

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 3060 Session of
1994

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HUTCHINSON, DALEY AND PERZEL, SEPTEMBER 27, 1994

REFERRED TO COMMITTEE ON CONSERVATION, SEPTEMBER 27, 1994

AN ACT

1 Establishing environmental cleanup requirements for response
2 actions taken to address contaminated media; further defining
3 the cleanup liability of new industries and tenants;
4 establishing a framework for setting environmental
5 remediation standards; establishing the Voluntary Cleanup
6 Loan Fund and the Industrial Land Recycling Fund to aid
7 industrial site cleanups; providing for powers and duties of
8 the Department of Environmental Resources and the
9 Environmental Quality Board; imposing a penalty; and making
10 repeals.

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8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 CHAPTER 1

11 GENERAL PROVISIONS

12 Section 101. Short title.

13 This act shall be known and may be cited as the Remediation
14 Standards and Procedures Act.

15 Section 102. Declaration of policy.

16 The General Assembly finds and declares as follows:

17 (1) The elimination of public health and environmental
18 hazards on existing commercial and industrial land across
19 this Commonwealth is vital to their use and reuse as sources
20 of employment, housing, recreation and open-space areas. The
21 reuse of industrial land is an important component of a sound
22 land-use policy that will help prevent the needless
23 development of prime farmland, open-space areas and natural
24 areas and reduce public costs for installing new water, sewer
25 and highway infrastructure.

26 (2) Incentives should be put in place to encourage
27 responsible persons to voluntarily develop and implement
28 cleanup plans without the use of taxpayer funds or the need
29 for adversarial enforcement actions by the Department of
30 Environmental Resources which frequently only serve to delay

1 cleanups and increase their cost. Procedures should be
2 developed to reduce transactional costs in selecting
3 appropriate remedies and in implementing cleanup plans.

4 (3) Public health and environmental hazards cannot be
5 eliminated without clear, predictable environmental
6 remediation standards and a process for developing those
7 standards. Any remediation standards adopted by this
8 Commonwealth must provide for the protection of public health
9 and the environment.

10 (4) It is necessary for the General Assembly to adopt a
11 statute which sets environmental remediation standards to
12 provide a uniform framework for cleanup decisions because few
13 environmental statutes set cleanup standards and to avoid
14 potentially conflicting and confusing environmental
15 standards.

16 (5) The General Assembly has a duty to implement the
17 provisions of section 27 of Article I of the Constitution of
18 Pennsylvania with respect to environmental remediation
19 activities. Remediation plans should be based on the actual
20 risk that contamination on the site may pose to public health
21 and the environment, taking into account its future use and
22 the degree to which contamination can spread offsite and
23 expose the public or the environment to unacceptable risk,
24 not on cleanup policies requiring every site in this
25 Commonwealth to be returned to a pristine condition.

26 (6) The Department of Environmental Resources now
27 routinely through its permitting policies determines when
28 contamination will and will not pose a significant risk to
29 public health or the environment. Similar concepts should be
30 used in establishing cleanup policies.

(7) The public is entitled to understand how remediation standards are applied to a site through a plain language description of contamination present on a site, the risk it poses to public health and the environment and any proposed cleanup measure.

Section 103. Definitions.

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

"ASTM." The American Society for Testing and Materials.

"Aquifer." A geologic formation, group of formations or part of a formation capable of a sustainable yield of a significant amount of water to a well or spring.

"Background." The concentration of a regulated substance determined by appropriate statistical methods that is present at a site but is not related to the release of regulated substances at the site.

"Baseline environmental report." A report prepared pursuant to section 505, by or on behalf of a prospective purchaser intending to reuse an industrial area, in order to establish the extent of existing contamination, if any, prior to purchase, which report describes the existing or potential public impact of the reuse of the property.

"Baseline risk assessment." An analysis of the potential adverse health effects, current or future, caused by the release or presence of a regulated substance on a site in the absence of any actions to control or mitigate the release.

