
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

SENATE AMENDMENTS TO HOUSE AMENDMENTS, JUNE 30, 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 an appropriation.

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29 The General Assembly of the Commonwealth of Pennsylvania
30 hereby enacts as follows:

1 CHAPTER 1

2 GENERAL PROVISIONS

3 Section 101. Short title.

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

6 Section 102. Legislative findings.

7 (a) Findings enumerated.--The General Assembly of the
8 Commonwealth finds and declares that:

9 (1) The lands and waters of this Commonwealth constitute
10 a unique and irreplaceable resource from which the well-being
11 of the public health and economic vitality of this
12 Commonwealth is assured.

13 (2) These resources have been contaminated by releases
14 and ruptures of regulated substances from both active and
15 abandoned storage tanks.

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

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

21 (5) Contamination of groundwater supplies caused by
22 releases from storage tanks constitutes a grave threat to the
23 health of affected residents.

24 (6) Contamination of these resources must be prevented
25 through improved safeguards on the installation and
26 construction of storage tanks.

27 (b) Declaration.--The General Assembly declares these
28 storage tank releases to be a threat to the public health and
29 safety of this Commonwealth and hereby exercises the power of
30 the Commonwealth to prevent the occurrence of these releases

1 through the establishment of a regulatory scheme for the storage
2 of regulated substances in new and existing storage tanks and to
3 provide liability for damages sustained within this Commonwealth
4 as a result of a release and to require prompt cleanup and
5 removal of such pollution and released regulated substance.

6 Section 103. Definitions.

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

10 "Aboveground storage tank." Any one or combination of
11 stationary tanks with a capacity in excess of 250 gallons,
12 including underground pipes and dispensing systems connected
13 thereto within the storage tank facility, which is or was used
14 to contain an accumulation of regulated substances, and the
15 volume of which, including the volume of all piping within the
16 storage tank facility, is greater than 90% above the surface of
17 the ground. The term includes any tank which can be visually
18 inspected, from the exterior, in an underground area. The term
19 shall not include any of the following:

20 (1) A farm, municipal or residential tank of 1,100
21 gallons or less capacity used for storing motor fuel for
22 noncommercial purposes.

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

25 (3) A pipeline facility, including gathering lines,
26 regulated under:

27 (i) the Natural Gas Pipeline Safety Act of 1968
28 (Public Law 90-481, 82 Stat. 720, 49 U.S.C. App. § 1671
29 et seq.).

30 (ii) the Hazardous Liquid Pipeline Safety Act of

1 1979 (Public Law 96-129, 93 Stat. 989, 49 U.S.C. § 2001
2 et seq.); or

3 (iii) An interstate or intrastate pipeline facility
4 regulated under State laws comparable to the provisions
5 of law referred to in subparagraph (i) or (ii).

6 (4) A surface impoundment, pit, pond or lagoon.

7 (5) A storm water or wastewater collection system.

8 (6) A flow-through process tank, including but not
9 limited to, a pressure vessel or process vessel and oil and
10 water separators.

11 (7) A nonstationary tank liquid trap or associated
12 gathering lines directly related to oil and gas production or
13 gathering operations.

14 (8) Tanks which are used to store brines, crude oil,
15 drilling or frac fluids and similar substances or materials
16 and are directly related to the exploration, development or
17 production of crude oil or natural gas regulated under the
18 act of December 19, 1984 (P.L.1140, No.223), known as the Oil
19 and Gas Act.

20 (9) Tanks regulated under the act of May 31, 1945
21 (P.L.1198, No.418), known as the Surface Mining Conservation
22 and Reclamation Act.

23 (10) Tanks used for the storage of products which are
24 regulated pursuant to the Federal Food, Drug, and Cosmetic
25 Act (52 Stat. 1040, 21 U.S.C. § 301 et seq.).

26 (11) Tanks permitted pursuant to the act of July 7, 1980
27 (P.L.380, No.97), known as the Solid Waste Management Act,
28 including, but not limited to, piping, tanks, collection and
29 treatment systems used for leachate, methane gas and methane
30 gas condensate management.

1 (12) A tank of 1,100 gallons or less in capacity located
2 on a farm used solely to store or contain substances that are
3 used to facilitate the production of crops, livestock and
4 livestock products on such farm.

5 (13) Tanks which are used to store propane gas.

6 (14) Any other tank excluded by regulations promulgated
7 pursuant to this act.

8 The term shall not include any pipes connected to any tank
9 described in paragraphs (1) through (13).

10 "Cathodic protection." A technique to prevent corrosion of a
11 metal surface by making that surface the cathode of an
12 electrochemical cell.

13 "Certified inspector." A person certified by the department
14 to conduct environmental audits and inspections of tanks or tank
15 facilities. A certified inspector shall not be an employee of a
16 tank owner.

17 "Certified installer." A person certified by the department
18 to install, erect, construct, modify or remove storage tanks. A
19 certified installer may be an employee of a tank owner.

20 "Commercial heating oil storage tank." Underground storage
21 tank in excess of 3,000 gallons used for storage of heating oil
22 for the consumptive use of the premises where stored.

23 "Comprehensive Environmental Response, Compensation and
24 Liability Act of 1980." Public Law 96-510, 94 Stat. 2767.

25 "Corrective action." The term shall include the following:

26 (1) Containing, assessing or investigating a release.

27 (2) Removing a release or any material affected by a
28 release.

29 (3) Taking measures to prevent, mitigate, abate or
30 remedy releases, pollution and potential for pollution,

1 nuisances and damages to the public health, safety or
2 welfare, including, but not limited to, waters of this
3 Commonwealth, including surface water and groundwater, public
4 and private property, shorelines, beaches, water columns and
5 bottom sediments, soils and other affected property,
6 including wildlife and other natural resources.

7 (4) Taking actions to prevent, abate, mitigate or
8 respond to a violation of this act THAT THREATENS PUBLIC HEALTH OR THE ENVIRONMENT. ←

10 (5) Temporarily or permanently relocating residents,
11 providing alternative water supplies or undertaking an
12 exposure assessment.

13 (6) Does not include the cost of routine inspections,
14 routine investigations and permit activities not associated
15 with a release.

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

18 "Environmental Hearing Board." The board established
19 pursuant to the act of July 13, 1988 (P.L.530, No.94), known as
20 the Environmental Hearing Board Act.

21 "Environmental Quality Board." The board established
22 pursuant to section 1920-A of the act of April 9, 1929 (P.L.177,
23 No.175), known as The Administrative Code of 1929, for the
24 purposes set forth in that section.

25 "Exposure assessment." An assessment to determine the extent
26 of exposure of, or potential for exposure of, individuals, the
27 biological community and all other natural resources to releases
28 from a storage tank based on, but not limited to, such factors
29 as the nature and extent of contamination and the existence of
30 or potential for pathways of human exposure (including

1 groundwater or surface water contamination, air emissions, soil
2 contamination and food chain contamination), the size of the
3 community within the likely pathways of exposure and the
4 comparison of expected human exposure levels to the short-term
5 and long-term health effects associated with identified
6 contaminants.

7 "Farm." Land used for the production for commercial purposes
8 of crops, livestock and livestock products, including the
9 processing of retail marketing of such crops, livestock or
10 livestock products if more than 50% of such processed or
11 merchandised products are produced by the farm operator. "Crops,
12 livestock and livestock products" include, but are not limited
13 to:

14 (1) Field crops, including corn, wheat, oats, rye,
15 barley, hay, potatoes and dry beans.

16 (2) Fruits, including apples, peaches, grapes, cherries
17 and berries.

18 (3) Vegetables, including tomatoes, snap beans, cabbage,
19 carrots, beats, onions and mushrooms.

20 (4) Horticultural specialties, including nursery stock,
21 ornamental shrubs, ornamental trees and flowers.

22 (5) Livestock and livestock products, including cattle,
23 sheep, hogs, goats, horses, poultry, furbearing animals,
24 milk, eggs and furs.

25 (6) Aquatic plants and animals and their by-products.

26 "Hazardous Liquid Pipeline Safety Act of 1979." Public Law
27 96-129, 93 Stat. 989, 49 U.S.C. § 2001 et seq.

28 "Monitoring system." A system capable of detecting releases
29 in connection with an aboveground or underground storage tank.

30 "Natural Gas Pipeline Safety Act of 1968." Public Law 90-

1 481, 82 Stat. 720, 49 U.S.C. app. § 1671 et seq.

2 "Operator." Any person who manages, supervises, alters,
3 controls, or has responsibility for the operation of a storage
4 tank.

5 "Owner."

6 (1) In the case of a storage tank in use on the
7 effective date of this act, or brought into use after that
8 date, any person who owns or has an ownership interest in a
9 storage tank used for the storage, containment, use or
10 dispensing of regulated substances.

11 (2) In the case of an aboveground storage tank in use
12 before the effective date of this act, but no longer in use
13 on the effective date of this act, any person who owned the
14 aboveground tank, immediately before the discontinuance of
15 its use, as well as any person who meets the definition of
16 owner in paragraph (1).

17 (3) In the case of an underground storage tank, the
18 owner of an underground storage tank holding regulated
19 substances on or after November 8, 1984, and the owner of an
20 underground storage tank at the time all regulated substances
21 were removed when removal occurred prior to November 8, 1984.

22 "Person." Any individual, partnership, corporation,
23 association, joint venture, consortium, institution, trust,
24 firm, joint-stock company, cooperative enterprise, municipality,
25 municipal authority, Federal Government or agency, Commonwealth
26 department, agency, board, commission, or authority, or any
27 other legal entity whatsoever which is recognized by law as the
28 subject of rights and duties. In any provisions of this act
29 prescribing a fine, imprisonment or penalty, or any combination
30 of the foregoing, the term "person" shall include the officers

1 and directors of any corporation or other legal entity having
2 officers and directors.

