
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

AS AMENDED ON THIRD CONSIDERATION, FEBRUARY 13, 1989

AN ACT

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

5 TABLE OF CONTENTS

6 Chapter 1. General Provisions

7 Section 101. Short title.

8 Section 102. Legislative findings.

9 Section 103. Definitions.

10 Section 104. Construction.

11 Section 105. API.

12 Chapter 3. Storage Tank Protection Program

13 Section 301. Establishment of program.

14 Section 302. Aboveground storage tank permits.

15 Section 303. Small aboveground storage tanks.

16 Section 304. Underground storage tank permits.

17 Section 305. Operation under existing permits.

18 Section 306. Registration of aboveground and underground

1 storage tanks.

2 Section 307. Inspection of aboveground storage tanks.

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

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

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

9 Section 311. Environmental Quality Board.

10 Section 312. Industry Technical Advisory Board.

11 Chapter 5. Spill Prevention Response Plan

12 Section 501. Submission of spill prevention response plan.

13 Section 502. Content of spill prevention response plan.

14 Section 503. Review of spill prevention response plan.

15 Section 504. Notification.

16 Chapter 7. Financial Provisions

17 Section 701. Financial responsibility.

18 Section 702. Storage Tank Fund.

19 Section 703. Underground Storage Tank Indemnification Board.

20 Section 704. Underground Storage Tank Indemnification Fund.

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

23 Section 706. Eligibility of claimants.

24 Section 707. Audit.

25 Section 708. Sunset review.

26 Chapter 9. Siting of New Aboveground Storage Tank Facilities

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

28 Section 902. Siting criteria for aboveground tank facilities.

29 Chapter 11. Enforcement and Remedies

30 Section 1101. Unlawful conduct.

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

9 Chapter 21. Miscellaneous Provisions

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

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

16 CHAPTER 1

17 GENERAL PROVISIONS

18 Section 101. Short title.

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

21 Section 102. Legislative findings.

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

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

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

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

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

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

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

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

21 Section 103. Definitions.

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

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

28 "Aboveground tank." Any stationary storage tank constructed
29 primarily of nonearthen materials which provides structured
30 support and whereby more than 90% of the tank volume is not

1 buried below the ground surface. This definition and regulations
2 promulgated under this act shall not include:

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

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

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

15 (4) Septic tanks.

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

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

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

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

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

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

29 (9) An interstate or intrastate pipeline facility
30 regulated under the State laws comparable to provisions of

1 law in paragraph (8).

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

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

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

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

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

16 (15) TANKS USED IN THE OPERATION OF FACILITIES PERMITTED ←
17 PURSUANT TO THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN
18 AS THE SOLID WASTE MANAGEMENT ACT, INCLUDING, BUT NOT LIMITED
19 TO, PIPING, TANKS, COLLECTION AND TREATMENT SYSTEMS USED FOR
20 LEACHATE, METHANE GAS AND METHANE GAS CONDENSATE MANAGEMENT.

21 ~~(15)~~ (16) Any other tank excluded by regulations or ←
22 policy promulgated pursuant to this act.

23 Unless specifically excluded, the term includes small
24 aboveground storage tanks.

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

29 "Certified tank installer." A person certified by the
30 Department of Environmental Resources to install, erect,

1 construct, modify or remove storage tanks. The term includes an
2 employee of a tank owner or operator.

3 "Corrective action." The:

4 (1) Containment or attempted containment of a ~~discharge~~ <—
5 RELEASE. <—

6 (2) Removal or attempted removal of a ~~discharge~~ RELEASE. <—

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

13 "Corrective action costs." All costs associated with the
14 cleanup and removal of a ~~discharge~~ RELEASE incurred by this <—
15 Commonwealth or its political subdivisions or their agents with
16 approval of the Department of Environmental Resources.

17 "Department." The Department of Environmental Resources of
18 the Commonwealth.

19 "Monitoring system." A system capable of detecting leaks or
20 ~~discharges~~ RELEASES in connection with an underground storage <—
21 tank.

22 "Nonoperated tank." Any storage tank that is empty and
23 represents excess storage capacity that may be brought up to
24 standards consistent with the regulatory requirements at the
25 time the tank is brought into service.

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

28 "Owner." Any person owning a storage tank. The term shall
29 include the current owner of any underground storage tank
30 holding regulated substances on or after November 8, 1984, and

1 the owner of an underground storage tank at the time all
2 regulated substances were removed when removal occurred prior to
3 November 8, 1984.

