the
29 permit application and provide a 30-day comment period for new
30 aboveground storage tank facilities consistent with section 311.

1 Section 902. Siting criteria for aboveground tank facilities.

2 The Environmental Quality Board shall promulgate siting
3 regulations for new aboveground storage tank facilities
4 consistent with section 311 which shall contain detailed site
5 specific provisions which an applicant shall use to evaluate a
6 potential site. The regulations shall include, but not be
7 limited to, consideration for public health and safety,
8 protection of water supply sources, water quality, air quality,
9 flooding, topography, soil conditions and hydrogeology. The
10 Environmental Quality Board shall hold at least one public
11 hearing on the siting regulations and shall solicit and take
12 into consideration written public comments, prior to final
13 adoption.

14 CHAPTER 11

15 ENFORCEMENT AND REMEDIES

16 Section 1101. Unlawful conduct.

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

19 (1) Sell, distribute, provide or fill any storage tank
20 with a regulated substance unless the storage tank has a
21 valid registration issued under this act and the regulations
22 promulgated hereunder.

23 (2) Violate, or cause or assist in the violation of, any
24 provision of this act, any regulation promulgated hereunder,
25 any order issued hereunder, or the terms or conditions of any
26 spill prevention and response plan approved by the department
27 under this act.

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

1 (4) Hinder, obstruct, prevent or interfere with the
2 department or its personnel in the performance of any duty
3 under this act.

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

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

11 Section 1102. Enforcement orders.

12 (a) Issuance.--The department may issue such orders to
13 persons as it deems necessary to aid in the enforcement of the
14 provisions of this act. The orders may include, but shall not be
15 limited to, orders requiring compliance with the provisions of
16 this act and the regulations promulgated pursuant thereto. Any
17 order issued under this act shall take effect upon notice,
18 unless the order specifies otherwise. The power of the
19 department to issue an order under this act is in addition to
20 any other remedy which may be afforded to the department
21 pursuant to this act or any other act.

22 (b) Compliance.--It shall be the duty of any person to
23 proceed diligently to comply with any order issued pursuant to
24 subsection (a). If such person fails to proceed diligently or
25 fails to comply with the order within such time, if any, as may
26 be specified, such person shall be guilty of contempt and shall
27 be punished by the court in an appropriate manner, and for this
28 purpose, application may be made by the department to the
29 Commonwealth Court, which is hereby granted jurisdiction.

30 Section 1103. Civil penalties.

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

15 (b) Escrow.--When the department assesses a civil penalty,
16 it shall inform the person of the amount of the penalty. The
17 person charged with the penalty shall then have 30 days to pay
18 the penalty in full or, if the person wishes to contest either
19 the amount of the penalty or the fact of the violation, either
20 to forward the proposed amount to the department for placement
21 in an escrow account with the State Treasurer or with a bank in
22 this Commonwealth or to post an appeal bond in the amount of the
23 penalty. The bond must be executed by a surety licensed to do
24 business in this Commonwealth and must be satisfactory to the
25 department. If, through administrative or judicial review of the
26 proposed penalty, it is determined that no violation occurred or
27 that the amount of the penalty shall be reduced, the department
28 shall, within 30 days, remit the appropriate amount to the
29 person, with an interest accumulated by the escrow deposit.
30 Failure to forward the money or the appeal bond to the

1 department within 30 days shall result in a waiver of all legal
2 rights to contest the violation or the amount of the penalty.

3 (c) Amount.--The maximum civil penalty which may be assessed
4 pursuant to this section is \$10,000 per violation. Each
5 violation for each separate day and each violation of any
6 provision of this act, any regulation promulgated hereunder or
7 any order issued hereunder shall constitute a separate offense
8 under this section.

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

13 Section 1104. Criminal penalties.

14 (a) Summary offense.--Any person who initially violates any
15 provision of Chapter 3, any regulation promulgated thereunder,
16 any order issued thereunder or the terms or conditions of any
17 permit shall, upon conviction thereof in a summary proceeding,
18 be sentenced to pay a fine of not less than \$100 nor more than
19 \$1,000 and costs and, in default of the payment of such fine and
20 costs, to imprisonment for not more than 30 days.

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

28 (c) Second or subsequent offense.--Any person who, within
29 two years after a conviction of a misdemeanor for any willful
30 violation of this act, willfully violates the same provision of

1 this act at the same facility, any regulation promulgated
2 hereunder, any order issued hereunder or the terms or conditions
3 of any permit commits a misdemeanor of the second degree and
4 shall, upon conviction, be sentenced to pay a fine of not less
5 than \$2,500 nor more than \$25,000 for each violation or to
6 imprisonment for a period of not more than two years, or both.