3 "Pressure vessel." A vessel used in industrial processes
4 designed to withstand pressures above 15 psig.

5 "Process vessel." A vessel in industrial or commercial
6 operation in which, during use, there is a mechanical, physical
7 or chemical change of the contained substances taking place. The
8 industrial or commercial process may include, but is not limited
9 to, mixing, separating, chemically altering, dehydrating,
10 extracting, refining or polishing of the substances in the tank.
11 The term does not include tanks used only to store substances
12 prior to sale or to store feedstock prior to additional
13 processing.

14 "Regulated substance." An element, compound, mixture,
15 solution or substance that, when released into the environment,
16 may present substantial danger to the public health, welfare or
17 the environment which is:

18 (1) any substance defined as a hazardous substance in
19 section 101(14) of the Comprehensive Environmental Response,
20 Compensation, and Liability Act of 1980 (Public Law 96-510,
21 94 Stat. 2767), but not including any substance regulated as
22 a hazardous waste under Subtitle C of the Resource
23 Conservation and Recovery Act of 1976 (Public Law 94-580, 42
24 U.S.C. § 6901 et seq.);

25 (2) petroleum, including crude oil or any fraction
26 thereof and hydrocarbons which are liquid at standard
27 conditions of temperature and pressure (60 degrees Fahrenheit
28 and 14.7 pounds per square inch absolute), including, but not
29 limited to, oil, petroleum, fuel oil, oil sludge, oil refuse,
30 oil mixed with other nonhazardous wastes and crude oils,

1 gasoline and kerosene; ~~and~~ OR

2 (3) any other substance determined by the department by
3 regulation whose containment, storage, use or dispensing may
4 present a hazard to the public health and safety or the
5 environment, but not including gaseous substances used
6 exclusively for the administration of medical care.

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

9 "Release." Any spilling, leaking, emitting, discharging,
10 escaping, leaching or disposing from a storage tank into surface
11 waters and groundwaters of this Commonwealth or soils or
12 subsurface soils in an amount equal to or greater than the
13 reportable released quantity determined under section 102 of the
14 Comprehensive Environmental Response, Compensation and Liability
15 Act of 1980, and regulations promulgated thereunder, or an
16 amount equal to or greater than a discharge as defined in
17 section 311 of the Federal Water Pollution Control Act (62 Stat.
18 1155, 33 U.S.C. § 1321) and regulations promulgated thereunder.
19 The term shall also include spilling, leaking, emitting,
20 discharging, escaping, leaching or disposing from a storage tank
21 into a containment structure or facility that poses an immediate
22 threat of contamination of the soils, subsurface soils,
23 surfacewater or groundwater.

24 "Resource Conservation and Recovery Act of 1976." Public Law
25 94-580, 42 U.S.C. § 6901 et seq.

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

30 "Secretary." The Secretary of Environmental Resources of the

1 Commonwealth.

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

4 "Spill prevention response plan." Emergency plans and
5 procedures developed by an aboveground storage tank or tank
6 facility owner and/or operator for response to an accident or
7 spill on the facility by facility personnel or contractors.

8 "Stationary tank." Any aboveground storage tank that is
9 permanently affixed to the real property on which such tank is
10 located.

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

13 "Storage tank facility." One or more stationary tanks,
14 including any associated intrafacility pipelines, fixtures,
15 monitoring devices and other equipment. A facility may include
16 aboveground tanks, underground tanks, or a combination of both.

17 "Substantial modification." An activity to construct,
18 refurbish, restore or remove from service an existing storage
19 tank piping or storage tank facility which alters the physical
20 construction or integrity of the tank or tank facility.

21 "Underground storage tank." Any one or combination of tanks
22 (including underground pipes connected thereto) which are used
23 to contain an accumulation of regulated substances, and the
24 volume of which (including the volume of the underground pipes
25 connected thereto) is 10% or more beneath the surface of the
26 ground. The term shall not include:

27 (1) Farm or residential tanks of 1,100 gallons or less
28 capacity used for storing motor fuel for noncommercial
29 purposes.

30 (2) Tanks of 3,000 gallons or less used for storing

1 heating oil for consumptive use on the premises where stored.

2 (3) A septic or other subsurface sewage treatment tank.

3 (4) A pipeline facility (including gathering lines)

4 regulated under:

5 (i) The Natural Gas Pipeline Safety Act of 1968
6 (Public Law 90-481, 82 Stat. 720, 49 U.S.C. App. § 1671
7 et seq.).

8 (ii) The Hazardous Liquid Pipeline Safety Act of
9 1979 (Public Law 96-129, 93 Stat. 989, 49 U.S.C. § 2001
10 et seq.).

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

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

15 (7) Storm water or wastewater collection systems.

16 (8) Flow-through process tanks.

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

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

23 (11) Tanks permitted pursuant to the act of July 7, 1980
24 (P.L.380, No.97), known as the Solid Waste Management Act,
25 including, but not limited to, piping, tanks, collection and
26 treatment systems used for leachate, methane gas and methane gas
27 condensate management.

28 (12) Any underground storage tank system whose capacity
29 is 110 gallons or less.

30 (13) Any other tank excluded by policy or regulations

1 promulgated pursuant to this act.

2 Section 104. API.

3 A reference in this act to a document published by "API" is a
4 reference to the appropriate technical publication, including
5 appendices, of the American Petroleum Institute.

6 Section 105. Advisory committee.

7 (a) Appointment, composition, etc.--A storage tank advisory
8 committee shall be appointed by the secretary within 30 days
9 after the effective date of this act. The committee shall
10 consist of no more than 11 members. Four members shall be
11 representatives of local government, three members shall be
12 representatives of the regulated community, one member shall be
13 a registered professional engineer with three years of
14 experience in this Commonwealth and three members shall be
15 representatives of the public at large. Members shall serve
16 without compensation other than reimbursement for reasonable and
17 necessary expenses in accordance with Commonwealth policy or
18 regulations and shall serve for terms fixed by the secretary.
19 The three representatives from the regulated community shall be
20 appointed by the secretary, one each from a list of three
21 nominees provided by the following:

22 (1) The Associated Petroleum Industries of Pennsylvania.

23 (2) The Pennsylvania Petroleum Association.

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

27 (b) Review of regulations.--The department shall consult
28 with the advisory committee in the formulation, drafting and
29 presentation of all regulations promulgated under this act. The
30 advisory committee shall be given a reasonable opportunity to

1 review and comment on all regulations prior to their submission
2 to the Environmental Quality Board for consideration. The
3 written report of the committee shall be presented to the
4 Environmental Quality Board with any regulatory proposal. The
5 chairman of the committee shall be invited to participate in the
6 presentation of all regulations before the Environmental Quality
7 Board. Nothing herein shall preclude any member of the committee
8 from filing a petition for rulemaking with the Environmental
9 Quality Board in accordance with procedures established by the
10 Environmental Quality Board.

11 Section 106. Powers and duties of Environmental Quality Board.

12 The Environmental Quality Board shall have the power and its
13 duty shall be to adopt rules and regulations of the department
14 governing aboveground and underground storage tanks to
15 accomplish the purposes and carry out the provisions of this
16 act.

17 Section 107. Powers and duties of department.

18 (a) Cooperative agreements.--The department is authorized to
19 enter into agreements, contracts or cooperative arrangements
20 under such terms and conditions as may be deemed appropriate,
21 with other State agencies, Federal agencies, and cities and
22 counties of the first and second class to delegate any or all of
23 its regulatory authority to permit, inspect, monitor and enforce
24 this act and the underground and aboveground storage tank
25 programs, provided that the counties and cities of the first and
26 second class have a storage tank program in effect that is at
27 least as stringent as this act.

28 (b) Compliance policy and procedure.--The department shall
29 develop and implement policies, procedures and forms as may be
30 necessary and appropriate in order to administer and obtain

1 compliance with this act, or the rules and regulations
2 promulgated pursuant to this act, and permits issued hereunder.

3 (c) Production of materials, recordkeeping requirements and
4 rights of entry.--

5 (1) The department, its agents and employees are
6 authorized to require any person regulated by this act to
7 establish and maintain such records and make such reports and
8 furnish such information as the department may prescribe
9 regarding any matter regulated by this act.

10 (2) The department is authorized to make such
11 inspections, conduct such tests or sampling, or examine or
12 require production of books, papers and records, and physical
13 evidence pertinent to any matter under investigation pursuant
14 to this act as it deems necessary to determine compliance
15 with this act and, for this purpose, the duly authorized
16 agents and employees of the department are authorized to
17 enter and examine any property, facility, operation or
18 activity governed by this act, upon presentation of
19 appropriate credentials, without prior notice at all
20 reasonable times, during regular business hours of the
21 operation and times when activity is being conducted at the
22 site.

23 (3) The owner, operator or other person in charge of
24 such property, facility, operation or activity, upon
25 presentation of proper identification and purpose for
26 inspection by the agents or employees of the department,
27 shall give such agents and employees free and unrestricted
28 entry and access and, upon refusal to grant such entry or
29 access, the agent or employee may obtain a search warrant or
30 other suitable order for the purposes of inspecting,

1 examining and seizing any property, building, premises,
2 place, book, record or other physical evidence, and for the
3 purposes of conducting tests and taking samples. Such
4 warrants shall be issued upon probable cause. It shall be
5 sufficient probable cause to show any one of the following:

6 (i) The inspection, examination, test or sampling is
7 pursuant to a general administrative plan to determine
8 compliance with this act.