4 "Person." Any individual, partnership, corporation,
5 association, joint venture, consortium, institution, trust,
6 firm, joint-stock company, cooperative enterprise, municipality,
7 municipal authority, Federal Government or agency, Commonwealth
8 department, agency, board, commission or authority, or any other
9 legal entity whatsoever which is recognized by law as the
10 subject of rights and duties. In any provisions of this act
11 prescribing a fine, imprisonment or penalty, or any combination
12 of the foregoing, the term "person" shall include the officers
13 and directors of any corporation or other legal entity having
14 officers and directors.

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

17 "Private tank inspector." A person certified by the
18 Department of Environmental Resources to conduct environmental
19 audits and inspections of storage tanks. A private tank
20 inspector shall not be an employee of a tank owner.

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

29 ~~"Regulated substance." An element, compound, mixture,~~ <—
30 ~~solution or substance that, when released into the environment,~~

1 ~~may present substantial danger to the public health, welfare or~~
2 ~~the environment. The term shall include:~~

3 "REGULATED SUBSTANCE." ANY ELEMENT, COMPOUND, MIXTURE, <—
4 SOLUTION OR SUBSTANCE WHICH IS:

5 (1) Any substance defined in section 101(14) of the
6 Comprehensive Environmental Response, Compensation, and
7 Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767), not
8 including any substance regulated as a hazardous waste under
9 Subtitle C of the Resource Conservation and Recovery Act of
10 1976 (Public Law 94-580, 42 U.S.C. § 6901 et seq.).

11 (2) Petroleum, including crude oil or any fraction
12 thereof, which is liquid at standard conditions of
13 temperature and pressure (60 degrees Fahrenheit and 14.7
14 pounds per square inch absolute), including, but not limited
15 to, oil, petroleum, fuel oil, oil sludge, oil refuse, oil
16 mixed with other wastes and crude oils, gasoline and
17 kerosene.

18 (3) Any other substance determined by the department by
19 regulation whose containment, storage, use or dispensing may
20 present a hazard to the public health and safety or the
21 environment WHEN RELEASED. <—

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

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

27 "Secondary containment." An additional layer of impervious
28 material creating a space in which a leak of a regulated
29 substance from a storage tank may be detected before it enters
30 the environment.

1 "Secretary." The Secretary of Environmental Resources of the
2 Commonwealth.

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

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

7 "Substantially modify." The construction, refurbishment or
8 restoration of an existing storage tank which alters the
9 physical integrity of the tank.

10 "Tank facility." An area in which one or more aboveground
11 storage tanks are located, excluding small aboveground storage
12 tanks.

13 "Underground storage tank." Any one or combination of
14 underground tanks (including underground pipes connected
15 thereto) which are used to contain an accumulation of regulated
16 substances, and the volume of which (including the volume of the
17 underground pipes connected thereto) is 10% or more beneath the
18 surface of the ground. This definition and regulations
19 promulgated under this act shall not include:

20 (1) Farm or residential tanks of 1,100 gallons or less
21 capacity used for storing motor fuel for noncommercial
22 purposes.

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

25 (3) Septic tanks.

26 (4) A pipeline facility (including gathering lines)
27 regulated under:

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

30 (ii) The Hazardous Liquid Pipeline Safety Act of

1 1979 (Public Law 96-129, 93 Stat. 1003).

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

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

6 (7) Storm water or wastewater collection systems.

7 (8) Flow-through process tanks.

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

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

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

16 (12) TANKS USED IN THE OPERATION OF FACILITIES PERMITTED ←
17 PURSUANT TO THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN
18 AS THE SOLID WASTE MANAGEMENT ACT, INCLUDING, BUT NOT LIMITED
19 TO, PIPING, TANKS, COLLECTION AND TREATMENT SYSTEMS USED FOR
20 LEACHATE, METHANE GAS AND METHANE GAS CONDENSATE MANAGEMENT.

21 Section 104. Construction.

22 This act and the regulations promulgated under this act shall
23 be liberally construed in order to fully protect the public
24 health, welfare and safety of the residents of this
25 Commonwealth.

26 Section 105. API.

27 A reference in this act to "API" in relation to publications
28 shall be deemed to be a reference to the appropriate technical
29 publication, including appendices, of the American Petroleum
30 Institute.

1 CHAPTER 3

2 STORAGE TANK PROTECTION PROGRAM

3 Section 301. Establishment of program.

4 (a) Authority.--The department shall establish, implement
5 and administer a comprehensive program for storage tank
6 protection by providing for regulation of the installation,
7 location, removal and closure of storage tanks and establishing
8 an inventory review procedure and inspection program to insure
9 the structural integrity of existing and new storage tanks.