"Board." The Cleanup Standards Scientific Advisory Board established in section 105.

"Carcinogen." A chemical, biological or physical agent,

1 defined by the Environmental Protection Agency as a human
2 carcinogen.

3 "Control." To apply engineering measures, such as capping or
4 treatment, or institutional measures, such as deed restrictions,
5 to sites with contaminated media.

6 "Department." The Department of Environmental Resources of
7 the Commonwealth.

8 "Engineering controls." Remedial actions directed
9 exclusively toward containing or controlling the migration of
10 regulated substances through the environment. These include, but
11 are not limited to, slurry walls, liner systems, caps, leachate
12 collection systems and groundwater recovery trenches.

13 "EPA." The Environmental Protection Agency or its successor
14 agency.

15 "Fate and transport." A term used to describe the
16 degradation of a chemical over time, and where chemicals are
17 likely to move given their physical and other properties and the
18 environmental medium they are moving through.

19 "Groundwater." Water below the land surface in a zone of
20 saturation.

21 "Hazard index." The sum of more than one hazard quotient for
22 multiple substances and multiple-exposure pathways. The hazard
23 index is calculated separately for chronic, subchronic and
24 shorter duration exposures.

25 "Hazard quotient." The ratio of a single-substance exposure
26 level over a specified period, for example, subchronic, to a
27 reference dose for that substance derived from a similar
28 exposure period.

29 "Hazardous Sites Cleanup Fund." The fund established under
30 the act of October 18, 1988 (P.L.756, No.108), known as the

1 Hazardous Sites Cleanup Act.

2 "Health advisory levels" or "HALs." The Health Advisory
3 Levels published by the United States Environmental Protection
4 Agency for particular substances.

5 "Industrial activity." Commercial, manufacturing, public
6 utility, mining or any other activity done to further either the
7 development, manufacturing or distribution of goods and
8 services, including, but not limited to, administration of
9 business activities, research and development, warehousing,
10 shipping, transport, remanufacturing, stockpiling, storage,
11 solid waste management, repair and maintenance of raw materials,
12 intermediate and final products and solid waste created during
13 such activities, commercial machinery and equipment.

14 "Institutional controls." A measure undertaken to limit or
15 prohibit certain activities that may interfere with the
16 integrity of a remedial action or result in exposure to
17 regulated substances at a site. These include, but are not
18 limited to, fencing or restrictions on the future use of the
19 site.

20 "Medium-specific concentration." The concentration
21 associated with a specified environmental medium for potential
22 risk exposures.

23 "Mitigation measures." Any remediation action performed by a
24 person prior to or during implementation of a remediation plan
25 with the intent to protect human health and the environment.

26 "Monte Carlo simulation." A repeated random sampling from
27 the distribution of values for each of the parameters in a
28 generic, exposure or dose, equation to derive an estimate of the
29 distribution of the population, exposures or doses.

30 "Nonresidential property." Any real property on which

1 commercial, industrial, manufacturing or any other activity is
2 done to further either the development, manufacturing or
3 distribution of goods and services, including, but not limited
4 to, administration of business activities, research and
5 development, warehousing, shipping, transport, remanufacturing,
6 stockpiling of raw materials, storage, repair and maintenance of
7 commercial machinery and equipment or intermediate and final
8 products and solid waste management. The term shall not include
9 schools, nursing homes or other residential-style facilities.

10 "Person." An individual, firm, corporation, association,
11 partnership, consortium, joint venture, commercial entity,
12 authority, nonprofit corporation, interstate body or other legal
13 entity which is recognized by law as the subject of rights and
14 duties. The term includes the Federal Government, State
15 government, political subdivisions and Commonwealth
16 instrumentalities.

17 "Point of compliance." For the purposes of determining
18 compliance with groundwater standards, the property boundary at
19 the time the area of contamination is defined or such point
20 beyond the property boundary as the Department of Environmental
21 Resources may determine to be appropriate.