9 (ii) The agent or employee has reason to believe
10 that a violation of this act has occurred or is likely to
11 occur.

12 (iii) The agent or employee has been refused access
13 to the property, building, premises, place, book, record
14 or other physical evidence on sites or pertaining to
15 matters governed by this act or has been prevented from
16 conducting tests or obtaining physical evidence which
17 activities are necessary to determine compliance or to
18 respond to a violation of this act.

19 (iv) The object of the investigation is subject to
20 regulation under this act and access, examination,
21 inspection or testing is necessary to enforce the
22 provisions of this act.

23 (d) Certification program.--The department shall have the
24 authority to establish, by regulation, a certification and
25 licensing program for installers and inspectors of storage tanks
26 and storage tank facilities, including procedures for the
27 suspension and revocation of certifications.

28 (e) Revocation.--The department shall have the power to
29 revoke any permit, certification or registration provided for in
30 this act for any violation of this act or the regulations

1 promulgated hereunder.

2 (f) Enforcement.--The department shall have the authority to
3 issue orders, assess civil penalties, institute enforcement
4 proceedings and prosecute violations of this act as deemed by
5 the department to be necessary and appropriate.

6 (g) Corrective action.--The department shall have the
7 authority to order corrective action to be undertaken, to take
8 corrective action or to authorize a third party to take
9 corrective action.

10 (h) Cost recovery.--The department shall have the authority
11 to recover the costs of taking or authorizing third parties to
12 take corrective action. Cost recovery shall not include the cost
13 of routine inspection and permitting activities not associated
14 with a release.

15 Section 108. Interim certification of installers and
16 inspectors.

17 (a) Certification.--Until such time as the department adopts
18 regulations for the certification of installers and inspectors
19 of storage tanks, any person may be certified by the department
20 on an interim basis by complying with all of the following:

21 (1) The person must file a complete application for an
22 interim certification with the department, with the
23 appropriate required information.

24 (2) The person must demonstrate that he or she has been
25 successfully trained by the manufacturer in the installation
26 of all the equipment, devices and other related products used
27 in the installation of a storage tank facility and/or has
28 equivalent expertise through education.

29 (3) The person has successfully completed a formalized
30 training program conducted by the manufacturer for all

1 installers and inspectors.

2 (4) The person demonstrates that all installations of
3 storage tanks and related equipment are installed according
4 to the manufacturer's technical specifications and manuals.

5 (5) The person maintains all applicable technical
6 specifications and manuals which govern the installation and
7 operation of tank facilities. The person shall make this
8 information available to the department upon request.

9 (6) The person files completed documentation with the
10 department for all certified installations and inspections of
11 tank facilities attesting to compliance with requirements of
12 the act.

13 (7) The person reports to the department the extent of
14 visible contamination from regulated substances at the site
15 of the tank installation, on a form provided by the
16 department.

17 (b) Revocation, suspension, etc.--The department may revoke
18 or suspend interim installer or inspector certification for good
19 cause, which shall include, but not be limited to:

20 (1) The installation of a tank and related equipment is
21 not in accordance with all applicable technical
22 specifications and procedures of the manufacturer.

23 (2) The installation has presented or does present a
24 fire safety hazard, pollution, threat of pollution, or hazard
25 to the public health, safety and welfare.

26 (3) The certified installer or inspector has falsified
27 information in subsection (a) or has failed to comply with
28 the requirements of subsection (a).

29 (4) The certified inspector has failed to identify or
30 report any condition or procedure:

1 (i) That is not in accordance with the
2 manufacturer's technical and procedural specifications
3 for the installation, construction or operation of a tank
4 or tank facility.

5 (ii) That is not in accordance with the provisions
6 of this act and any regulations adopted pursuant to this
7 act.

8 (iii) That presents a pollution, threat of
9 pollution, or harm to the public health, safety and
10 welfare.

11 (c) Guidelines.--The department shall develop the interim
12 certification program which shall expire 24 months after the
13 effective date of this act.

14 Section 109. Construction.

15 This act and the regulations promulgated under this act shall
16 be liberally construed in order to fully protect the public
17 health, welfare and safety of the residents of this
18 Commonwealth.

19 Section 110. Applicability of certain provisions to the
20 Commonwealth.

21 A Commonwealth department, agency, board, commission or
22 authority shall not be required to participate in the
23 Underground Storage Tank Indemnification Fund or to pay
24 registration or permit fees required under this act, until and
25 unless regulations are promulgated that direct otherwise.

26 CHAPTER 3

27 ABOVEGROUND STORAGE TANKS

28 Section 301. Aboveground storage tank requirements.

29 (a) Minimum program requirements.--The department shall, by
30 regulation, adopt and implement an aboveground storage tank

1 program that, at a minimum, requires all of the following:

2 (1) The payment of an annual registration fee to the
3 department by aboveground storage tank owners.

4 (2) Methods and procedures for the operation of
5 aboveground storage tanks and the early detection, by owners,
6 of releases or potential releases, including testing on new
7 or substantially modified aboveground storage tanks and out-
8 of-service inspection at least once every ten years for
9 existing and new aboveground storage tanks. Testing of
10 aboveground storage tanks after initial installation may be
11 by hydrostatic means or, in instances where wastewater would
12 be generated or materials stored in the tank might be water
13 reactive, other methods of testing such as the radioactive
14 method, the magnetic particle method, the ultrasonic method
15 or the liquid penetrant method, in accordance with "API"
16 standards, may be used. A new aboveground storage tank not
17 exceeding 21,000 gallon capacity may meet the initial testing
18 requirements if the tank is fully assembled, inspected and
19 tested at the plant where it is manufactured.

20 (3) Methods and procedures for inventory control
21 measures by owners and operators, if appropriate.

22 (4) The periodic inspection of the leak detection
23 systems, the structural integrity of the aboveground storage
24 tank and associated equipment, and release prevention
25 measures.

26 (5) Corrective actions, by owners, operators, landowners
27 and occupiers, or other responsible parties, on an emergency
28 basis if necessary, in response to a release from an
29 aboveground storage tank.

30 (6) The reporting, by the owner or operator, of any

1 release and corrective action taken in response to a release
2 from an aboveground storage tank.

3 (7) The maintenance of records, by owners and operators,
4 of periodic inspections of the leak detection systems,
5 inspections of structural integrity of the aboveground
6 storage tank and associated equipment, and all release
7 prevention measures.

8 (8) Minimum standards for the construction, testing,
9 corrosion protection, operation, release prevention, and
10 repair and reuse of aboveground storage tanks.

11 (9) A permit, by rule, for certain classifications of
12 aboveground storage tanks, including small aboveground
13 storage tanks.

14 (10) Methods and procedures for the removal of
15 aboveground storage tanks from service by the owner and
16 operator.

17 (11) Requirements for reporting, by the owner or
18 operator, of the intended and completed closure of any
19 aboveground storage tank.

20 (b) Tank classification.--The department shall have the
21 authority to establish classes and categories of aboveground
22 storage tanks by regulation, which classes may be regulated in
23 consideration of, among other factors, size, intended use,
24 contents and potential risk of harm to public health and the
25 environment.

26 (c) Certified installer and inspector program.--

27 (1) The department shall establish, by regulation, a
28 certification program for installers and inspectors of
29 aboveground storage tanks, including qualification standards,
30 procedures for training and testing, and procedures for

1 revocation and suspension of such certificates. All
2 department employees administering this program shall be
3 deemed certified while in the employment of the department.

4 (2) Aboveground storage tanks shall only be installed by
5 a certified installer as provided by regulations of the
6 department.

7 (3) Aboveground storage tanks, as deemed necessary by
8 the department, shall be inspected by a certified inspector
9 prior to permitting and facility operation and at a frequency
10 thereafter established by the department.

11 (d) Requirements for small aboveground storage tanks.--The
12 department shall develop a simplified program to regulate small
13 aboveground storage tanks. The program shall include, but not be
14 limited to:

15 (1) Testing requirements for new and substantially
16 modified small aboveground storage tanks, except as provided
17 in section 301(a)(2).

18 (2) Performance and design standards consistent with the
19 manufacturer's specifications for small aboveground storage
20 tanks.

21 (3) Monitoring standards consistent with the
22 manufacturer's specifications for a small aboveground storage
23 tank.

24 (4) Requirements for closure.

25 (5) Recordkeeping requirements.

26 (6) Inspection requirements for existing small
27 aboveground storage tanks.

28 Section 302. Interim requirements.

29 (a) Registration fees and requirements.--

30 (1) Until alternative fees are established by the

1 department by regulation, annual registration fees to be paid
2 by owners of aboveground storage tanks are hereby established
3 as follows:

4 (i) Three hundred dollars for each aboveground
5 storage tank with a capacity of more than 50,000 gallons.

6 (ii) One hundred twenty-five dollars for each
7 aboveground storage tank with a capacity of more than
8 5,000 gallons and less than or equal to 50,000 gallons.

9 (iii) Fifty dollars for each aboveground storage
10 tank with a capacity of up to or equal to 5,000 gallons.

11 (2) The owner of any aboveground storage tank with a
12 capacity greater than 5,000 gallons shall, along with the
13 registration fee, submit to the department all information
14 required on the data plate required by section 8.1 of API 650
15 Large Welded Storage Tanks (Atmospheric) and such other
16 information as is required by the department.

17 (b) Interim installation requirements.--

18 (1) Until such time as the department adopts
19 installation requirements by regulation, no person shall
20 install a new or reconstructed aboveground storage tank or
21 make a substantial modification to an aboveground storage
22 tank unless the tank meets the applicable technical standards
23 for the specific type and class of tank as set forth in the
24 applicable Underwriters Laboratory Standards No. 142 and by
25 the American Petroleum Institute in each of the following
26 (including any appendices):

27 (i) API-12B - Bolted Tanks for Storage of Production
28 Liquids.