10 (b) Rules and regulations for aboveground and underground
11 storage tanks.--The department shall develop separate regulatory
12 programs pursuant to provisions of sections 310 and 311
13 governing underground storage tanks and aboveground storage
14 tanks. Regulations governing underground storage tanks as
15 proposed by the department and adopted by the Environmental
16 Quality Board, shall be no more stringent than rules and
17 regulations adopted by the Federal Environmental Protection
18 Agency. The department shall develop regulations which are based
19 on industry practices and standards as embodied in the existing
20 regulations governing aboveground and underground storage tanks.

21 Section 302. Aboveground storage tank permits.

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

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

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

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

7 (c) Application content.--Applications for aboveground
8 storage tank permits shall be submitted, in writing, by a
9 certified tank installer, to the department in such form and
10 with such accompanying data as shall be prescribed by
11 regulations, and shall include, to the extent that a good faith
12 effort has been made by the applicant, but not be limited to, a
13 map identifying the exact location of the tank; a description of
14 the construction of the tank, including the material out of
15 which the tank is constructed; the age and manufacturer of the
16 tank; the design of the storage tank facilities, including any
17 pumping, venting, secondary containment system and safety
18 equipment; the products to be stored in the tank; and the
19 location of the facility relative to surface water. The
20 department shall have the authority to deny permits, or include
21 in each permit general and specific conditions to insure the
22 proper operation of the aboveground storage tank.

23 (d) Review of applications.--The department shall make a
24 determination regarding whether an application is reasonably
25 complete within 45 days of the filing of an application with the
26 department and shall identify all areas in which an application
27 is incomplete when issuing a notice of deficiency. The
28 department shall review any amended application filed in
29 response to a notice of deficiency within 30 days of the filing
30 of the amended application with the department. Nothing in this

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

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

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

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

14 (h) Inspections.--The department shall require tanks to be
15 inspected prior to operation and periodically thereafter.
16 Section 303. Small aboveground storage tanks.

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

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

28 (c) Application content.--Applications for a small
29 aboveground storage tank shall be submitted, in writing, to the
30 department in such a form and with such accompanying data as

1 shall be prescribed by regulation, and shall include, to the
2 extent a good faith effort has been made by the applicant, but
3 not be limited to, a description of the construction of the
4 tank, including the material out of which the tank is
5 constructed; the age and manufacturer of the tank; the design of
6 the storage tank facilities, including any pumping, venting,
7 secondary containment and safety equipment; and the products to
8 be stored in the tank.

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

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

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

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

28 Section 304. Underground storage tank permits.

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

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

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

10 (c) Application content.--Applications for underground
11 storage tank shall be submitted, in writing, to the department
12 in such form and with such accompanying data as shall be
13 prescribed by regulation, and shall include, to the extent that
14 a good faith effort has been made by the applicant, but not be
15 limited to, a description of the construction of the tank,
16 including the material out of which the tank is constructed; the
17 age and manufacturer of the tank; installation procedures; and
18 safety equipment and leak detection system. The department shall
19 have the authority to deny applications or include in each
20 application general and specific conditions based on promulgated
21 regulations to insure that any new underground storage tank and
22 existing underground storage tank meet the Federal requirements
23 and deadlines for tank construction.

24 (d) Review of applications.--An application submitted by a
25 certified tank installer is deemed approved by the department
26 unless the department disapproves the application within ten
27 days of submission. The department shall review any amended
28 application filed in response to a notice of deficiency within
29 ten days of the filing of the amended application with the
30 department. Nothing in this section shall prohibit the

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

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

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

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

13 Section 305. Operation under existing permits.

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

30 (b) Repermitting.--

1 (1) Within two years of the effective date of this act,
2 every person issued a permit under subsection (a) for any
3 aboveground storage tank, including a small aboveground
4 storage tank, which is certified by that person to be ten
5 years of age or older shall apply to the department for a new
6 permit.

7 (2) Within three years of the effective date of this
8 act, every person issued a permit under subsection (a) for
9 any aboveground storage tank, including a small aboveground
10 storage tank, which is certified by that person to be less
11 than ten years of age shall apply to the department for a new
12 permit.

13 Section 306. Registration of aboveground and underground
14 storage tanks.

15 (a) Existing aboveground storage tanks.--The owner of an
16 existing aboveground storage tank shall, within one year of the
17 effective date of this act, register each aboveground storage
18 tank with the department.