22 "Practical quantification limit." The lowest limit that can
23 be reliably achieved within specified limits of precision and
24 accuracy under routine laboratory conditions for a specified
25 matrix and based on quantitation, precision and accuracy, normal
26 operation of a laboratory and the practical need in a compliance
27 monitoring program to have a sufficient number of laboratories
28 available to conduct the analysis.

29 "Prospective innocent purchaser." Any person who has a bona
30 fide intention to purchase a property used for industrial

1 activity and who has expressed such intention through a formal
2 agreement, option agreement or other appropriate documentation
3 and who did not by act or omission cause or contribute to any
4 contamination or release of a regulated substance on such
5 property, and who will reuse or redevelop the property for
6 industrial activities or other compatible uses, such as open
7 space or greenways.

8 "Public utility." The term shall have the same meaning as
9 given to it in 66 Pa.C.S. (relating to public utilities).

10 "Regulated substance." The term shall include hazardous
11 substances regulated under the act of October 18, 1988 (P.L.756,
12 No.108), known as the Hazardous Sites Cleanup Act, and
13 substances covered by the act of June 22, 1937 (P.L.1987,
14 No.394), known as The Clean Streams Law, the act of January 8,
15 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control
16 Act, the act of July 7, 1980 (P.L.380, No.97), known as the
17 Solid Waste Management Act, the act of July 13, 1988 (P.L.525,
18 No.93), referred to as the Infectious and Chemotherapeutic Waste
19 Law, and the act of July 6, 1989 (P.L.169, No.32), known as the
20 Storage Tank and Spill Prevention Act.

21 "Release." Spilling, leaking, pumping, pouring, emitting,
22 emptying, discharging, injecting, escaping, leaching, dumping or
23 disposing of a regulated substance into the environment in a
24 manner not authorized by law. The term includes the abandonment
25 or discarding of barrels, containers, vessels and other
26 receptacles containing a regulated substance.

27 "Remedial investigation report." A report prepared in
28 accordance with section 504 by the party undertaking site
29 remediation, which defines the nature and extent of regulated
30 substances present at the site, if any, for the purpose of

1 determining appropriate site remediation.

2 "Remediation." To clean up, mitigate, correct, abate,
3 minimize, eliminate, control or prevent a release of a regulated
4 substance into the environment in order to protect the public
5 health, safety, welfare or the environment, including
6 preliminary actions to study or assess the release.

7 "Residential property." Any property or portion of the
8 property which does not meet the definition of "nonresidential
9 property."

10 "Responsible person." The term shall have the same meaning
11 as given to it in the act of October 18, 1988 (P.L.756, No.108),
12 known as the Hazardous Sites Cleanup Act, and shall include a
13 person subject to enforcement actions for substances covered by
14 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean
15 Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787),
16 known as the Air Pollution Control Act, the act of July 7, 1980
17 (P.L.380, No.97), known as the Solid Waste Management Act, the
18 act of July 13, 1988 (P.L.525, No.93), referred to as the
19 Infectious and Chemotherapeutic Waste Law, and the act of July
20 16, 1989 (P.L.169, No.32), known as the Storage Tank and Spill
21 Prevention Act.

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

24 "Site." The extent of contamination and all areas in close
25 proximity to the contamination necessary for the implementation
26 of remediation activities.

27 "Systemic toxicant." A material that manifests its toxic
28 effect in humans in a form other than cancer.

29 "Treatment." The term shall have the same meaning as given
30 to it in the act of October 18, 1988 (P.L.756, No.108), known as

1 the Hazardous Sites Cleanup Act.