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

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

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

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

6 (vi) API-620 - Large Welded Low Pressure Storage
7 Tanks.

8 (vii) API-650 - Large Welded Storage Tanks
9 (Atmospheric).

10 (viii) API-RP 2000 - Guide for venting atmospheric
11 and low pressure storage tanks.

12 (2) Unless modified by the rules and regulations of the
13 department, the owner, subject to paragraph (1), shall, along
14 with the registration form required by this act, submit a
15 certification by a registered professional engineer qualified
16 in tank construction that the requirements of paragraph (1)
17 have been met.

18 Section 303. Registration.

19 (a) Registration requirements.--Every owner of an
20 aboveground storage tank, except as specifically excluded by
21 policy or regulation of the department, shall register each
22 aboveground storage tank by completing and submitting the form
23 provided by the department, and by paying the yearly
24 registration fee prescribed by the department for each
25 aboveground storage tank. It shall be unlawful for any owner or
26 operator to operate or use, in any way, any aboveground storage
27 tank that has not been currently registered as required by this
28 section.

29 (b) Prohibitions.--After 12 months from the effective date
30 of this act, it shall be unlawful to sell, distribute, deposit

1 or fill an aboveground storage tank with any regulated substance
2 unless the aboveground storage tank is registered as required by
3 this section. Any person who, on or after the effective date of
4 this subsection, knowingly sells, distributes, deposits or fills
5 any aboveground storage tank in violation of this subsection
6 prior to the discovery of a release shall be liable for any
7 release from the aboveground storage tank, in addition to the
8 remedies provided in section 1302. Within 12 months of the
9 effective date of this act, the department shall have available
10 for the general public an easily distinguishable visual system,
11 such as a sticker, to identify tanks with a current registration
12 as part of enforcement by the department.

13 (c) Use of registration fees.--Registration fees collected
14 by the department shall be used to fund the development and
15 operation of the storage tank programs established by this act.

16 (d) Initial registration.-- Within six months of the
17 effective date of this act, all owners of aboveground storage
18 tanks shall meet the registration requirements and pay the
19 registration fee required by this act.

20 Section 304. Permits and plans.

21 (a) Permit requirements.--No person shall install,
22 construct, erect, modify, operate or remove from service all or
23 part of an aboveground storage tank facility unless such
24 installation, construction, modification, operation or removal
25 from service is authorized by rules and regulations of the
26 department or the person has first obtained a permit from the
27 department using the prescribed forms and procedures of the
28 department.

29 (b) Application.--Applications for permits shall be
30 submitted in writing to the department in such form and with

1 such accompanying data as shall be prescribed by the department.

2 (c) Fee.--Each application for a newly installed,
3 constructed or erected aboveground tank shall be accompanied by
4 a fee of \$20 per whole 10,000 gallon units of storage capacity.
5 This fee may be modified by regulation. The department shall
6 develop by regulation a schedule of fees for permit amendments
7 and modifications and for those aboveground tanks being
8 repermited.

9 (d) Prior permits.--Any person who has obtained a permit for
10 the aboveground storage tank facility, prior to the effective
11 date of this act, pursuant to the act of June 8, 1911 (P.L.705,
12 No.281), entitled "An act creating the office of Fire Marshal,
13 to be attached to the Department of Public Safety in cities of
14 the first class; prescribing his duties and powers; and
15 providing penalties for violations of the provisions of the act;
16 and providing for the method of appointment, compensation, and
17 for the maintenance of his office," the act of April 27, 1927
18 (P.L.450, No.291), referred to as the State Fire Marshal Law, or
19 the act of July 28, 1953 (P.L.723, No.230), known as the Second
20 Class County Code, shall be deemed to have an operating permit
21 under this act so long as that person complies with subsection
22 (e) and with the registration provisions and operational
23 standards and requirements for removal from service established
24 through regulation promulgated by the department under this act
25 and all other applicable laws and until the department makes a
26 determination on the application for repermitting.

27 (e) Repermitting.--

28 (1) Within two years of the effective date of this act
29 every person considered to have a permit under subsection (d)
30 for any aboveground storage tank which is certified by that

1 person to be ten years of age or older shall apply to the
2 department for a permit.

3 (2) Within three years of the effective date of this
4 act, every person considered to have a permit under
5 subsection (d) for any aboveground storage tank which is
6 certified by that person to be less than ten years of age
7 shall apply to the department for a new permit.

8 (3) The provisions of Chapter 11 shall not apply to the
9 repermitting of aboveground storage tanks.

10 (f) Interim permit requirements.--Prior to the effective
11 date of a regulation of the department concerning installation,
12 construction, erection, modification, operation or removal from
13 service of an aboveground storage tank facility, any owner or
14 operator who meets the interim installation requirements of
15 section 302(b) of this act and other applicable provisions shall
16 be deemed to meet the permit requirements for installation and
17 operation of an aboveground storage tank facility.

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

1 application prior to the deadline for department action.

2 (h) Renewal of permit.-- In order to continue to operate an
3 aboveground storage tank facility, the owner or operator must
4 obtain a new permit or a renewed permit at least every ten
5 years.

6 (i) Unlawful conduct.--It shall be unlawful to install,
7 construct, erect, modify, operate or remove from service an
8 aboveground storage tank facility unless authorized by the
9 policies, rules or regulations of the department or unless the
10 owner or operator has first obtained a permit from the
11 department. However, any person who has installed, constructed
12 or erected an aboveground storage tank prior to the effective
13 date of this act who was not required to obtain a permit under
14 one of the authorities listed in subsection (d) shall have 12
15 months from the effective date of this act to obtain an
16 operating permit from the department.

17 CHAPTER 5

18 UNDERGROUND STORAGE TANKS

19 Section 501. Underground storage tank requirements.

20 (a) Program requirements.--The department shall adopt
21 regulations and implement an underground storage tank program
22 that, at a minimum, requires all of the following:

23 (1) The payment of an annual registration fee to the
24 department by owners of underground storage tanks and
25 commercial heating oil storage tanks.

26 (2) Methods and procedures for the operation of
27 underground storage tank facilities and for the operator's
28 and owner's maintenance of a leak detection system, an
29 inventory control system together with tank testing or a
30 comparable system or method designed to identify releases or

1 potential releases in a manner consistent with the protection
2 of human health and the environment.

3 (3) The maintenance of records by the owner or operator
4 of any monitoring or leak detection system or inventory
5 control system or tank testing system.

6 (4) The reporting by the owner or operator of any
7 releases and corrective action taken in response to a release
8 from an underground storage tank.

9 (5) Corrective actions by owners, operators, landowners
10 and occupiers, or other responsible parties, on an emergency
11 basis if necessary, in response to a release from an
12 underground storage tank.

13 (6) Requirements for closure of tanks by owners and
14 operators to prevent future releases of regulated substances
15 into the environment.

16 (7) Standards for installation and performance for new
17 and existing underground storage tanks, including minimum
18 standards for the construction, testing, corrosion,
19 protection, operation, release prevention and repair and
20 reuse of underground storage tanks.

21 (8) Standards and procedures for permitting ,
22 installation, construction, modification , operation and
23 removal of tanks and intended and completed closure of an
24 underground storage tank.

25 (9) Methods and procedures for the removal of
26 underground storage tanks from service by the owner or
27 operator.

28 (10) Requirements for reporting by the owner or operator
29 of intended and completed closure of any underground storage
30 tank facilities.

1 (11) The periodic inspection of the leak detection
2 systems, structural integrity of the underground storage
3 tanks and associated equipment, and release prevention
4 measures.

5 (12) A permit, by rule, for certain classifications of
6 underground storage tanks.

7 (b) Tank classification.--The department shall have the
8 authority to establish classes and categories of underground
9 storage tanks by regulation, which classes may be regulated in
10 consideration of, among other factors, size, composition,
11 intended use, contents and potential risk of harm to public
12 health and the environment.

13 (c) Certified installer and inspector program.--

14 (1) The department shall establish, by regulation, a
15 certification program for installers and inspectors of
16 underground storage tanks and facilities. This program shall
17 include provisions for qualifications and standards,
18 procedures for training and testing and for the revocation
19 and suspension of certification. All department employees
20 administering this program shall be deemed certified while in
21 the employment of the department.

22 (2) Underground storage tanks shall only be installed
23 modified and removed by a certified installer as provided by
24 policy or regulations of the department.

25 (3) Underground storage tanks shall be inspected by
26 certified inspectors prior to permitting and at a frequency
27 thereafter established by the department as provided by
28 regulations of the department.

29 Section 502. Interim requirements and discontinued use.

30 (a) Registration fees and requirements.--Until alternative

1 fees are established by the department by regulation, an annual
2 fee of \$50 for each underground storage tank and each commercial
3 heating oil storage tank to be paid by owners of the underground
4 storage tank is hereby established.

5 (b) Interim installation and operation requirements.--Until
6 such time as the department adopts installation and operational
7 requirements by regulation, no person shall install or make a
8 substantial modification to an underground storage tank or
9 facility unless that tank or facility meets all of the following
10 requirements:

11 (1) The tank prevents releases due to corrosion or
12 structural failure for the operational life of the tank.

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

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

20 (4) The tank is equipped with spill and overflow
21 prevention equipment.

22 (5) The tank is installed by a certified installer.