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

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

26 (d) Existing underground storage tanks.--The owner of any
27 existing underground storage tank that has not registered that
28 tank with the department pursuant to Subtitle I of the Resource
29 Conservation and Recovery Act of 1976 (Public Law 94-580, 42
30 U.S.C. § 6901 et seq.) shall register said tank with the

1 department within 60 days of the effective date of this act. The
2 owner of any underground storage tank already registered with
3 the department pursuant to Federal law shall renew the
4 registration within one year of the effective date of this act
5 and comply with subsection (g) with regard to subsequent
6 registration renewals.

7 (e) Registration forms.--The department shall continue to
8 use the existing underground storage tank registration as
9 required by Federal law. The registration form for aboveground
10 storage tanks, including small aboveground storage tanks, shall
11 be substantially similar to the underground storage tank
12 registration form.

13 (f) Initial registration fees.--Until such time that
14 regulations on registration fees are promulgated under section
15 311, each registration application shall be accompanied with a
16 registration fee that shall be \$600 for each aboveground storage
17 tank, \$300 for each small aboveground storage tank and \$50 for
18 each underground storage tank.

19 (g) Renewal.--Each registration issued under this section
20 shall be renewed every three years as determined from the date
21 of the last registration, except underground tanks which shall
22 be renewed annually. Renewals shall continue until the time that
23 the department receives written notification from the owner that
24 the storage tank has been permanently closed.

25 Section 307. Inspection of aboveground storage tanks.

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

29 (b) Inspection report.--As a condition to operate any
30 permitted storage tank, including aboveground storage tanks, the

1 permittee shall maintain records and complete an annual report
2 form as prescribed by the Environmental Quality Board which will
3 include, but not be limited to, the following information:

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

5 (2) Any changes outside the permitted usage of the
6 system.

7 (3) Any changes in the monitoring program.

8 (4) Any unaccounted inventory occurrences.

9 (c) Aboveground storage tank testing requirements.--Any
10 owner of an aboveground storage tank, excluding a small
11 aboveground storage tank, shall conduct a hydrostatic test on
12 new aboveground storage tanks or substantially modified
13 aboveground storage tanks. Each existing aboveground storage
14 tank, excluding a small aboveground storage tank, shall undergo
15 an out-of-service inspection at least once every ten years.

16 Section 308. Inspection and inventory records of underground
17 storage tanks.

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

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

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

29 Section 309. Certification of storage tank installers and
30 private tank inspectors.

1 The department shall have the authority to establish a
2 certification system for tank installers and private tank
3 inspectors by regulation. The department is authorized to
4 certify through training and testing programs and shall also be
5 empowered to revoke or suspend the certification of a tank
6 installer or private tank inspector pursuant to regulations
7 promulgated under section 311. Any certification issued by the
8 department under this section shall be valid for a period of
9 five years. THE DEPARTMENT MAY DEVELOP AN INTERIM CERTIFICATION ←
10 PROGRAM BY PUBLISHING GUIDELINES WHICH SHALL EXPIRE 18 MONTHS
11 AFTER THE EFFECTIVE DATE OF THIS ACT.

12 Section 310. Small operator assistance program for underground
13 storage tanks.

14 The department shall establish, implement and administer a
15 small operator assistance program within 180 days of the
16 effective date of this act. The small operator assistance
17 program shall provide information on compliance with this act
18 and other technical assistance to small operators located in
19 rural areas who pump, on a monthly basis, less than 3,000
20 gallons retail motor fuel sales.

21 Section 311. Environmental Quality Board.

22 (a) Rules and regulations.--The Environmental Quality Board
23 shall have the power and its duty shall be to review the
24 existing regulations governing storage tanks and adopt rules and
25 regulations governing the location, siting, installation,
26 operation, monitoring, classification and permitting of storage
27 tanks as it deems necessary for the implementation of this act.
28 The Environmental Quality Board shall, in developing
29 regulations, use the recommendations and standard procedures
30 developed by the American Petroleum Institute, American Society

1 of Testing and Materials, National Association of Corrosion
2 Engineers, National Fire Protection Association, and
3 Underwriters Laboratories. Until the Environmental Quality Board
4 adopts rules and regulations:

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

10 (2) No person shall install a new or reconstructed
11 aboveground storage tank or modify an aboveground storage
12 tank unless the tank meets all applicable technical
13 requirements set forth by the American Petroleum Institute in
14 the following (including any appendices):

15 (i) API-12B - Bolted Tanks for Storage of Production
16 Liquids.

