

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1688 Session of
1993

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LAUGHLIN, MAY 26, 1993

REFERRED TO COMMITTEE ON CONSERVATION, MAY 26, 1993

AN ACT

1 Providing for the reduction of the use of toxic materials;
2 establishing the Toxic Use Reduction Advisory Board in the
3 Department of Environmental Resources and providing for its
4 powers and duties; providing for additional duties of the
5 Department of Environmental Resources and for the
6 preparation, submission and approval of toxic use reduction
7 plans and related documents; establishing the Office of Toxic
8 Use Reduction and the Toxic Use Reduction Assistance Bureau
9 and providing for their powers and duties; establishing the
10 Toxic Waste Reduction Fund; and providing for enforcement and
11 civil and criminal penalties.

12 The General Assembly finds and declares as follows:

13 (1) That thousands of tons of hazardous substances are
14 discharged into the environment of this Commonwealth each
15 year and that, regardless of whether the discharges are legal
16 under the terms of applicable permits, the discharges often
17 constitute an unnecessary risk to the environment and to the
18 public health. This risk is compounded by the danger of
19 spills and accidents during the transportation of hazardous
20 substances and by the residues of these substances sometimes

1 incorporated into products and packaging.

2 (2) That the traditional system of separately regulating
3 air pollution, water pollution and hazardous waste
4 constitutes a fragmented approach to environmental protection
5 and potentially allows pollution to be shifted from one
6 environmental medium to another. While the traditional system
7 has produced palpable improvements in this Commonwealth's
8 environmental quality, it does not adequately address the
9 problem.

10 (3) That the inherent limitations of the traditional
11 system of pollution control should be addressed by a new
12 emphasis on pollution prevention and toxic use reduction,
13 focused on reducing the use of hazardous substances in
14 industrial and manufacturing processes. A rigorous audit of
15 the use of hazardous substances, their generation as
16 nonproduct output and their environmental release at each
17 step of an industrial process will identify ways and means by
18 which pollution can be prevented. Toxic use reduction can be
19 achieved through a more efficient use of hazardous substances
20 and the substitution of less hazardous substances and less
21 polluting production processes.

22 (4) That a soundly planned toxic use reduction program
23 can be implemented without weakening the existing legislative
24 and regulatory system of pollution control, while at the same
25 time promoting the Commonwealth's economic health and
26 protecting the jobs of those employed by industries that use
27 and discharge hazardous substances.

28 (5) That government can play a major role in reducing
29 pollution by providing to businesses the technical assistance
30 necessary to achieve reduction in the use and creation of

1 hazardous substances. Many businesses will sustain long-term
2 profit and other advantages from the reduction of toxics.
3 Often businesses are prevented from initiating their own
4 toxic use reduction programs by the lack of available
5 technical assistance and by a tax structure which generally
6 fails to encourage toxic reduction programs. Providing needed
7 assistance and incentives to businesses will give many
8 businesses an opportunity to reduce their reliance on toxic
9 chemicals and chemical processes.

10 (6) That it is in the interest of the environment and
11 public health and in the general public interest of all
12 residents of this Commonwealth to place greater emphasis on
13 pollution prevention and toxic use reduction, while at the
14 same time maintaining the current framework of pollution
15 control.

16 (7) That it is in the public interest to propose, as a
17 Commonwealth public policy goal a 50% reduction over five
18 years in the use of hazardous substances at industrial
19 facilities and in the generation of hazardous substances as
20 nonproduct output, even greater reductions in the use of
21 special hazards and continuing reductions in the use and
22 generation of hazardous substances and special hazards
23 thereafter.

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12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Short title.

15 This act shall be known and may be cited as the Toxic Use
16 Reduction Law.

17 Section 2. Definitions.

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

21 "Board." The Toxic Use Reduction Advisory Board.

22 "Bureau." The Toxic Use Reduction Assistance Bureau.

23 "CAS number." The unique identification number assigned by
24 the Chemical Abstracts Service to the chemical.

25 "Chemical name." The scientific designation of a chemical in
26 accordance with the nomenclature system developed by the
27 International Union of Pure and Applied Chemistry or the
28 Chemical Abstracts Service rules of nomenclature.

29 "Consume." To change or alter the molecular structure of a
30 hazardous substance within a production process.

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

3 "Facility." All buildings, equipment, structures and other
4 property that are located on a single site or on contiguous or
5 adjacent sites and that are owned or operated by the same person
6 on a permanent or temporary basis.

7 "Hazardous nonproduct output." All hazardous substances or
8 hazardous wastes that are generated prior to storage, recycling,
9 treatment, control or disposal and that are not used or intended
10 for use as a product.

11 "Hazardous substance." Any substance on the most recent list
12 established by the Bureau of Right to Know, under section 3 of
13 the act of October 5, 1984 (P.L.734, No.159), known as the
14 Worker and Community Right-to-Know Act.

15 "Hazardous waste." Any solid waste defined as hazardous
16 waste by the Department of Environmental Resources under the act
17 of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
18 Management Act.

19 "Industrial facility." Any facility having an SIC code that
20 is included under the requirements of section 313 of the
21 Emergency Planning and Community Right-to-Know Act of 1986
22 (Public Law 99-499, 42 U.S.C. § 11023) or is listed as a source
23 of hazardous waste in the Pennsylvania Hazardous Waste
24 Facilities Plan.

25 "Manufacture." To produce, prepare, import or compound a
26 hazardous substance.

27 "Multimedia release." The release of a hazardous substance
28 to any environmental medium, or any combination of media,
29 including the air, water or land.

30 "Operator." Any person in control of, or exercising

1 responsibility for, the daily operation of an industrial
2 facility or a priority industrial facility; and any person who
3 owns an industrial facility or owns a corporation which manages
4 or controls an industrial facility.

5 "Person." Any individual, partnership, company, corporation,
6 society, firm, consortium, joint venture or any commercial or
7 other legal entity; and including the Commonwealth, its
8 political subdivisions, including school districts, and any
9 officer, board, commission, agency, authority or other
10 instrumentality thereof.

11 "Plan documents." The toxic use reduction plan, toxic use
12 reduction plan summary and toxic use reduction progress report
13 required to be prepared under this act, collectively.

14 "Priority industrial facility." Any industrial facility
15 required to prepare and submit a toxic chemical release form
16 under section 313 of the Emergency Planning and Community Right-
17 to-Know Act of 1986 (Public Law 99-499, 42 U.S.C. § 11023) and
18 any other industrial facility designated a priority industrial
19 facility by the Department of Environmental Resources under
20 section 8.