23 (c) Discontinued use.--Upon abandonment or discontinuance of
24 the use or active operation of an underground storage tank, the
25 owner and operator shall remove the tank and its contents or
26 shall seal the tank, and restore the area in a manner that
27 prevents any future release, and shall remedy any adverse
28 impacts from any prior release in a manner deemed satisfactory
29 to the department.

30 Section 503. Registration.

1 (a) Requirements.--Every owner of an underground storage
2 tank, except as specifically excluded by policy or regulation of
3 the department, shall register with the department each
4 underground storage tank by completing and submitting the form
5 provided by the department and by paying the registration fee
6 prescribed by the department for each underground storage tank
7 within three months of the effective date of this act. It shall
8 be unlawful for any owner or operator to operate or use, in any
9 way, any underground storage tank that has not been registered
10 as required by this section.

11 (b) Prohibitions.--After 12 months from the effective date
12 of this act, it shall be unlawful to sell, distribute, deposit
13 or fill an underground storage tank with any regulated substance
14 unless the underground storage tank is registered as required by
15 this section. Any person who, on or after the effective date of
16 this subsection, knowingly sells, distributes, deposits or fills
17 any underground storage tank in violation of this subsection
18 prior to the discovery of a release shall be liable for any
19 release from the underground storage tank, in addition to the
20 remedies provided in section 1302. Within 12 months of the
21 effective date of this act, the department shall have available
22 for the general public an easily distinguishable visual system,
23 such as a sticker, to identify tanks with a current sticker as
24 part of enforcement by the department.

25 (c) Use of registration fees.--Registration fees collected
26 by the department shall be used to fund the development and
27 operation of the storage tank programs established by this act.
28 Section 504. Permits and plans.

29 (a) Permit requirements.--No person shall install,
30 construct, modify, operate or remove from service all or part of

1 an underground storage tank facility unless such installation,
2 construction, modification, operation or removal from service is
3 authorized by the rules and regulations of the department or the
4 person has first obtained a permit from the department.

5 (b) Application.--Applications for permits shall be
6 submitted in writing to the department in such form and with
7 such accompanying data as shall be prescribed by the department.

8 (c) Fee.--Each application shall be accompanied by a permit
9 fee of \$20 per tank. This fee may be modified by regulation.

10 (d) Prior permits.--Any person who has obtained a permit for
11 the underground storage tank facility, prior to the effective
12 date of this act, pursuant to the act of June 8, 1911 (P.L.705,
13 No.281), entitled "An act creating the office of Fire Marshal,
14 to be attached to the Department of Public Safety in cities of
15 the first class; prescribing his duties and powers; and
16 providing penalties for violations of the provisions of the act;
17 and providing for the method of appointment, compensation, and
18 for the maintenance of his office," the act of April 27, 1927
19 (P.L.450, No.29), referred to as the State Fire Marshal Law, or
20 the act of July 28, 1953 (P.L.723, No.230), known as the Second
21 Class County Code, shall be deemed to have an operating permit
22 under this act so long as that person complies with the
23 operational standards and requirements for removal from service
24 established through regulation promulgated by the department
25 under this act and all other applicable laws.

26 (e) Submission of applications.--The applicant shall provide
27 a completed permit application with all requested information
28 using the forms provided by the department. Application forms
29 shall be accompanied by the necessary fees. Nothing in this
30 section shall prohibit the department from requesting additional

1 information or clarifications regarding the content of the
2 application.

3 (f) Interim operating permit requirements.--Prior to the
4 effective date of a regulation of the department concerning
5 installation, substantial modification or operation of
6 underground storage tanks at a tank facility, any owner or
7 operator who submits an application demonstrating that he meets
8 the interim installation and operation requirements of sections
9 502 and 503 of this act shall meet the operating permit
10 requirements of this section.

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

25 (h) Unlawful conduct.--It shall be unlawful to install,
26 construct, modify, operate or remove from service an underground
27 storage tank unless authorized by the rules or regulations of
28 the department or unless the owner or operator has first
29 obtained a permit from the department. However, any person who
30 has installed, constructed or erected an underground storage

1 tank prior to the effective date of this act who was not
2 required to obtain a permit under one of the authorities listed
3 in subsection (d) shall have 12 months from the effective date
4 of this act to obtain a permit from the department.

5 Section 505. Commercial heating oil storage tanks.

6 The Environmental Quality Board shall establish, by
7 regulation, specific requirements for commercial heating oil
8 storage tanks, including, but not limited to, requirements
9 regarding permitting, monitoring, leak detection, corrective
10 action and release prevention, closure and restoration.

11 Section 506. Small operator assistance program for underground
12 storage tanks.

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

19 CHAPTER 7

20 FINANCIAL PROVISIONS

21 Section 701. Financial responsibility.

22 (a) Regulations of the Environmental Quality Board.--The
23 Environmental Quality Board is authorized to establish, by
24 regulation, requirements for maintaining evidence of financial
25 responsibility as deemed necessary and desirable, for taking
26 corrective action and for compensating third parties for bodily
27 injury and property damage caused by sudden and nonsudden
28 releases arising from operation of a storage tank. Every owner
29 or operator shall meet the financial responsibility requirements
30 established by the department.

1 (b) Methods of obtaining financial responsibility.--
2 Financial responsibility required by this section may be
3 established in accordance with regulations promulgated by the
4 Environmental Quality Board by any one or any combination of the
5 following: insurance, guarantee, surety, bond, letter of credit,
6 qualification as a self-insurer, indemnity contract, risk
7 retention coverage, or any other method deemed satisfactory by
8 the department. Owners of underground storage tanks must meet
9 these requirements by complying with sections 703, 704, 705 and
10 706. In regulations under this section, the department is
11 authorized to specify policy or other contractual terms,
12 conditions, or defenses which are necessary or acceptable in
13 establishing such evidence of financial responsibility.

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

30 (d) Guarantor liability.--The total liability of any

1 guarantor shall be limited to the aggregate amount which the
2 guarantor has provided as evidence of financial responsibility
3 to the owner or operator under this section. Nothing in this
4 subsection shall be construed to limit any other State or
5 Federal statutory, contractual or common law liability of a
6 guarantor to its owner or operator, including, but not limited
7 to, the liability of such guarantor for bad faith either in
8 negotiating or in failing to negotiate the settlement of any
9 claim. Nothing in this subsection shall be construed to diminish
10 the liability of any person under section 107 or 111 of the
11 Comprehensive Environmental Response, Compensation and Liability
12 Act of 1980 or other applicable statutes.

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

17 Section 702. Storage Tank Fund.

18 (a) Establishment of fund.--There is hereby created a
19 special nonlapsing fund in the State Treasury to be known as the
20 Storage Tank Fund. All fees, fines, judgments, bond forfeitures,
21 interest and recovered costs collected by the department under
22 this act shall be paid into the Storage Tank Fund. All moneys
23 placed in the Storage Tank Fund and the interest it accrues are
24 hereby appropriated, upon authorization by the Governor, to the
25 department for the costs of operating the aboveground and
26 underground storage tank programs, including activities
27 necessary for the elimination of releases from storage tanks and
28 any other activities necessary to meet the requirements of this
29 act.

30 (b) Supplements to fund.--The Storage Tank Fund may be

1 supplemented by appropriations from the General Assembly, the
2 Federal, State or local government or from any private source.

3 (c) Liability for costs.--Whenever costs have been incurred
4 by the Commonwealth for taking corrective action in response to
5 a release from a storage tank regulated by this act, the owner
6 or operator, as may be appropriate, of such tank shall be liable
7 to the Commonwealth for such costs.

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

29 (e) Status of fund.--The Storage Tank Fund shall not be
30 subject to 42 Pa.C.S. Ch.37 Subch. C (relating to judicial

1 computer system).

2 Section 703. Underground Storage Tank Indemnification Board.

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

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

15 (i) The Associated Petroleum Industries of
16 Pennsylvania.

17 (ii) The Pennsylvania Petroleum Association.

18 (iii) The Service Station Dealers and Automotive
19 Repair Association of Pennsylvania and Delaware and the
20 Petroleum Retailers and Auto Repair Association, Inc.

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

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

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

30 (c) Vacancies.--Vacancies in appointed positions shall be

1 filled by the Governor in the same manner as the original
2 appointment. Members shall serve until their successors are
3 appointed and qualified.

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

7 (e) Conflicts.--No member shall participate in making any
8 decision in a matter involving any payment from which he or his
9 employer may benefit or which may benefit a member of his
10 immediate family.

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

17 Section 704. Underground Storage Tank Indemnification Fund.

18 (a) Establishment of fund.--There is hereby created a
19 special fund in the State Treasury to be known as the
20 Underground Storage Tank Indemnification Fund. This fund shall
21 consist of the fees assessed by the board under section 705(d),
22 amounts recovered by the board due to fraudulent or improper
23 claims or as penalties for failure to pay fees when due, and
24 funds earned by the investment and reinvestment of the moneys
25 collected. Moneys in the fund are hereby appropriated to the
26 board for the purpose of making payments to owners and operators
27 of underground storage tanks who incur liability for taking
28 corrective action or for bodily injury or property damage caused
29 by a sudden or nonsudden release from underground storage tanks.
30 The fund shall be the sole source of payments under this act,

1 and the Commonwealth shall have no liability beyond the amount
2 of the fund. Every owner of an underground storage tank shall
3 demonstrate financial responsibility by participating in the
4 Underground Storage Tank Indemnification Fund. The owner or
5 operator may obtain coverage for liability not insured by the
6 fund through any of the methods approved in accordance with
7 section 701(b).