2 Section 104. Scope.

3 The environmental remediation standards established under
4 this act shall be used whenever site remediation and cleanup is
5 conducted under the act of June 22, 1937 (P.L.1987, No.394),
6 known as The Clean Streams Law, the act of January 8, 1960 (1959
7 P.L.2119, No.787), known as the Air Pollution Control Act, the
8 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
9 Management Act, the act of July 13, 1988 (P.L.525, No.93),
10 referred to as the Infectious and Chemotherapeutic Waste Law,
11 the act of October 18, 1988 (P.L.756, No.108), known as the
12 Hazardous Sites Cleanup Act, and the act of July 6, 1989
13 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
14 Act, to be eligible for cleanup liability protection under
15 Chapter 7. In addition, the remediation standards established
16 under this act shall be considered as applicable, relevant and
17 appropriate requirements for this Commonwealth under the
18 Comprehensive Environmental Response Compensation and Liability
19 Act of 1980 (Public Law 96-510, 94 Stat. 2767), as amended by
20 the Superfund Amendments and Reauthorization Act of 1986,
21 (Public Law 99-499, 100 Stat. 1613).

22 Section 105. Cleanup Standards Scientific Advisory Board.

23 (a) Establishment.--There is hereby created a 13-member
24 Cleanup Standards Scientific Advisory Board for the purpose of
25 assisting the department and the Environmental Quality Board in
26 developing Statewide health standards, determining the
27 appropriate statistically and scientifically valid procedures to
28 be used, determining the appropriate risk factors and providing
29 other technical and scientific advice as needed to implement the
30 provisions of this act.

1 (b) Membership.--Five members shall be appointed by the
2 secretary and two members each by the President pro tempore of
3 the Senate, the Minority Leader of the Senate, the Speaker of
4 the House of Representatives and the Minority Leader of the
5 House of Representatives. Members shall have a background in and
6 be practicing in the following fields: engineering, biology,
7 hydrogeology, statistics, epidemiology, chemistry, toxicology or
8 other related scientific education or experience that relates to
9 problems and issues likely to be encountered in developing
10 health-based cleanup standards and other procedures needed to
11 implement the provisions of this act. The board membership shall
12 include representatives of local government, the public and the
13 regulated community. The members shall serve for a period of
14 four years. The initial terms of the members shall be staggered
15 so that at least one-half of the terms expire in two years.

16 (c) Organization.--The board shall elect a chairperson by
17 majority vote and may adopt any bylaws or procedures it deems
18 necessary to accomplish its purpose. Recommendations, positions
19 or other actions of the board shall be by a majority of its
20 members.

21 (d) Expenses.--Members of the board shall be reimbursed for
22 their travel expenses to attend meetings as authorized by the
23 executive board.

24 (e) Support.--The department shall provide the appropriate
25 administrative and technical support needed by the board in
26 order to accomplish its purpose, including support for surveys
27 and technical studies the board may wish to undertake. The
28 department shall publish a notice of meeting dates, times and
29 locations and a list of topics to be discussed at any meeting no
30 less than 14 days prior to the meeting, published in the same

1 manner as required by the act of July 3, 1986 (P.L.388, No.84),
2 known as the Sunshine Act.

3 (f) Interested persons list.--The department shall maintain
4 a mailing list of persons interested in receiving notice of
5 meetings and the activities of the board. The department shall
6 name a contact person to be responsible for board meetings and
7 to serve as a contact for the public to ask questions and get
8 information about the board.

9 (g) Access to documents.--The board shall have access to all
10 department policies and procedures, draft proposed or final
11 regulations or issue papers which the board determines are
12 necessary to achieving its purpose.

13 Section 106. Existing standards.

14 All regulations, policies, guidance documents and procedures
15 which were not adopted under the provisions of this act shall
16 expire three years after the effective date of this act. The
17 standards established in sections 502, 503(b)(3) and 504 shall
18 be effective immediately and shall supersede existing
19 regulations, policies, guidance documents and procedures.

20 CHAPTER 3

21 POWERS AND DUTIES

22 Section 301. Powers and duties of department.

23 (a) General rule.--The department shall have the power and
24 its duty shall be to:

25 (1) Implement the provisions of this act.