21 "Process." The preparation of a hazardous substance, after
22 its manufacture, for sale or use in the same form or physical
23 state, or in a different form or physical state, as that in
24 which it was received at the industrial facility where it is
25 processed, or as part of an article or product containing the
26 hazardous substance.

27 "Product." A desired result of a production process that is
28 used as a commodity in trade in the channels of commerce by the
29 general public in the same form as it is produced.

30 "Production process." A line, method, activity or technique,

1 or a series thereof, used to create a product or reach a planned
2 result.

3 "Research and development laboratory." A specially
4 designated area used primarily for research, development,
5 teaching or testing activity, and not primarily involved in the
6 production of goods for commercial sale, in which chemicals are
7 used by or under the direct supervision of a technically
8 qualified person. For the purposes of this act, a technically
9 qualified person is a person who, because of education, training
10 or experience, understands the risks associated with the
11 hazardous substance or mixture containing a hazardous substance
12 handled by employees under his supervision and guidance.

13 "Secretary." The Secretary of Environmental Resources of the
14 Commonwealth.

15 "SIC code." The Standard Industrial Classification assigned
16 to a facility by latest edition of the Standard Industrial
17 Classification Manual issued by the Federal Office of Management
18 and Budget.

19 "Source." A point or location in a production process at
20 which a hazardous nonproduct output is generated or released,
21 provided, that similar, related or identical kinds of sources
22 may be considered a single source for the purposes of this act.

23 "Special hazard." Any substance on the most recent list of
24 special hazards established by the Bureau of Right to Know,
25 under section 3 of the act of October 5, 1984 (P.L.734, No.159),
26 known as the Worker and Community Right-to-Know Act.

27 "Toxic use reduction." In-plant changes in production
28 processes or raw materials that reduce, avoid or eliminate the
29 use of hazardous substances or generation of hazardous
30 nonproduct output per unit of product, so as to reduce risks to

1 the health of consumers, the public at large or the environment,
2 without shifting risks from one person or group of people to
3 another, from the environment to the public or consumers or from
4 any group of people to the environment.

5 "Toxic use reduction plan." A plan required to be prepared
6 by a priority industrial facility under section 6.

7 "Toxic use reduction plan progress report." A report
8 required to be submitted annually to the Department of
9 Environmental Resources by the owner or operator of a priority
10 industrial facility under section 6.

11 "Toxic use reduction plan summary." A summary of a toxic use
12 reduction plan required to be prepared by a priority industrial
13 facility and submitted to the Department of Environmental
14 Resources under section 6.

15 "Trade secret." Any confidential formula, pattern, process,
16 device, information, or compilation of information that is used
17 in an owner's business, and that gives said owner an opportunity
18 to obtain an advantage over competitors who do not know or use
19 it.

20 "Use." To process or otherwise act upon a hazardous
21 substance.

22 Section 3. Toxic use reduction.

23 (a) Reduction methods.--Toxic use reduction shall be
24 achieved through any of the following methods:

25 (1) Input substitution, which refers to replacing a
26 hazardous substance or raw material used in a production
27 process with a nonhazardous or less hazardous substance.

28 (2) Product reformulation, which refers to substituting
29 for an existing end product a different end product which is
30 nonhazardous or less hazardous upon use, release or disposal.

1 (3) Production process redesign or modification, which
2 refers to developing and using production processes of a
3 different design than those currently used.

4 (4) Production process modernization, which refers to
5 upgrading or replacing existing production process equipment
6 and methods with other equipment and methods based on the
7 same production process.

8 (5) Improved operation and maintenance of production
9 process equipment and methods, which refers to modifying or
10 adding to existing equipment or methods including, but not
11 limited to, such techniques as improved housekeeping
12 practices, system adjustments, product and process
13 inspections, or production process control equipment or
14 methods.

15 (6) In-process recycling, which refers to recycling,
16 reuse, or extended use of toxics by using equipment or
17 methods which become an integral part of the production
18 process of concern, including, but not limited to, filtration
19 and other closed loop methods.

20 (b) Methods not included.--Toxic use reduction shall not
21 include or in any way be inferred to promote or require
22 incineration, transfer from one medium of release or discharge
23 to other media, offsite or out-of-production unit waste
24 recycling, or methods of end-of-production unit waste recycling,
25 use as a fuel source, or methods of end-of-pipe treatment of
26 toxics as waste.

27 Section 4. Office of Toxic Use Reduction.

28 (a) Establishment and supervision.--There is hereby
29 established within the Department of Environmental Resources the
30 Office of Toxic Use Reduction. The office shall be under the

1 immediate supervision of a director appointed by the secretary
2 who shall report directly to the secretary. The director and all
3 managerial employees necessary to implement the provisions of
4 this act as determined by the secretary may be members of the
5 unclassified service of the Commonwealth.

6 (b) Powers and duties in general.--The office shall be
7 responsible for the implementation of the provisions of this
8 act, for the coordination of all toxic use reduction policies
9 within the department, for conducting an ongoing review of all
10 regulatory and enforcement policies to ensure that they require
11 or encourage toxic use reduction to the maximum feasible extent,
12 and for performing any other function that the secretary may
13 deem appropriate.

14 (c) Education and outreach program.--The office shall
15 establish an education and outreach program designed to explain
16 and make available to the general public all toxic use reduction
17 plan summaries and toxic use reduction plan progress reports
18 submitted to the department under this act.

19 (d) Copies of summaries and reports.--Upon a written request
20 by a member of the public, the department shall provide that
21 person within 30 days a copy of any requested toxic use
22 reduction plan summary or toxic use reduction plan progress
23 report in its possession, at a cost not to exceed the cost of
24 copies and postage.

25 Section 5. Toxic use reduction plans.

26 (a) Preparation and submission.--For each priority
27 industrial facility, the owner shall, in the manner prescribed
28 below and in regulations promulgated by the department, prepare
29 a toxic use reduction plan, and shall prepare and submit to the
30 department a toxic use reduction plan summary and toxic use

1 reduction plan progress report.

2 (b) Departmental review.--The department shall have the
3 authority to review and approve the content of plan documents
4 prepared under this act and require the owner or operator of a
5 priority industrial facility to make any revisions or
6 modifications of the plan documents necessary for compliance
7 with this act. In reviewing the plan documents, the department
8 shall have the authority to compel the production of such
9 information as the department deems necessary to support the
10 owner or operator's plan documents concerning a production
11 process or source. The secretary shall require any plan
12 deficiencies to be corrected within 90 days.