8 (b) Limit of payments.--Payments to eligible owners or
9 operators shall be limited to the actual costs of corrective
10 action and the amount of an award of damages by a court of
11 competent jurisdiction for bodily injury, property damage, or
12 both, not to exceed a total of \$1,000,000 per tank per
13 occurrence. Payments of claims against the fund shall be subject
14 to a deductible as provided in section 705. Payments shall be
15 made only for releases resulting from storage tanks that are
16 located within this Commonwealth. Payments shall not exceed an
17 annual aggregate of \$1,000,000 for each owner and operator of
18 100 or less underground storage tanks or an annual aggregate of
19 \$2,000,000 for each owner and operator of 101 or more
20 underground storage tanks, up to the total of \$1,000,000 per
21 tank per occurrence or the total eligible costs or damages.

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

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

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 a sudden or
13 nonsudden release from underground 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 a sudden
30 or nonsudden release from underground storage tanks in this

1 Commonwealth. The board shall not set a deductible in an
2 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 a sudden or nonsudden
9 release from underground storage tanks in this Commonwealth.
10 The 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 storage tanks. Fees shall be set on an actuarial
15 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 the
14 result of a release from an underground storage tank and to
15 implead and be impleaded, complain and defend in all courts.

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

19 Section 706. Eligibility of claimants.

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

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

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

27 (3) The tank has been registered in accordance with the
28 requirements of section 503.

29 (4) The owner or operator has obtained a permit, if
30 required under sections 501 and 504.

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 Section 709. Loan fund.

20 (a) Establishment.--There is established a separate account
21 in the State Treasury to be known as the Storage Tank Loan Fund,
22 which shall be a special fund administered by the Department of
23 Commerce.

24 (b) Purpose.--In a case when the department has identified
25 no more than two owners or operators that individually own no
26 more than 20 storage tanks as potentially liable to take
27 corrective action under section 1302, such persons may be
28 eligible, upon written application to the Department of
29 Commerce, to receive long-term, low-interest loans in an amount
30 up to \$15,000 at an interest rate not to exceed 2%. The

1 Department of Commerce shall promulgate regulations establishing
2 eligibility criteria for the loans. As part of this effort, the
3 Department of Commerce shall include a determination of the
4 availability of other sources of funds at reasonable rates to
5 finance all or a portion of the response action and the need for
6 Department of Commerce assistance to finance the response
7 action.

8 (c) Funds.--In addition to any funds as may be appropriated
9 by the General Assembly, at least 2% of the funds raised
10 annually by the assessments imposed by sections 303 and 502
11 shall be deposited into the loan fund.

12 (d) Annual report.--Beginning January 1, 1990, and annually
13 thereafter, the Department of Commerce shall transmit to the
14 General Assembly a report concerning activities and expenditures
15 made pursuant to this section for the preceding State fiscal
16 year. Included in this report shall be information concerning
17 all revenues and receipts deposited into the loan fund and all
18 loans extended to eligible applicants.

19 (e) Sunset.--The loan fund shall cease to exist on June 30,
20 1995, unless it is reestablished by action of the General
21 Assembly. Any funds remaining in the loan fund on June 30, 1995,
22 shall lapse to the Storage Tank Fund. Money received by the
23 Department of Commerce as repayment of outstanding loans after
24 June 30, 1995, shall lapse to the Storage Tank Fund.

25 CHAPTER 9

26 SPILL PREVENTION RESPONSE PLAN

27 Section 901. Submission of spill prevention response plan.

28 (a) Schedule.-- Each owner of an aboveground storage tank or
29 tank facility shall submit to the department within one year of
30 the effective date of this act a plan for each aboveground

1 storage tank or tank facility. Each plan shall be site-specific
2 and be consistent with the requirements of this act and shall be
3 developed in consultation with county and municipal emergency
4 management agencies. This chapter shall not apply to aboveground
5 storage tank facilities with a capacity equal to or less than
6 21,000 gallons.

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

12 (1) There is a substantial modification in design,
13 construction, operation, maintenance of the storage tank or
14 tank facility or associated equipment or other circumstances
15 that increase the potential for fires, explosions or releases
16 of regulated substances.

17 (2) There is a substantial modification in emergency
18 equipment at the facility.

19 (3) There are substantial changes in tank facility
20 emergency organization.

21 (4) Applicable department regulations are revised.

22 (5) The plan fails in an emergency.

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

25 (7) Other circumstances occur of which the department
26 requests an update.

27 (c) Existing plans.--All existing plans regarding storage
28 tank facilities required by the department pursuant to the act
29 of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams
30 Law, and known as preparedness, prevention and contingency plans

1 must be revised within one year of the effective date of this
2 act. Thereafter, all plans submitted in accordance with this
3 Chapter shall be deemed to have satisfied the requirements of
4 The Clean Streams Law, relating to preparedness, prevention and
5 contingency plans.

6 Section 902. Content of spill prevention response plan.

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

15 (b) Description of the organization structure for plan
16 implementation.--The plan shall identify all facility related
17 individuals and their duties and responsibilities for
18 developing, implementing and maintaining the facilities' plan.
19 The plan shall describe in detail the chain of command at the
20 aboveground storage tank or storage tank facility and list all
21 facility emergency coordinators, and emergency response
22 contractors.

23 (c) Spill leak prevention and response.--The plan shall
24 provide a preventive maintenance program that includes
25 monitoring and inspection procedures, including identification
26 of stress points, employee training program and security system.
27 The plan shall include a description of potential sources and
28 areas where spills and leaks may occur by drawings and plot
29 plans and shall identify specific spill prevention measures for
30 those identified areas.

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

5 (e) Emergency spill control network.--The plan shall include
6 information obtained by the owner of the aboveground storage
7 tank facility from the county and municipal emergency management
8 agencies. The plan shall also contain information relating to
9 persons to be notified in the event of a spill.

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

13 Section 903. Review of spill prevention response plans.

14 (a) Written notice.--The owner of the aboveground storage
15 tank facility located adjacent to surface waters shall annually
16 provide public notice to all downstream municipalities,
17 downstream water companies and downstream industrial users
18 within 20 miles of the aboveground storage tank facility site
19 and the local municipality and county in which the facility is
20 located. The notice shall provide a detailed inventory of the
21 type and quantity of material in storage at the facility. The
22 facility operator shall annually provide a copy of the spill
23 prevention response plan or updates to that plan after its
24 initial preparation to the county and municipal emergency
25 management agency and the department.

26 (b) Department action.--The department shall approve the
27 spill prevention response plan or disapprove the plan and
28 provide the owner of the storage tank or tank facility with
29 specific reasons for the disapproval. If disapproved, the owner
30 of the storage tank or tank facility shall submit a revised plan

1 to the department.

2 Section 904. Notification.

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

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

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

29 (d) Other emergency response plans.--Notwithstanding Chapter
30 9 to the contrary, the aboveground storage tank spill prevention

1 response plan shall be developed jointly by the owner of the
2 aboveground storage tank in consultation with the local and
3 county emergency management agency consistent with the emergency
4 management procedures developed by local emergency management
5 agencies under Title III of the Superfund Amendments and
6 Reauthorization Act of 1986 (Public Law 99-499, 100 Stat. 1613).

7 CHAPTER 11

8 SITING OF NEW ABOVEGROUND STORAGE TANK FACILITY

9 AND REGULATIONS

10 Section 1101. Notification.

11 (a) Procedure.--The owner or operator of an existing or
12 proposed aboveground tank facility shall provide written
13 notification to the local municipality and county in which the
14 aboveground tank facility is situated or to be located prior to
15 submitting an application for an aboveground storage permit to
16 construct or reconstruct an additional aboveground storage tank
17 at the aboveground storage tank facility or construct a new
18 aboveground storage tank facility. This chapter shall not apply
19 to aboveground storage tanks with a capacity equal to or less
20 than 21,000 gallons.

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

29 (c) Public comment on aboveground storage tank permit.--The
30 department shall publish the aboveground storage tank facility

1 permit application in the Pennsylvania Bulletin upon receipt of
2 the permit application and provide a 30-day comment period for
3 new aboveground storage tank facilities.

4 Section 1102. Siting regulations.

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

15 CHAPTER 13

16 ENFORCEMENT

17 Section 1301. Withholding permit.

18 The department shall not issue any permit pursuant to this
19 act or amend any permit issued under this act, and may revoke
20 any permit previously issued under this act, if it finds, after
21 investigation and an opportunity for informal hearing, that:

22 (1) the applicant has failed and continues to fail to
23 comply with any provisions of Federal or State law which are
24 in any way connected with or related to the regulation of
25 storage tanks or of any relevant rule, regulation, permit or
26 order of the department or related to the regulation of
27 storage tanks.

28 (2) the applicant has shown a lack of ability or
29 intention to comply with any law, rule, regulation, permit or
30 order of the department issued pursuant to this act as

1 indicated by past or continuing violations. Any person,
2 partnership, association or corporation which has violated
3 this act, rule, regulation, order of the department, or any
4 condition of any permit issued pursuant to this act, or which
5 has a partner, associate, officer, parent corporation,
6 subsidiary corporation, contractor or subcontractor which has
7 engaged in such violation shall be denied any permit required
8 by this act unless the permit application demonstrates that
9 the violation is being corrected to the satisfaction of the
10 department.

11 Section 1302. Responsibilities of owners and operators.

12 (a) Order to correct condition.--Whenever the department
13 finds that a release or danger of a release is or may be
14 resulting from a storage tank in this Commonwealth, the
15 department may order the owner, operator, landowner or occupier
16 to take corrective action in a manner satisfactory to the
17 department or it may order such owner, operator, landowner or
18 occupier to allow access to the land by the department or a
19 third party to take such action.