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

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

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

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

24 (vi) API-620 - Large Welded Low Pressure Storage
25 Tanks.

26 (vii) API-650 - Large Welded Storage Tanks
27 (Atmospheric).

28 (3) Unless modified by the rules and regulations of the
29 department, the owner shall, along with the registration form
30 required by this act, submit a certification by a registered

1 professional engineer that the requirements of paragraph (2)
2 have been met.

3 (4) For underground tanks, no person shall install an
4 underground storage tank unless the underground storage tank
5 meets the standards promulgated by the Administrator of the
6 Environmental Protection Agency under section 9003(e) of the
7 Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. §
8 6991b(e)), including the following requirements:

9 (i) The tank is designed to prevent releases due to
10 corrosion or structural failure for the operational life
11 of the tank.

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

17 (iii) The material used in the construction or
18 lining of the tank is compatible with the substance to be
19 stored.

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

30 (b) Requirements for aboveground storage tanks.--The

1 Environmental Quality Board shall, by regulation, adopt
2 aboveground storage tank standards, excluding a small
3 aboveground storage tank, which shall include, but shall not be
4 limited to:

5 (1) Dike integrity.

6 (2) Liner requirements.

7 (3) Steel thickness based on storage capacity.

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

10 (5) Closure requirements.

11 (6) Corrosion control features.

12 (7) Monitoring standards.

13 (8) Recordkeeping requirements.

14 (9) Performance and design standards for new and
15 substantially modified aboveground storage tanks.

16 (10) Inspection requirements for existing aboveground
17 storage tanks.

18 (11) Standards to protect against fire and explosion
19 hazards.

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

23 (1) Testing requirements for new and substantially
24 modified small aboveground storage tanks.

25 (2) Performance and design standards consistent with the
26 manufacturer's specifications for the small aboveground
27 storage tank model.

28 (3) Monitoring standards consistent with the
29 manufacturer's specifications for the small aboveground
30 storage tank model.

1 (4) Requirements for closure.

2 (5) Recordkeeping requirements.

3 (6) Inspection requirements for existing small
4 aboveground storage tanks.

5 (7) Standards to protect against fire and explosion
6 hazards.

7 (d) Fees.--The board shall establish separate fees for
8 aboveground storage tanks, small aboveground storage tanks and
9 underground storage tanks for:

10 (1) Permit applications and amendments.

11 (2) Registration applications and transfers.

12 (3) Inspections.

13 (4) Certification fees for tank installers and private
14 tank inspectors.

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

20 (1) Corrosion control features, including cathodic
21 protection.

22 (2) Monitoring standards and monitoring systems
23 including electric or mechanical devices, monitoring wells,
24 tank testing or other methods of monitoring approved by the
25 department.

26 (3) Recordkeeping requirements of any monitoring or leak
27 detection systems, inventory control system or underground
28 storage tank testing system.

29 (4) Tank testing requirements pursuant to paragraph (2)
30 for underground storage tanks which considers such factors as

1 the regulated substance stored, proximity of the underground
2 storage tank to potable water supplies and soil conditions.

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

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

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

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

15 (9) Standards to protect against fire and explosion
16 hazards.

17 Section 312. Industry Technical Advisory Board.

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

1 storage tanks in this Commonwealth, who shall be chosen from a
2 list of three names submitted by the Citizens Advisory Council
3 to the Governor and who shall sit as a representative of the
4 public interest. One member shall be a representative of local
5 government. One member shall be a representative of county
6 government.

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

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

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

1 CHAPTER 5

2 SPILL PREVENTION RESPONSE PLAN

3 Section 501. Submission of spill prevention response plan.

4 (a) Schedule.--Accompanying the registration form as set
5 forth in section 306, each owner of an aboveground storage tank
6 or tank facility shall submit to the department within one year
7 of the effective date of this act a plan for each aboveground
8 storage tank or tank facility. Each plan shall be site-specific
9 and be consistent with the requirements of this act. This
10 chapter shall not apply to small aboveground storage tanks.

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

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

20 (2) Substantial changes in emergency equipment at the
21 facility.

22 (3) Substantial changes in tank facility emergency
23 organization.

24 (4) Revision of applicable department regulations.

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

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

28 (7) Otherwise deemed necessary by the department.

29 (c) Existing plans.--All existing plans covering storage
30 tanks approved by the department pursuant to the act of June 22,

1 1937 (P.L.1987, No.394), known as The Clean Streams Law, and
2 known as preparedness, prevention and contingency plans must be
3 revised within one year of the effective date of this act.