13 (c) Procedure.--At the time of an initial application for,
14 or renewal of, any permit, certificate, registration or any
15 other relevant department approval issued to the operator of a
16 priority industrial facility under the act of June 22, 1937
17 (P.L.1987, No.394), known as The Clean Streams Law, the act of
18 January 8, 1960 (1959 P.L.2119, No.787), known as the Air
19 Pollution Control Act, or the act of July 7, 1980 (P.L.380,
20 No.97), known as the Solid Waste Management Act, the department
21 may require that the permit, certificate, registration or
22 approval include the toxic use reduction strategies set forth in
23 the toxic use reduction plan or toxic use reduction plan summary
24 prepared for that facility, or may require, as a condition of
25 issuing a permit, certificate, registration, or any other
26 relevant department approval, that the operator of the priority
27 industrial facility prepare a toxic use reduction plan and
28 submit a toxic use reduction plan summary to the department.

29 (d) Enforcement.--The department may revoke, issue, reissue,
30 or modify any permit, certificate, registration, or any other

1 relevant approval issued under any of the statutes cited in
2 subsection (c), to the operator of a priority industrial
3 facility by the department, for the purpose of requiring more
4 stringent control of emission or effluent levels based on toxic
5 use reduction strategies contained in the toxic use reduction
6 plan for that facility. Any action taken by the department under
7 this subsection may be appealed under the provisions of 42
8 Pa.C.S. § 763(a) (relating to direct appeals from government
9 agencies), as appropriate.

10 Section 6. Content of plans.

11 (a) General rule.--The information required by the
12 department in a toxic use reduction plan shall cover the
13 previous calendar year and be reported in two parts.

14 (b) Part I.--Part I shall consist of a comprehensive
15 inventory and analysis of the use and release of hazardous
16 substances and special hazards, and the generation of hazardous
17 nonproduct output and hazardous waste at an industrial facility.
18 The information required shall include the following:

19 (1) A certification by the highest ranking official with
20 direct operating responsibility at the facility that he has
21 read the toxic use reduction plan, that he has made
22 reasonable inquiries into the underlying facts and assertions
23 contained therein, and that the toxic use reduction plan is
24 true, accurate and complete to the best of his knowledge, and
25 a certification by the highest ranking corporate official at
26 the facility that he is familiar with the toxic use reduction
27 plan and that it is the corporate policy of that facility to
28 achieve the goals of the toxic use reduction plan.

29 (2) The name and business telephone number of the
30 operator of the facility, and of the highest ranking

1 corporate official at the facility, and the name and business
2 telephone number of a representative for each union which
3 represents employees at the facility.

4 (3) An identification of each production process at the
5 industrial facility using or producing hazardous substances
6 or special hazards, the product produced in the production
7 process, and the total units of production produced in each
8 production process during the year.

9 (4) The chemical name and CAS number of each hazardous
10 substance or special hazard manufactured, stored or used at
11 the industrial facility.

12 (5) The amounts of each hazardous substance or special
13 hazard, in pure form or contained in a mixture, which are:

14 (i) in storage at the industrial facility on the
15 first and last days of the year;

16 (ii) stored on an annual average at the industrial
17 facility;

18 (iii) manufactured as a product at the industrial
19 facility;

20 (iv) brought into the industrial facility;

21 (v) generated as hazardous nonproduct output at the
22 industrial facility;

23 (vi) used at the industrial facility;

24 (vii) consumed at the industrial facility; and

25 (viii) contained in the product or products produced
26 at the industrial facility.

27 (6) For each production process, the amounts of each
28 hazardous substance or special hazard, either in pure form or
29 contained in a mixture, manufactured, used, consumed,
30 contained in the product or products produced and generated

1 as hazardous nonproduct output.

2 (7) The amounts of each hazardous waste generated and
3 hazardous substance released at each production process at
4 the industrial facility and the amount of hazardous
5 nonproduct output generated at each source at the industrial
6 facility.

7 (8) The address of each offsite treatment, disposal, or
8 storage facility to which hazardous waste generated at the
9 industrial facility is transported, and the type of treatment
10 or disposal method utilized at each offsite facility.

11 (9) For the industrial facility as a whole, the amounts
12 of each hazardous waste generated, recycled in-process,
13 treated, stored, disposed of or recycled outside of any
14 production process onsite, recycled outside of any production
15 process offsite, and treated, stored or disposed of offsite.

16 (10) The amount of each hazardous substance in hazardous
17 nonproduct output recycled within each production process at
18 the industrial facility, recycled outside of any production
19 process onsite and recycled outside of any production process
20 offsite.

21 (11) The amounts of all hazardous substances and special
22 hazards that are released into the air or discharged into the
23 water or any other waste stream following recycling,
24 treatment or any combination thereof.

25 (12) A comprehensive financial analysis, as specified by
26 the department, of the costs associated with the use,
27 generation, release or discharge of hazardous substances
28 which occur as a result of current production processes at
29 the industrial facility, including the costs of generation of
30 hazardous nonproduct output, the savings realized by

1 investments in toxic use reduction and the more efficient use
2 of raw materials, the cost of the treatment and disposal of
3 hazardous waste, the cost of environmental cleanup associated
4 with spills and the cost of medical treatment due to workers'
5 exposure to hazardous substances and the cost of liability
6 insurance.

7 (13) A calculation of the reduction or increase in the
8 use of each hazardous substance and special hazard per
9 comparable unit of production in each production process, in
10 comparison to the use of each hazardous substance and special
11 hazard per unit of production in each production process
12 reported in the previous toxic use reduction plan, including
13 an indication if the calculation is an estimate.

14 (14) A calculation of the reduction or increase in the
15 amount of each hazardous substance or special hazard
16 generated as hazardous nonproduct output and the amount of
17 each hazardous waste generated from each source and
18 production process per comparable unit of product, in
19 comparison to the amounts reported in the toxic use reduction
20 plan for the previous year.

21 (15) A calculation of the reduction or increase in the
22 use of each hazardous substance or special hazard by the
23 entire industrial facility in comparison to the use reported
24 in the toxic use reduction plan for the previous year,
25 including an indication if the calculation is an estimate.

26 (16) A calculation of the reduction or increase in the
27 amount of each hazardous substance generated as hazardous
28 nonproduct output and in the amount of each hazardous waste
29 generated by the entire industrial facility, in comparison to
30 the amounts reported in the toxic use reduction plan for the

1 previous year.

2 (17) Indications of the methods, modifications or
3 procedures used to achieve each reduction reported under
4 paragraphs (13), (14), (15) and (16) and the industrial
5 facility's five-year goals for such reductions for each
6 production process and on a facility-wide basis, except that
7 the product of a production process need not be included in
8 the reduction goal.