20 (b) Assessment of expenses.--For purposes of collecting or
21 recovering the expense involved in taking corrective and cost
22 recovery action pursuant to an order or recovering the cost of
23 corrective action, litigation, oversight, monitoring, sampling,
24 testing, AND investigation related to a corrective action and <—
25 ~~other expenses.~~ The, THE department may collect the amount in <—
26 the same manner as civil penalties are collected under the
27 provisions of section 1307(b).

28 (c) Contracts.--The department is authorized to enter into
29 contracts and to develop streamlined contract procedures,
30 policies, rules and regulations that provide for:

1 (1) The identification, investigation, containment,
2 remediation, disposal, monitoring and maintenance of leaking
3 underground storage tanks.

4 (2) Conducting and funding programs for research into
5 innovative and alternative methods for site remediation.

6 (3) The purchase, lease or rental of equipment, and
7 other necessary expenses.

8 (4) Emergency housing, replacement water supplies and
9 water sources.

10 Section 1303. Protection of water supplies.

11 (a) Regulations.--In addition to the powers and authority
12 hereinbefore granted, power and authority is hereby conferred
13 upon the department to make, adopt, promulgate and enforce
14 orders, and regulations for the protection of any source of
15 water for present or future supply to the public or other
16 legitimate use, prohibiting the pollution of any such source of
17 water which would render the same inimical or injurious to the
18 public health or objectionable for the purposes served by the
19 water supply and for the replacement of any water supply
20 affected, polluted, diminished or threatened by a release from a
21 storage tank. For purposes of this section, water supply to the
22 public shall include a water supply serving one or more persons.

23 (b) Affected or diminished supply.--Any owner or operator
24 of a storage tank who affects or diminishes a water supply as a
25 result of a release shall restore or replace the affected supply
26 with an alternate source of water adequate in quantity and
27 quality for the purposes served by the supply, at no cost to the
28 owner of the affected water supply.

29 Section 1304. Public nuisances.

30 A violation of this act or of any order or regulation adopted

1 by the department or of permits issued by the department shall
2 constitute a public nuisance. The department shall have the
3 authority to order any person causing a public nuisance to abate
4 the public nuisance. In addition, the department or any
5 Commonwealth agency which undertakes to abate a public nuisance
6 may recover the costs of abatement in an action in equity
7 brought before any court of competent jurisdiction. Whenever
8 such nuisance shall be maintained or continued contrary to this
9 act or such orders, regulations or permits the same may be
10 abatable in the manner provided by this act. Any person who
11 causes such public nuisance shall be liable for the cost of
12 abatement.

13 Section 1305. Suits to abate nuisances and restrain violations.

14 (a) Suits to abate nuisances.--Any activity or condition
15 declared by this act to be a nuisance, or which is otherwise in
16 violation of this act, shall be abatable in the manner provided
17 by law or equity for the abatement of public nuisances. In
18 addition, in order to restrain or prevent any violation of this
19 act and of the rules, regulations or orders issued thereunder,
20 or to restrain the maintenance and threat of public nuisance,
21 suits may be instituted in equity or at law in the name of the
22 Commonwealth upon relation of the Attorney General, the General
23 Counsel or upon relation of any district attorney of any county,
24 or upon relation of the solicitor of any municipality affected,
25 after notice has first been served upon the Attorney General of
26 the intention of the General Counsel, district attorney or
27 solicitor to so proceed. Such proceedings may be prosecuted in
28 the Commonwealth Court, or in the court of common pleas of the
29 county where the activity has taken place, the condition exists,
30 or the public is affected, and to that end jurisdiction is

1 hereby conferred in law and equity upon such courts. Except in
2 cases of emergency where, in the opinion of the court, the
3 exigencies of the case require immediate abatement of the
4 nuisance, the court may, in its decree, fix a reasonable time
5 during which the person responsible for the nuisance may make
6 provision for the abatement of the same.

7 (b) Mandatory and special injunctions.--In cases where the
8 circumstances require it or the public health is endangered, a
9 mandatory preliminary injunction, special injunction or
10 temporary restraining order may be issued upon the terms
11 prescribed by the court, notice of the application therefor
12 having been given to the defendant in accordance with the rules
13 of equity practice, and in any such case the Attorney General,
14 the General Counsel, the district attorney or the solicitor of
15 any municipality shall not be required to give bond. In any such
16 proceeding the court shall, upon motion of the Commonwealth,
17 issue a prohibitory or mandatory preliminary injunction if it
18 finds that the defendant is engaging in unlawful conduct as
19 defined by this act or is engaged in conduct which is causing
20 immediate and irreparable harm to the public. In addition to an
21 injunction, the court in such equity proceedings may levy civil
22 penalties in the same manner as the department in accordance
23 with section 1307.

24 (c) Private actions.--Except as provided in subsection (d),
25 any person having an interest which is or may be affected may
26 commence a civil action on his behalf to compel compliance with
27 this act or any rule, regulation, order or permit issued
28 pursuant to this act by any owner, operator, landowner or
29 occupier alleged to be in violation of any provision of this act
30 or any rule, regulation, order or permit issued pursuant to this

1 act. Except where 42 Pa.C.S. (relating to judiciary and judicial
2 procedure) requires otherwise, the courts of common pleas shall
3 have jurisdiction of such actions, and venue in such actions
4 shall be as set forth in the Rules of Civil Procedure concerning
5 civil actions in assumpsit. No such action may be commenced if
6 the department has commenced and is diligently prosecuting a
7 civil action in a court of the United States or of the
8 Commonwealth or is in litigation before the Environmental
9 Hearing Board to require the alleged violator to comply with
10 this act or any rule, regulation, order or permit issued
11 pursuant to this act, but in any such action in a court of the
12 United States or of the Commonwealth, any person having or
13 representing an interest which is or may be adversely affected
14 may intervene as a matter of right without posting bond.

15 (d) Notice of private action.--No action pursuant to
16 subsection (c) may be commenced prior to 60 days after the
17 plaintiff has given notice, in writing, of the violation to the
18 department and to any alleged violator.

19 (e) Notice not required.--The 60-day notice provisions of
20 subsection (d) to the contrary notwithstanding, any action
21 pursuant to subsection (c) may be initiated immediately upon
22 written notification to the department in the case where the
23 violation or order complained of constitutes an imminent threat
24 to the health or safety of the plaintiff or would immediately
25 affect a legal interest of the plaintiff.

26 (f) Fees and costs.--The court, in issuing any final order
27 in any action brought pursuant to this section, may award costs
28 of litigation (including attorney and expert witness fees) to
29 any party, whenever the court determines such award is
30 appropriate. Except as provided in subsection (b), the court

1 may, if a temporary restraining order or preliminary injunction
2 is sought, require the filing of a bond or equivalent security
3 in accord with the Rules of Civil Procedure.

4 Section 1306. Criminal penalties.

5 (a) Summary offense.--Any person who violates any provision
6 of this act, any rule or regulation of the department, any order
7 of the department, or any condition or term of any permit or
8 certification issued pursuant to this act commits a summary
9 offense and shall, upon conviction, be sentenced to pay a fine
10 of not less than \$100 nor more than \$1,000 for each separate
11 offense, and, in default of the payment of such fine, may be
12 sentenced to imprisonment for 90 days. Employees of the
13 department are hereby declared to be law enforcement officers
14 for purposes of issuing citations for summary violations under
15 this act.

16 (b) Misdemeanor.--

17 (1) Any person who willfully or negligently violates any
18 provision of this act, any rule or regulation of the
19 department, any order of the department, or any condition or
20 term of any permit issued pursuant to this act commits a
21 misdemeanor of the third degree and shall, upon conviction,
22 be sentenced to pay a fine of not less than \$2,500 nor more
23 than \$25,000 per day for each separate offense or to
24 imprisonment for a period of not more than one year, or both.

25 (2) Any person who, after a conviction of a misdemeanor
26 for any violation as provided in paragraph (1), willfully or
27 negligently violates any provision of this act, any rule or
28 regulation of the department, any order of the department, or
29 any condition or term of any permit issued pursuant to this
30 act commits a misdemeanor of the second degree and shall,

1 upon conviction, be sentenced to pay a fine of not less than
2 \$5,000 nor more than \$50,000 for each separate offense or to
3 imprisonment for a period of not more than two years, or
4 both.

5 (c) Continuing violations.--Each day of continued violation
6 and each violation of any provision of this act, any rule or
7 regulation of the department, any order of the department, or
8 any condition or term of any permit issued pursuant to this act
9 shall constitute a separate offense.

10 Section 1307. Civil penalties.

11 (a) Assessment.--In addition to proceeding under any other
12 remedy available at law or in equity for a violation of a
13 provision of this act, rule, regulation, order of the
14 department, or a condition or term of any permit issued pursuant
15 to this act, the department may assess a civil penalty for the
16 violation. This penalty may be assessed whether or not the
17 violation was willful. The civil penalty so assessed shall not
18 exceed \$10,000 per day for each violation. In determining the
19 amount of the penalty, the department shall consider the
20 willfulness of the violation; damage to air, water, land or
21 other natural resources of this Commonwealth or their uses; cost
22 of restoration and abatement; savings resulting to the person in
23 consequence of the violation; deterrence of future violations;
24 and other relevant factors. Each violation of any provision of
25 this act, rule, regulation, order of the department or condition
26 of a permit and each day of violation shall constitute a
27 separate violation.