7 (d) Violations to be separate offenses.--Each violation of
8 any provision of this act, any regulation promulgated hereunder,
9 any order issued hereunder or the terms or conditions of any
10 permit shall constitute a separate offense under subsections
11 (a), (b) and (c).

12 Section 1105. Production of materials; recordkeeping
13 requirements.

14 (a) Authority of department.--The department and its agents
15 and employees shall:

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

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

22 (3) Have the authority to enter any building, property,
23 premises or place where a storage tank is located for the
24 purposes of making an investigation or inspection necessary
25 to ascertain the compliance or noncompliance by any person
26 with the provisions of this act and the regulations
27 promulgated under this act. In connection with the inspection
28 or investigation, samples may be taken for analysis. If
29 analysis is made of the samples, a copy of the results of the
30 analysis shall be furnished within five business days after

1 receiving the analysis to the person having apparent
2 authority over the building, property, premises or place.

3 (b) Warrants.--An agent or employee of the department may
4 apply for a search warrant to any Commonwealth official
5 authorized to issue a search warrant for the purposes of
6 inspecting or examining any property, building, premises, place,
7 book, record or other physical evidence; of conducting tests; or
8 of taking samples. The warrant shall be issued upon probable
9 cause. It shall be sufficient probable cause to show any of the
10 following:

11 (1) The inspection, examination, test or sampling is
12 pursuant to a general administrative plan to determine
13 compliance with this act.

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

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

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

21 (a) Lien.--All fines, fees, interest and penalties and any
22 other assessments shall be collectible in any manner provided by
23 law for the collection of debts. If the person liable to pay any
24 such amount neglects or refuses to pay the same after demand,
25 the amount, together with interest and any costs that may
26 accrue, shall be a judgment in favor of the Commonwealth upon
27 the property of such person, but only after same has been
28 entered and docketed of record by the prothonotary of the county
29 where the property is situated. The Commonwealth may at any time
30 transmit to the prothonotaries of the respective counties

1 certified copies of all such judgments, and it shall be the duty
2 of each prothonotary to enter and docket the same of record in
3 his office, and to index the same as judgments are indexed,
4 without requiring the payment of costs as a condition precedent
5 to the entry thereof.

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

9 Section 1107. Public information.

10 (a) General rule.--Except as provided in subsection (b),
11 records, reports or other information obtained by the department
12 under this act shall be available to the public for inspection
13 or copying during regular business hours.

14 (b) Confidentiality.--The department may, upon request,
15 designate records, reports or information as confidential when
16 the person providing the information demonstrates all of the
17 following:

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

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

23 (c) Separation of information.--When submitting information
24 under this act, a person shall designate the information which
25 the person believes is confidential or shall submit that
26 information separately from other information being submitted.

27 Section 1108. Relationship to other laws.

28 The department shall take enforcement actions and actions to
29 recover the Commonwealth's costs for undertaking corrective
30 actions under this act before taking actions pursuant to the act

1 of October 18, 1988 (P.L.756, No.108), known as the Hazardous
2 Sites Cleanup Act.

3 CHAPTER 21

4 MISCELLANEOUS PROVISIONS

5 Section 2101. Appropriations.

6 (a) Storage Tank Fund.--The sum of \$700,000, or as much
7 thereof as may be necessary, is hereby appropriated to the
8 Storage Tank Fund for the fiscal year July 1, 1988, to June 30,
9 1989.

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

14 Section 2102. Severability.

15 The provisions of this act are severable. If any provision of
16 this act or its application to any person or circumstance is
17 held invalid, the invalidity shall not affect other provisions
18 or applications of this act which can be given effect without
19 the invalid provision or application.

20 Section 2103. Repeals.

21 The following acts and parts of acts are repealed to the
22 extent specified:

23 Act of June 8, 1911 (P.L.705, No.281), entitled "An act
24 creating the office of Fire Marshal, to be attached to the
25 Department of Public Safety in cities of the first class;
26 prescribing his duties and powers; and providing penalties for
27 violations of the provisions of the act; and providing for the
28 method of appointment, compensation, and for the maintenance of
29 his office," insofar as it is inconsistent with this act, only
30 to the extent that this act provides coverage over the same

1 class of storage tanks and materials.

2 Act of April 27, 1927 (P.L.450, No.291), referred to as the
3 State Fire Marshal Law, insofar as the authority of the State
4 Fire Marshal and the Pennsylvania State Police are to adopt and
5 enforce rules and regulations governing the use, storage and
6 sale and retention of gasoline, naphthalene, kerosene, fuel oil
7 or other substances of like character, only to the extent that
8 this act provides coverage over the same class of storage tanks
9 and materials.

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

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

17 Section 2104. Effective date.

18 This act shall take effect in 30 days.