9 (c) First year's plan.--The information identified in
10 paragraphs (13), (14), (15) and (16) shall not be required for
11 the first year covered by a toxic use reduction plan prepared
12 under this subsection.

13 (d) Part II.--The information required by the department in
14 Part II of a toxic use reduction plan shall consist of
15 information concerning production processes and sources, and
16 shall include at least the following information:

17 (1) The facility's five-year numeric goals for reducing
18 the use of each hazardous substance and special hazard, and
19 for reducing the generation as hazardous nonproduct output of
20 each hazardous substance.

21 (2) For each production process, the facility's five-
22 year numeric goals for reducing the use of each hazardous
23 substance or special hazard per unit of product, and for
24 reducing the generation as hazardous nonproduct output of
25 each hazardous substance or special hazard per unit of
26 product.

27 (3) A description of each production process and source
28 using or producing hazardous substances.

29 (4) An identification, for each production process and
30 source using or producing hazardous substances, of available

1 reduction options, including procedures, technologies and
2 equipment, that may substantially reduce the use and
3 generation of hazardous substances.

4 (5) A feasibility analysis, for each production process
5 and source using or producing hazardous substances, of
6 reduction options identified under paragraph (4), which shall
7 include, but not be limited to, a full-cost accounting of the
8 options, and any technological obstacles to adopting the
9 options.

10 (6) A description, for each production process using or
11 producing hazardous substances, of options the owner or
12 operator of the facility intends to undertake during the next
13 five years to achieve its reduction goals and a schedule for
14 the implementation of the options. The options to be
15 described shall include, but not be limited to, employee
16 training, management policies, inventory control, scheduling
17 improvements, material handling improvements, and spill and
18 leak prevention.

19 (7) A description of the valuation methods used by the
20 owner or operator to determine not to install or utilize each
21 option identified under paragraph (4) that would have
22 resulted in a greater percentage reduction in the use of
23 hazardous substances or generation of hazardous nonproduct
24 output than the option chosen.

25 (8) A quantitative description of the impact that
26 individual toxic use reduction techniques have had on
27 posttreatment multimedia environmental releases of hazardous
28 substances, reported by medium.

29 (e) Description of prior methods.--The owner or operator of
30 an industrial facility may include in a toxic use reduction plan

1 and toxic use reduction plan summary a description of any toxic
2 use reduction methods implemented at the industrial facility
3 prior to enactment of this act.

4 (f) Content of progress report.--The information required by
5 the department in a toxic use reduction plan progress report
6 shall include at least the following:

7 (1) An identification of each production process using
8 or producing hazardous substances or special hazards, and
9 calculations, for the facility and for each production
10 process, of the reduction or increase in the use of each
11 hazardous substance or special hazard per unit of production,
12 in the generation of each hazardous nonproduct output per
13 unit of production, and in multimedia releases, by medium,
14 following recycling and treatment of each hazardous
15 substance, in comparison to the previous year.

16 (2) An indication of the method used to achieve each
17 reduction listed under paragraph (1).

18 (3) A numerical statement demonstrating the facility's
19 progress towards achieving each of its five-year goals under
20 subsection (d)(1) and (2).

21 (4) An explanation of why the facility's annual progress
22 may be less than that anticipated in the toxic use reduction
23 plan time schedule for implementation.

24 (5) A description of toxic use reduction techniques that
25 the owner or operator of the facility intends to undertake
26 during the forthcoming year at a production process level.

27 (6) The amounts of each hazardous substance and special
28 hazard, in pure form or contained in a mixture, which are:

29 (i) in storage at the industrial facility on the
30 first and last days of the year;

1 (ii) stored on an annual average at the industrial
2 facility;

3 (iii) manufactured as a product at the industrial
4 facility;

5 (iv) brought into the industrial facility;

6 (v) generated as hazardous nonproduct output at the
7 industrial facility;

8 (vi) used at the industrial facility;

9 (vii) consumed at the industrial facility; and

10 (viii) contained in the product or products produced
11 at the industrial facility.

12 (g) Content of plan summary.--The information required by
13 the department in a toxic use reduction plan summary shall
14 contain at least the following:

15 (1) The facility's five-year numeric goal for reducing
16 the use of each hazardous substance and special hazard, and
17 for reducing the generation of each hazardous nonproduct
18 output.

19 (2) For each production process that uses or produces
20 hazardous substances, the facility's five-year numeric goals
21 for reducing the use of each hazardous substance and special
22 hazard per unit of production, and for reducing the
23 generation of hazardous nonproduct output per unit of
24 product.

25 (3) A description of each production process and source
26 that uses or produces hazardous substances.

27 (4) A description, for each production process, of the
28 techniques the owner or operator of the industrial facility
29 intends to undertake during the next five years to achieve
30 the industrial facility's reduction goals, and a schedule for

1 the implementation of the techniques.

2 (5) An indication, for each hazardous substance used in
3 a targeted production process, of whether the hazardous
4 substance is used in an amount of zero to 5,000 pounds, 5,000
5 pounds to 10,000 pounds, or greater than 10,000 pounds.

6 (6) A written certification that the owner or operator
7 of the facility has prepared a toxic use reduction plan and
8 that the plan is available onsite for the department's
9 inspection.

10 (7) A list of all other permits, certificates,
11 registrations, or other approvals, or documents issued by the
12 department for the facility.

13 (8) The amounts of each hazardous substance and special
14 hazard, in pure form or contained in a mixture, which are:

15 (i) in storage at the industrial facility on the
16 first and last days of the year;

17 (ii) stored on an annual average at the industrial
18 facility;

19 (iii) manufactured as a product at the industrial
20 facility;

21 (iv) brought into the industrial facility;

22 (v) generated as hazardous nonproduct output at the
23 industrial facility;

24 (vi) used at the industrial facility;

25 (vii) consumed at the industrial facility; and

26 (viii) contained in the product or products produced
27 at the industrial facility.

28 (h) Certain facilities excluded.--An owner or operator is
29 not required to include in a toxic use reduction plan or toxic
30 use reduction plan summary information concerning a research and

1 development laboratory located at the facility.

2 Section 7. Submission of toxic use reduction documents.

3 (a) Submission by certain priority facility operators.--The
4 operator of each priority industrial facility within SIC Code
5 Major Group Numbers 26, 28 and 33, shall prepare a toxic use
6 reduction plan, and shall submit a toxic use reduction plan
7 summary to the department within 24 months of the date of final
8 enactment of this act.

9 (b) Submission by other operators.--The operator of each
10 priority industrial facility, other than those enumerated in
11 subsection (a), shall prepare a toxic use reduction plan and
12 submit a toxic use reduction plan summary to the department
13 within 48 months of the date of final enactment of this act.