4 Section 502. Content of spill prevention response plan.

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

13 (b) Plan implementation at facility, including emergency
14 response contractors.--The plan shall identify all individuals
15 and their duties and responsibilities for developing,
16 implementing and maintaining the plan. The plan shall describe
17 in detail the chain of command at the aboveground storage tank
18 or storage tank facility and list and describe how the owner or
19 operator will notify and coordinate spill response with off-site
20 spill response agencies and the local emergency response
21 agencies.

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

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

29 (e) Emergency spill control network.--The plan shall include
30 information obtained by the owner of the aboveground storage

1 tank facility from the county and municipal emergency management
2 agencies.

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

6 Section 503. Review of spill prevention response plan.

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

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

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

27 Section 504. Notification.

28 (a) Procedure.--Upon the occurrence of a release at the
29 aboveground storage tank, the owner or operator of a storage
30 tank shall immediately notify the department, the Pennsylvania

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

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

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

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

27 CHAPTER 7

28 FINANCIAL PROVISIONS

29 Section 701. Financial responsibility.

30 (a) Regulations of department.--The department is authorized

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

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

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

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

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

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

27 Section 702. Storage Tank Fund.

28 (a) Establishment of fund.--There is hereby created a
29 special nonlapsing fund in the State Treasury to be known as the
30 Storage Tank Fund. All fees, fines, judgments, bond forfeitures

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

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

16 (c) Liability for costs.--Whenever costs have been incurred
17 by the Commonwealth for taking corrective action or paying
18 damages pursuant to section 701(a) with respect to a storage
19 tank regulated by this act, any person who has caused a release
20 of a regulated substance from such tank shall be strictly
21 liable, without fault, to the Commonwealth for such costs,
22 subject to 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 release. If the parties fail to agree upon a
2 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 (f) Status of fund.--The Storage Tank Fund shall not be
7 subject to 42 Pa.C.S. Ch. 37 Subch. C (relating to Judicial
8 Computer System).

9 Section 703. Underground Storage Tank Indemnification Board.

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

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

22 (i) The Associated Petroleum Industries of
23 Pennsylvania.

24 (ii) The Pennsylvania Petroleum Association.

25 (iii) The Service Station Dealers and Automotive
26 Repair Association of Pennsylvania and Delaware and the
27 Petroleum Retailers and Auto Repair Association, Inc.

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

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

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

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

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

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

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

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

27 Section 704. Underground Storage Tank Indemnification Fund.

28 (a) Establishment of fund.--There is hereby created a
29 special fund in the State Treasury to be known as the
30 Underground Storage Tank Indemnification Fund. This fund shall

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

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

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

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

27 (e) Status of fund.--The Underground Storage Tank
28 Indemnification Fund shall not be subject to 42 Pa.C.S. Ch. 37
29 Subch. C (relating to Judicial Computer System).

30 Section 705. Powers and duties of Underground Storage Tank

1 Indemnification Board.

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

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

18 (c) Deductible.--

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

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

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

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

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

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

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

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

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

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

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

20 Section 706. Eligibility of claimants.

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

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

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

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

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

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

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

7 Section 707. Audit.

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

10 Section 708. Sunset review.

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

19 CHAPTER 9

20 SITING OF NEW ABOVEGROUND STORAGE TANK FACILITIES

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

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

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

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

11 (c) Public comment on aboveground storage tank permit.--The
12 department shall publish the aboveground storage tank permit
13 application in the Pennsylvania Bulletin upon receipt of the
14 permit application and provide a 30-day comment period for new
15 aboveground storage tank facilities consistent with section 311.
16 Section 902. Siting criteria for aboveground tank facilities.

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

29 CHAPTER 11

30 ENFORCEMENT AND REMEDIES

1 Section 1101. Unlawful conduct.

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

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

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

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

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

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

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

26 Section 1102. Enforcement orders.

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

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

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

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

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

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

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

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

28 Section 1104. Criminal penalties.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 Section 1107. Public information.

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

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

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

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

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

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

12 Section 1108. Relationship to other laws.

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

18 CHAPTER 21

19 MISCELLANEOUS PROVISIONS

20 Section 2101. Appropriations.

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

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

29 Section 2102. Severability.

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

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

5 Section 2103. Repeals.

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

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

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

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

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

1 act.

2 Section 2104. Effective date.

3 This act shall take effect in 30 days.