28 (b) Collection.--When the department or any State agency,
29 Federal Agency, county, joint county authority or multimunicipal
30 authority delegated authority to assess civil penalties under

1 section 107(a) proposes to assess a civil penalty, it shall
2 inform the person of the proposed amount of the penalty. The
3 person charged with the penalty shall then have 30 days to pay
4 the proposed penalty in full or, if the person wishes to contest
5 the amount of the penalty or the fact of the violation, forward
6 the proposed amount of the penalty to the department within the
7 30-day period for placement in an escrow account with the State
8 Treasurer or any Pennsylvania bank, or post an appeal bond to
9 the department within 30 days in the amount of the proposed
10 penalty, provided that such bond is executed by a surety
11 licensed to do business in this Commonwealth and is satisfactory
12 to the department. If, through administrative or final judicial
13 review of the proposed penalty, it is determined that no
14 violation occurred or that the amount of the penalty shall be
15 reduced, the department shall within 30 days remit the
16 appropriate amount to the person with any interest accumulated
17 by the escrow deposit. Failure to forward the money or the
18 appeal bond shall result in a waiver of all legal rights to
19 contest the violation or the amount of the penalty. The amount
20 assessed after administrative hearing or after waiver of
21 administrative hearing shall be payable to the Commonwealth of
22 Pennsylvania and shall be collectible in any manner provided by
23 law for the collection of debts. If any person liable to pay any
24 such penalty neglects or refuses to pay the same after demand,
25 the amount, together with interest and any costs that may
26 accrue, shall constitute a judgment in favor of the Commonwealth
27 upon the property of such person from the date it has been
28 entered and docketed on record by the prothonotary of the county
29 where such is situated. The department 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 them of record in his
3 office, and to index the same as judgments are indexed, without
4 requiring the payment of costs as a condition precedent to the
5 entry thereof.

6 Section 1308. Proceedings where waters are polluted from many
7 sources.

8 Nothing contained in the laws of this Commonwealth shall
9 estop the department from proceeding under the provisions of
10 this act against any person releasing any regulated substance
11 into the waters of the Commonwealth even though said waters are,
12 at the time, polluted from other sources.

13 Section 1309. Enforcement orders.

14 The department may issue such orders as are necessary to aid
15 in the enforcement of the provisions of this act. Such orders
16 shall include, but shall not be limited to, orders modifying,
17 suspending or revoking permits or certifications, orders
18 requiring persons to cease unlawful activities or cease
19 operation of an establishment which, in the course of its
20 operation, is in violation of any provision of this act, rule or
21 regulation promulgated hereunder, permit, order to take
22 corrective action or to abate a public nuisance, or an order
23 requiring the testing, sampling or monitoring of any tank. Such
24 an order may be issued if the department finds that any
25 condition existing in or on the facility or operation involved
26 is causing or is creating a danger of pollution of the waters of
27 this Commonwealth, including any public or private water supply,
28 surface water or groundwater or if it finds that the permittee,
29 or any person is in violation of any provision of this act, or
30 of any rule, regulation or order of the Environmental Hearing

1 Board or regulation, order, permit or certification of the
2 department, provided, however, that an order addressed to an
3 operation not directly related to the condition or violation in
4 question may be issued only if the department finds that the
5 other enforcement procedures, penalties and remedies available
6 under this act would not be adequate to effectuate prompt or
7 effective correction of the condition or violation. The
8 department may, in its order, require compliance with such
9 conditions as are necessary to prevent or abate pollution or
10 effect the purposes of this act. An order issued under this
11 section shall take effect upon notice, unless the order
12 specifies otherwise. An appeal to the Environmental Hearing
13 Board of the department's order shall not act as a supersedeas,
14 provided, however, that, upon application and for cause shown,
15 the Environmental Hearing Board may issue such a supersedeas.
16 The right of the department to issue an order under this section
17 is in addition to any remedy or penalty which may be imposed
18 pursuant to this act. The failure to comply with any such order
19 is hereby declared to be a nuisance.

20 Section 1310. Unlawful conduct.

21 It shall be unlawful to fail to comply with, or to cause or
22 assist in the violation of, any of the provisions of this act or
23 rules and regulations adopted hereunder; or to fail to comply
24 with any order, permit, registration, or certification
25 requirement of the department; or to cause a public nuisance; or
26 to cause air, soil or water pollution; or to hinder, obstruct,
27 prevent or interfere with the department or its personnel in the
28 performance of any duty hereunder; or to violate the provisions
29 of 18 Pa.C.S. § 4903 (relating to false swearing) or 4904
30 (relating to unsworn falsification to authorities) in regard to

1 papers required to be submitted under this act. The owner or
2 operator of a storage tank and the landowner or occupier on
3 whose land a storage tank is or was located shall not allow
4 pollution resulting from, or a release to occur from, a storage
5 tank.

6 Section 1311. Presumption.

7 (a) General rule.--Except as provided in subsection (b), it
8 shall be presumed as a rebuttable presumption of law in civil
9 and administrative proceedings that a person who owns or
10 operates an aboveground or underground storage tank shall be
11 liable, without proof of fault, negligence, or causation for all
12 damages, contamination or pollution within 2,500 feet of the
13 perimeter of the site of a storage tank containing or which
14 contained a regulated substance of the type which caused the
15 damage, contamination or pollution. Such presumption may be
16 overcome by clear and convincing evidence that the person so
17 charged did not contribute to the damage, contamination or
18 pollution.

19 (b) Defenses.--In order to overcome the presumption of
20 liability established in subsection (a), the owner or operator
21 must affirmatively prove, by clear and convincing evidence, one
22 of the following:

23 (1) The damages, contamination or pollution existed
24 prior to the use of any storage tank at the facility to
25 contain an accumulation of regulated substances, as
26 determined by surveys of the site and within 2,500 feet of
27 the perimeter of the storage tank or facility.

28 (2) An adjacent landowner refused to allow the owner or
29 operator of a storage tank at a new facility access to property
30 within 2,500 feet of the perimeter of a storage tank facility to

1 conduct a survey.

2 (3) The damage, contamination or pollution was not
3 within 2,500 feet of the perimeter of a storage tank.

4 (4) The owner or operator did not contribute to the
5 damages, contamination or pollution.

6 Section 1312. Existing rights and remedies preserved.

7 The collection of any penalty imposed under the provisions of
8 this act shall not be construed as estopping the Commonwealth,
9 or any district attorney or solicitor of a municipality, from
10 proceeding in courts of law or equity to abate pollutions
11 forbidden under this act, or abate nuisances under existing law.
12 It is hereby declared to be the purpose of this act to provide
13 additional and cumulative remedies to prevent and abate the
14 pollution caused by storage tanks, and nothing contained in this
15 act shall in any way abridge or alter rights of action or
16 remedies now or hereafter existing in equity, or under the
17 common law or statutory law, criminal or civil, nor shall any
18 provision in this act, or the granting of any permit under this
19 act, or any act done by virtue of this act, be construed as
20 estopping the Commonwealth, persons or municipalities, in the
21 exercise of their rights under the common law or decisional law
22 or in equity, from proceeding in courts of law or equity to
23 suppress nuisances, or to abate any pollution now or hereafter
24 existing, or enforce common law or statutory rights.

25 Section 1313. Appealable actions.

26 Any person aggrieved by an order or other administrative
27 action of the department issued pursuant to this act shall have
28 the right, within 30 days, to appeal the action to the
29 Environmental Hearing Board in accordance with 2 Pa.C.S. Ch. 5
30 Subch. A (relating to practice and procedure of Commonwealth

1 agencies) and the act of July 13, 1988 (P.L.530, No.94), known
2 as the Environmental Hearing Board Act.

3 Section 1314. Limitation on action.

4 The provisions of any other statute to the contrary
5 notwithstanding actions for civil or criminal penalties under
6 this act may be commenced at any time within a period of 20
7 years from the date the offense is discovered.

8 Section 1315. Collection of fines and penalties.

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

23 CHAPTER 21

24 MISCELLANEOUS PROVISIONS

25 Section 2101. Start-up costs.

26 The Governor is hereby authorized to transfer \$2,500,000, or
27 as much thereof as may be necessary, from the Hazardous Sites
28 Cleanup Fund created by section 602.3 of the act of March 4,
29 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, to the
30 Storage Tank Fund to begin development and operation of the

1 Aboveground and Underground Storage Tank Programs and to the
2 Underground Storage Tank Indemnification Fund to be used for the
3 initial administrative expenses of the Underground Storage Tank
4 Indemnification Board. All transferred funds from the Hazardous
5 Sites Cleanup Fund shall be repaid to that fund from funds in
6 the Storage Tank Fund or the Underground Storage Tank
7 Indemnification Fund within two years of the transfer. Such
8 transfers shall be made hereunder upon warrant of the State
9 Treasurer upon requisition by the Governor.

10 Section 2102. Saved from repeal.

11 The following acts which are repealed in section 2104 are
12 saved from repeal to the extent that such acts provide authority
13 for the regulation and prevention of fire or explosive hazards
14 at aboveground or underground storage tanks:

15 Act of June 8, 1911 (P.L.705, No.281), entitled "An act
16 creating the office of Fire Marshal, to be attached to the
17 Department of Public Safety in cities of the first class;
18 prescribing his duties and powers; and providing penalties for
19 violations of the provisions of the act; and providing for the
20 method of appointment, compensation, and for the maintenance of
21 his office."

22 Act of April 27, 1927 (P.L.450, No.291), referred to as the
23 State Fire Marshal Law.

24 Act of July 28, 1953 (P.L.723, No.230), known as the Second
25 Class County Code.

26 Section 2103. Severability.

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

1 the invalid provision or application.

2 Section 2104. Repeals.

3 The following acts and parts of acts are repealed to the
4 extent specified:

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

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

20 Act of July 28, 1953 (P.L.723, No.230), known as the Second
21 Class County Code, insofar as it is inconsistent with this act.

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

25 Section 2105. Effective date.

26 This act shall take effect in 30 days.