14 (c) Copies.--The operator shall maintain a copy of the toxic
15 use reduction plan at the facility, where it shall be available
16 for inspection by the department, and shall immediately provide
17 a copy to the department in person or by mail or electronic
18 facsimile upon the department's request.

19 (d) Updates and changes.--The information required to be
20 reported under section 6(b)(13), (14), (15), (16) and (17) shall
21 be updated annually, as well as whenever a significant change in
22 operations occurs, including, but not limited to, the cessation
23 or major expansion of a production process; the installation or
24 removal of primary components of a production process; or the
25 additional use or release of a hazardous substance, or the
26 additional generation of a hazardous waste, which was not used,
27 released or generated when the initial toxic use reduction plan
28 was completed.

29 (e) Revised plan.--A complete revision of a toxic use
30 reduction plan shall be prepared by July 1 of the fifth year

1 after the initial completion of the plan, and by July 1 of each
2 fifth year thereafter.

3 (f) "Revised summary." A complete revision of a toxic use
4 reduction plan summary shall be prepared and submitted to the
5 department by July 1 of the fifth year after the initial
6 completion of the plan summary, and by July 1 of each fifth year
7 thereafter.

8 (g) Progress report.--An owner or operator shall prepare and
9 submit to the department, on July 1 of each year after the year
10 of the initial completion of a toxic use reduction plan or the
11 year of a complete revision of the toxic use reduction plan, a
12 toxic use reduction plan progress report that indicates the
13 progress made in the previous year in complying with the goals
14 set forth in the initial toxic use reduction plan or revised
15 toxic use reduction plan, as appropriate.

16 (h) Additional priority industrial facilities.--After
17 January 1, 1995, the department may designate additional
18 priority industrial facilities pursuant to criteria established
19 in duly promulgated rules and regulations.

20 (i) Addition of new hazardous substances.--The addition of
21 new hazardous substances to the list shall be accomplished
22 through the procedures set forth in section 3(b) and (c) of the
23 act of October 5, 1984 (P.L.734, No.159), known as the Worker
24 and Community Right-to-Know Act.

25 Section 8. Other industrial facilities.

26 The department, pursuant to the criteria established in duly
27 promulgated rules and regulations, may direct the owner or
28 operator of an industrial facility which is not a priority
29 industrial facility, to prepare a toxic use reduction plan for
30 the facility and to submit a toxic use reduction plan summary

1 and toxic use reduction plan progress report to the department.
2 An operator shall thereupon prepare the toxic use reduction plan
3 and submit the toxic use reduction plan summary to the
4 department within 18 months of receipt of the department's
5 directive, and shall annually submit to the department a toxic
6 use reduction plan progress report. This facility shall be
7 treated the same as a priority industrial facility for the
8 purposes of section 5.

9 Section 9. Toxic Use Reduction Assistance Bureau.

10 (a) Powers and duties.--There is hereby established within
11 the department the Toxic Use Reduction Assistance Bureau, which
12 shall have, in addition to any other responsibilities under this
13 act, the powers and duties listed below:

14 (1) To provide technical assistance to owners and
15 operators to assist them in achieving toxic use reduction
16 goals and in complying with the other requirements of this
17 act. The bureau shall, however, establish criteria for
18 prioritizing this assistance to owners and operators of small
19 facilities without sufficient resources to formulate toxic
20 use reduction plans on their own.

21 (2) To engage in an outreach program to small businesses
22 required to report and plan as a result of prioritization and
23 to assist first-time filers with reporting requirements and
24 trade secret submissions.

25 (3) To coordinate with private sector initiatives in the
26 reduction of the use and generation of hazardous substances
27 and waste prevention education and technical assistance.

28 (b) Confidential information.--The bureau shall not make
29 available to the department information it obtains in the course
30 of providing technical assistance, unless:

1 (1) the operator agrees that such information may be
2 available to the department;

3 (2) the information is a matter of public record;

4 (3) the information pertains to an imminent threat to
5 public health or safety or to the environment; or

6 (4) disclosure to the department is required by law.

7 (c) Construction of section.--Nothing in this section shall
8 relieve any owner or operator of any obligation to provide the
9 department any notice or information required by this or any
10 other act. The bureau shall notify owners and operators
11 requesting technical assistance of these provisions.

12 Section 10. Research on pollution prevention.

13 (a) Conduct of research.--The department shall conduct
14 research on toxic use reduction trends within each of the SIC
15 industry groups represented by priority industrial facilities.
16 This research shall include an analysis of information contained
17 in toxic use reduction plan summaries, and may include an
18 analysis of toxic use reduction plans. This research shall also
19 investigate techniques to develop standardized classifications
20 of production processes employed by industrial facilities and
21 investigate the feasibility of utilizing such techniques in the
22 development and implementation of toxic use reduction plans.
23 Within five years of the effective date of this act, the
24 department shall prepare and submit to the Governor and the
25 General Assembly, and shall make available to the public, a
26 toxic use reduction profile report for each of the Standard
27 Industrial Classification industry groups represented by
28 priority industrial facilities that summarizes the department's
29 research on each industry group, and, if warranted by the
30 research, that recommends any administrative or legislative

1 action necessary to increase toxic use reduction activities at
2 priority industrial facilities.

3 (b) Analysis of reduction.--Five years after all priority
4 industrial facilities are required to submit plans, the
5 department shall analyze the reductions achieved by
6 participating industries, evaluating whether an aggregate
7 reduction of 50% has been achieved in the use of hazardous
8 substances and the generation of hazardous nonproduct output per
9 unit of production.

10 (c) Performance standards.--

11 (1) If the department determines that the 50% reduction
12 goal has not been achieved, the department shall be
13 authorized to establish by regulation, performance standards
14 for priority industrial facilities. The department may
15 establish such a standard if a facility falls significantly
16 below a Commonwealth-based norm for similar facilities for
17 hazardous substances used or hazardous by-product generated
18 per unit of product. The department shall consider the
19 facility's efforts to reduce the use of hazardous substances
20 and generation of hazardous nonproduct output. The department
21 shall also consider the potential effectiveness of referral
22 for technical assistance and/or proposing changes in the
23 facility's toxic use reduction plan instead of establishing a
24 performance standard, such consideration not being subject to
25 adjudication.

26 (2) A performance standard shall be set through the
27 issuance of an administrative order applicable to the
28 facility. The order shall require a specified percent
29 reduction of hazardous substances used or hazardous by-
30 product generated per unit of product that is economically

1 and technically feasible to the user and the technology for
2 which is commercially available. A facility for whom a
3 performance standard is set under this section may appeal the
4 order to the Environmental Hearing Board in the manner
5 provided by law.

6 (3) Each performance standard issued under this section
7 shall specify a reasonable time for compliance, not to exceed
8 three years. If a facility finds it cannot comply with the
9 standard in the time provided for compliance, it shall apply
10 to the department for a waiver based on a showing that the
11 standard is not economically or technically feasible for that
12 user. No waiver shall be granted by the department unless it
13 finds that the standard is not feasible for the facility.

14 (4) A facility otherwise covered by a performance
15 standard shall be exempt from such standard if compliance
16 would adversely affect the facility's ability to produce its
17 product in conformance with product specifications of the
18 United States Food and Drug Administration, the United States
19 Department of Defense or other Federal agency.

20 Section 11. Right to enter and inspect.

21 The department may enter any industrial facility for the
22 purpose of obtaining information concerning the industrial
23 facility's toxic use reduction practices, reviewing a toxic use
24 reduction plan or ascertaining compliance with the provision of
25 this act or any rule or regulation adopted pursuant thereto. Any
26 information relating to a trade secret obtained in the course of
27 implementing or enforcing the provisions of this act shall be
28 kept confidential and shall be inadmissible as evidence in any
29 court or in any other proceeding in such a manner so as to
30 protect the confidentiality of the information.

1 Section 12. Protection of trade secrets.

2 (a) Trade secret claims.--An owner or operator may omit from
3 the toxic use reduction plan or toxic use reduction plan summary
4 the specific chemical identity of a hazardous substance about
5 which information is required, and include instead the generic
6 class or category of the hazardous substance, or may omit any
7 other information required to be disclosed, if the owner or
8 operator files with the department a trade secret claim under
9 this section.

10 (b) Proof of trade secret.--An owner or operator which seeks
11 to prevent disclosure of a trade secret shall submit to the
12 department a trade secret claim, accompanied by the toxic use
13 reduction plan or toxic use reduction plan summary, which
14 provides the department with the information omitted, and a
15 statement demonstrating that the omitted information meets the
16 criteria for a valid trade secret established under subsection
17 (c). Any trade secret claim made under this section which the
18 department determines is false or frivolous shall be considered
19 a violation of this act.

20 (c) Criteria for claim approval.--The department shall not
21 approve a trade secret claim unless the owner or operator can
22 demonstrate all of the following:

23 (1) The information has not been disclosed to any other
24 person other than to a person bound by a confidentiality
25 agreement.

26 (2) The owner or operator has taken all reasonable
27 measures necessary to protect the secrecy of the information.

28 (3) The information is not required to be disclosed, or
29 to be otherwise made available, to the public under any other
30 Federal or State law.

1 (4) Disclosure of the information would be likely to
2 cause the owner or operator substantial economic disadvantage
3 or harm.

4 (5) The information is not readily discoverable through
5 reverse engineering or other analytical techniques.

6 (d) Determination by department.--

7 (1) The department shall act to make a determination on
8 the validity of a trade secret claim when a request is made
9 by any person for the disclosure of the information for which
10 the trade secret claim was made, or at any time that the
11 department deems appropriate. Upon making a determination on
12 the validity of a trade secret claim, the department shall
13 inform the owner or operator of the affected industrial
14 facility of the determination by certified mail.

15 (2) If the department determines that the owner or
16 operator's trade secret claim is not valid, the owner or
17 operator shall have 45 days from the receipt of the
18 department's determination to file with the department a
19 written request for an administrative hearing before the
20 Environmental Hearing Board. If the owner or operator does
21 not file such a request within 45 days, the department shall
22 take action to provide that the information for which the
23 trade secret claim was made be disclosed under the provisions
24 of this act. At the hearing, the owner or operator shall have
25 the burden to show that the trade secret claim is valid. The
26 action of the Environmental Hearing Board shall be considered
27 a final agency action, and shall be subject only to judicial
28 review by the Commonwealth Court under 42 Pa.C.S. § 763(a)
29 (relating to direct appeals from government agencies). The
30 Environmental Hearing Board shall inform the owner or

1 operator of its decision by certified mail. If the department
2 determines that the trade secret claim is not valid, the
3 owner or operator shall have 45 days to notify the department
4 in writing that he has filed an appeal of the department's
5 decision in the courts. Absent such notice, the department
6 shall take action to disclose the information for which the
7 trade secret claim was made.

8 (e) Omission of trade secrets from public copies.--Any toxic
9 use reduction plan summary containing information for which a
10 trade secret claim is pending or has been approved shall be made
11 available to the public with that information omitted.

12 (f) Nondisclosure of confidential information.--

13 (1) The subject of any trade secret claim pending or
14 approved and all information and documents submitted in
15 connection therewith shall be treated as confidential
16 information. Confidential information shall be kept in a
17 locked filed within a locked room at the department, and
18 shall not be duplicated by any person, including any employee
19 of the department. Except as provided in subsection (e), the
20 department shall not disclose any confidential information to
21 any person except an officer or employee of the State in
22 connection with the official duties of the officer or
23 employee under any law for the protection of public health,
24 or to the contractors of the State and their employees if, in
25 the opinion of the department, the disclosure is necessary
26 for the completion of any work contracted for in connection
27 with the implementation of this act.

28 (2) Any officer or employee of the State, contractor of
29 the State, or health professional who has access to any
30 confidential information, and who willingly and knowingly

1 discloses the confidential information to any person not
2 authorized to receive it, is guilty of a misdemeanor of the
3 third degree.

4 (g) Certain matters not trade secrets.--The secretary shall
5 not approve any trade secret claim for any information which has
6 already been determined not to be a trade secret:

7 (1) by the United States Environmental Protection Agency
8 pursuant to section 312 of the Emergency Planning and Community
9 Right-to-Know Act of 1986 (Public Law 99-499, 42 U.S.C. § 11023)
10 or section 3001 of the Resource Conservation and Recovery Act of
11 1976 (Public Law 94-580 42 U.S.C. § 6921);

12 (2) by the United States Occupational Safety and Health
13 Administration pursuant to 29 C.F.R. 1910.1200(i)(relating to
14 Lazard communications); or

15 (3) by the Commonwealth's Department of Labor and Industry
16 under section 11 of the act of October 5, 1984 (P.L.734,
17 No.159), known as the Worker and Community Right-to Know Act.

18 (h) Other matters not trade secrets.--An owner or operator
19 of an industrial facility may not claim the following
20 information as a trade secret:

21 (1) the chemical name, identity and amounts of any
22 hazardous substance discharged into the air or the surface or
23 ground waters of the State or into a wastewater treatment
24 system, the chemical identity and amounts of hazardous waste
25 generated, or the location of a discharge or generation; or

26 (2) hazards to health or the environment posed by any
27 hazardous substance at an industrial facility and potential
28 routes of human exposure to a hazardous substance.

29 (i) Use of information authorized.--The information for
30 which a trade secret claim is made under this section may be

1 used by the department in general compilations of information
2 based on industry groups or classifications of hazardous
3 substances, or for the conducting of research and preparation of
4 the reports required under section 10 if this use does not
5 identify the specific facility for which the information was
6 reported.

7 Section 13. Rules and regulations.

8 (a) When promulgated.--Within ten months of the effective
9 date of this act, the Environmental Quality Board shall
10 promulgate the rules and regulations necessary to carry out this
11 act.

12 (b) Content.--The rules and regulations which contain the
13 substantive requirements for plan documents shall, to the extent
14 possible, require that information be based on data developed
15 for the purposes of compliance with other Federal and State
16 laws, so long as all information required by this act is
17 supplied. These rules and regulations shall specify which, if
18 any, information required in a toxic use reduction plan summary
19 and toxic use reduction plan progress report may be reported to
20 the department in an environmental hazard survey submitted under
21 section 3(g) of the act of October 5, 1984 (P.L.734, No.159),
22 known as the Worker and Community Right-to-Know Act. These
23 regulations may require owners or operators of industrial
24 facilities to submit toxic use reduction plan summaries or toxic
25 use reduction plan progress reports in a form that is compatible
26 with the department's electronic information storage and
27 retrieval system.

28 (c) Priority facilities.--Within 18 months of the effective
29 date of this act the Environmental Quality Board shall adopt
30 rules and regulations establishing criteria under which it may

1 require an industrial facility which is not a priority
2 industrial facility to prepare plan documents. These criteria
3 shall include the toxicity and volume of the hazardous
4 substances or hazardous waste used, generated or released at the
5 industrial facility, or the history of unpermitted releases at
6 the industrial facility.

7 (d) Hazardous substances.--The department, through the
8 promulgation of rules and regulations, may establish, for any
9 hazardous substance use or manufactured at an industrial
10 facility, a facility-wide threshold quantity of up to 5,000
11 pounds below which the hazardous substance need not be included
12 in the plan documents. For special hazards, the threshold
13 quantity may be set at up to 1,000 pounds.

14 Section 14. Toxic Use Reduction Advisory Board.

15 (a) Establishment and composition.--

16 (1) There is hereby established with the department the
17 Toxic Use Reduction Advisory Board. The board shall consist
18 of the director of the Office of Toxic Use Reduction and 14
19 public members, ten of whom shall be appointed by the
20 Governor, no more than five of whom shall be of the same
21 political party; one member who shall be appointed by the
22 President pro tempore of the Senate; one member who shall be
23 appointed by the Minority Leader of the Senate; one member
24 who shall be appointed by the Speaker of the House of
25 Representatives and one member who shall be appointed by the
26 Minority Leader of the House of Representatives.

27 (2) Of the members appointed by the Governor, two shall
28 have experience or training in the field of environmental
29 compliance at an industrial facility, one at a large facility
30 and the second at a small or medium-sized industrial

1 facility; two shall be members of environmental organizations
2 with experience in toxic use reduction issues and which are
3 unconnected with any operators; one shall be a person with
4 academic training in the field of industrial processes; one
5 shall be a person with academic training in the field of
6 environmental economics; two shall be representatives of
7 organized labor and have training or experience in the field
8 of occupational diseases and health; one shall have
9 experience in local government; and one shall be a
10 representative of the general public.

11 (b) Terms.--Each of the members appointed by the Governor
12 shall be appointed for a term of four years; the members
13 appointed by the President pro tempore of the Senate, Minority
14 Leader of the Senate, Speaker of the House of Representatives
15 and Minority Leader of the House of Representatives shall serve
16 terms concurrent with the session of the General Assembly.

17 (c) Quorum.--A majority of the membership of the board shall
18 constitute a quorum for the transaction of board business.
19 Action may be taken and motions adopted by the board at any
20 meeting thereof by the affirmative vote of a majority of the
21 members of the board present and voting.

22 (d) Officers and expenses.--The Governor shall appoint a
23 chairman and other officers as may be necessary from among the
24 members of the board. Members of the board shall serve without
25 compensation but shall be entitled to receive reimbursement for
26 all reasonable and necessary expenses, in accordance with the
27 rules of the Executive Board.

28 (e) Powers and duties.--The board shall have the power and
29 duty to:

30 (1) Review any matters submitted to it by the department

1 or the office concerning any aspect of the provisions or
2 implementation of this act, and report its recommendations to
3 the department or office.

4 (2) Conduct an ongoing review of the implementation of
5 this act, including initiating any inquiries it deems
6 necessary or useful, and submit any recommendations for
7 administrative or legislative changes it deems necessary to
8 the department of the office.

9 (3) Advise the office on the interpretation of
10 information submitted in plan documents.

11 (4) Review the scientific literature concerning the
12 human, public health and environmental risks presented by
13 exposures to specific hazardous substances, evaluate
14 scientific interpretations of these risks and assess the
15 risks of the discharge of these hazardous substances into
16 different environmental media.

17 (5) Review and evaluate whether there is any impact on
18 employment levels of reductions in the use or discharge of
19 specific hazardous substances.

20 (6) Conduct periodic reviews of the criteria adopted by
21 the department for the preparation of plan documents and, if
22 deemed necessary, make recommendations to the department for
23 administrative or legislative changes.

24 (7) Study and evaluate the practicability and
25 feasibility of achieving hazardous substance toxic use
26 reduction through the use of substitute substances,
27 alternative procedures or processes, or other means, and
28 whether such methods have any positive or negative impact on
29 employment in the various industries.

30 (8) Conduct research and hold public hearings concerning

1 the continued use, production, manufacture, discharge or
2 disposal of any hazardous substance in this Commonwealth and
3 the threat it poses to human health or the environment, and,
4 if warranted, make a written recommendation to the Governor
5 and the General Assembly concerning the prohibition of, or
6 restrictions on, the continued use, production, manufacture,
7 discharge or disposal of the hazardous substance in this
8 Commonwealth.

9 (9) Review the expenditure by the department of moneys
10 deposited in the Toxic Use Reduction Fund established under
11 section 16.

12 Section 15. Enforcement and penalties.

13 (a) Authority of department.--Whenever, on the basis of
14 information available to the department, the secretary finds
15 that a person is in violation of this act, the secretary shall:

16 (1) issue an order in accordance with subsection (b)
17 requiring the person to comply;

18 (2) bring a civil action in accordance with subsection
19 (c);

20 (3) levy a civil administrative penalty in accordance
21 with subsection (d); or

22 (4) bring an action for a civil penalty in accordance
23 with subsection (e).

24 The exercise of any of the remedies provided in this section
25 shall not preclude recourse to any other remedy so provided.

26 (b) Order.--Whenever, on the basis of information available,
27 the secretary finds that a person is in violation of this act,
28 the secretary may issue an order:

29 (1) specifying the provision of this act, or the rule or
30 regulation adopted pursuant thereto, of which the person is

1 in violation;

2 (2) citing the action that caused the violation;

3 (3) requiring compliance with the provision of this act
4 or the rule or regulation adopted pursuant thereto of which
5 the person is in violation; and

6 (4) giving notice to the person of his right to a
7 hearing on the matters contained in the order.

8 (c) Civil action.--The secretary is authorized to commence a
9 civil action in the court of common pleas of the applicable
10 judicial district for appropriate relief from a violation of
11 this act. This relief may include an assessment against the
12 violator for the costs of any investigation, inspection or
13 monitoring survey that led to the discovery and establishment of
14 the violation and for the reasonable costs of preparing and
15 litigating the case under this subsection.

16 (d) Civil penalty.--

17 (1) The secretary is authorized to impose a civil
18 penalty of not more than \$15,000 for each violation, and each
19 day during which each violation continues shall constitute an
20 additional, separate and distinct offense. Any amount imposed
21 under this subsection shall be assessed under the rules and
22 regulations adopted by the secretary for violations of
23 similar type, seriousness and duration. The secretary shall
24 have the authority to assess penalties prior to the
25 establishment of rules and regulations governing penalties to
26 the extent that such penalties are reasonable and based on
27 other violations of a similar type, seriousness and duration.

28 (2) No civil administrative penalty shall be imposed
29 until after the person has been notified by certified mail or
30 personal service. The notice shall include:

- 1 (i) a reference to the section of the act, rule,
- 2 regulation, order or permit violated;
- 3 (ii) a concise statement of the facts alleged to
- 4 constitute a violation;
- 5 (iii) a statement of the amount of the civil
- 6 administrative penalties to be imposed; and
- 7 (iv) a statement of the person's right to a hearing.

8 The person shall have 20 days from receipt of the notice
9 within which to deliver to the secretary a written request
10 for a hearing. Subsequent to the hearing and upon finding
11 that a violation has occurred, the secretary may issue a
12 final order or civil administrative penalty after imposing
13 the amount of the fine specified in the notice. If no hearing
14 is requested, the notice shall become a final order or a
15 final civil administrative penalty upon the expiration of the
16 20-day period. Payment of the penalty is due when a final
17 order is issued or when the notice becomes a final order or a
18 final civil administrative penalty.

19 (3) The authority to levy a civil administrative penalty
20 is in addition to all other enforcement provisions in this
21 act, and the payment of a civil administrative penalty shall
22 not be deemed to affect the availability of any other
23 enforcement provision in connection with the violation for
24 which the penalty is levied. A civil administrative penalty
25 imposed under this subsection may be compromised by the
26 secretary upon the posting of a performance bond by the
27 violator, or upon terms and conditions the secretary may
28 establish by rule or regulation.

29 (4) In addition to the assessment of a civil
30 administrative penalty, the secretary may, by administrative

1 order and upon an appropriate finding, assess a violator for
2 the reasonable costs of any investigation, inspection or
3 monitoring survey which led to the establishment of the
4 violation.

5 (e) Additional civil penalty.--Any person who violates this
6 act, an order issued under subsection (b) or a court order
7 issued under subsection (c) or who fails to pay in full a civil
8 penalty levied under subsection (d) shall be subject, upon order
9 of a court, to a civil penalty not to exceed \$15,000 for each
10 day during which the violation continues. Any penalty imposed
11 under this subsection may be collected and any costs incurred in
12 connection therewith may be recovered in a civil action brought
13 in the name of the Commonwealth.

14 (f) Private actions.--Any affected person may bring a civil
15 action in the appropriate court of common pleas on his own
16 behalf against any owner or operator for a violation of any
17 provision of this act or any rule or regulation promulgated
18 pursuant thereto, or may bring suit in Commonwealth Court
19 against the department for failure to enforce the provisions of
20 this act or any rule or regulation promulgated pursuant thereto.
21 The court may issue, whenever it deems appropriate, a
22 preliminary, permanent or special injunction as necessary to
23 enforce the provisions of this act or any rule or regulation
24 promulgated pursuant thereto. A private plaintiff who is a
25 prevailing party in any litigation under this subsection shall
26 be awarded all costs of litigation, including, but not limited
27 to, court fees, litigation expenses, deposition transcript fees,
28 expert witness fees and reasonable attorney fees.

29 (g) Falsification of plans.--Any operator or person who
30 willfully falsifies any part of a plan document commits a

1 misdemeanor of the second degree, punishable by a fine of not
2 less than \$2,500 nor more than \$50,000 for each separate
3 offense, or to imprisonment for a period of not more than two
4 years for each separate offense, or both.

5 Section 16. Toxic Use Reduction Fund.

6 (a) Establishment.--There is hereby established a separate
7 account in the State Treasury to be known as the Toxic Use
8 Reduction Fund. The fund shall be credited with all fees imposed
9 and collected by the department under this act, with all
10 penalties collected for violations of this act and with any
11 other moneys that may be made available, or appropriated, to the
12 department for the implementation of this act. Moneys in the
13 fund shall be used by, and are hereby continuously appropriated
14 to, the Department of Environmental Resources solely for the
15 purpose of implementing this act.

16 (b) Assessment.--Commencing within 180 days of the effective
17 date of this act, each operator shall be assessed a fee in the
18 amount of \$970 for each hazardous substance which the facility
19 is required to report on Form R under the Emergency Planning and
20 Community Right-to-Know Act of 1986 (Public Law 99-499, 42
21 U.S.C. § 11023), the fees to be paid into the fund.

22 (c) Payments per pound.--Commencing seven years from the
23 effective date of this act, the fee schedule contained in
24 subsection (b) shall be replaced with a system requiring
25 companies to pay a flat amount per pound of hazardous substance
26 used by the facility. The rate per pound shall be determined by
27 the department, in accordance with a formula to be determined by
28 the department and promulgated by the department as a
29 regulation.

30 Section 17. Effective date.

1 This act shall take effect in 60 days.