26 (2) Cooperate with appropriate Federal, State,
27 interstate and local government agencies in carrying out its
28 duties under this act.

29 (3) Waive any otherwise applicable requirements.

30 (4) Solicit and use the expert advice of the Cleanup

Standards Scientific Advisory Board created under section 105 and provide to the Cleanup Standards Scientific Advisory Board access to all pertinent records and documents as requested.

(b) Report.--The department shall on October 1 of each year report to the General Assembly on the department's efforts to reduce the transactional costs incurred by responsible persons and other persons performing cleanups pursuant to the requirements of this act.

(c) Preliminary regulations.--Prior to proposing regulations, the department shall release draft preliminary regulations and shall seek and consider comments from the public for a period of six months.

Section 302. Powers and duties of Environmental Quality Board.

The Environmental Quality Board shall have the power and its duty shall be to adopt by regulation Statewide health standards, appropriate mathematically valid statistical tests to define compliance with this act and other regulations that may be needed to implement the provisions of this act. Any regulations needed to implement this act shall be proposed by the Environmental Quality Board no later than 18 months after the effective date of this act and shall be finalized no later than 30 months after the effective date of this act, unless otherwise specified in this act.

CHAPTER 5

REMEDIATION PROCEDURES AND STANDARDS

Section 501. Remediation standards.

(a) Standards.--Any person who proposes to respond to the release of a regulated substance at a site and to be eligible for the cleanup liability protection under Chapter 7 shall

1 select and attain compliance with one or more of the following
2 environmental standards when conducting remediation activities:

3 (1) a background standard;

4 (2) a Statewide health standard adopted by the
5 Environmental Quality Board which achieves a uniform
6 Statewide health-based level so that any substantial present
7 or probable future risk to human health and the environment
8 from released regulated substances is eliminated as specified
9 in section 503; or

10 (3) a site-specific standard which achieves remediation
11 levels based on a site-specific risk assessment so that any
12 substantial present or probable future risk to human health
13 and the environment from released regulated substances is
14 eliminated or reduced to protective levels based upon the
15 present or currently planned future use of the property
16 comprising the site as specified in section 504.

17 (b) Combination of standards.--A person may use a
18 combination of the remediation standards to implement a site
19 remediation plan and may propose to use the site-specific
20 standard whether or not efforts have been made to attain the
21 background or Statewide health standard.

22 (c) Determining compliance.--For the purpose of determining
23 compliance with any one or a combination of remediation
24 standards, the concentration of a regulated substance shall not
25 be required to be numerically less than the practical
26 quantification limit for a regulated substance as developed by
27 the United States Environmental Protection Agency.

28 Section 502. Background standard.

29 (a) Standard.--Persons selecting the background standard
30 shall meet background as represented by the results of analyses

1 of representative samples for each regulated substance in each
2 environmental medium.

3 (b) Attainment.--Final certification that a site or portion
4 of a site meets the background standard shall be documented in
5 the following manner:

6 (1) Attainment of the background standard shall be
7 demonstrated by collection and analysis of representative
8 samples from environmental media of concern, including soil
9 and groundwater in aquifers in the area where the
10 contamination occurs through the application of statistical
11 tests set forth in regulation or, if no regulations have been
12 adopted, in a demonstration of a mathematically valid
13 application of statistical tests. The department shall also
14 recognize those methods of attainment demonstration generally
15 recognized as appropriate for that particular remediation.

16 (2) A final report that documents attainment of the
17 background standard shall be submitted to the department
18 which includes, as appropriate:

19 (i) The descriptions of procedures and conclusions
20 of the site investigation to characterize the nature,
21 extent, direction, volume and composition.

22 (ii) The basis for selecting environmental media of
23 concern, descriptions of removal or decontamination
24 procedures performed in remediation, summaries of
25 sampling methodology and analytical results which
26 demonstrate that remediation has attained the background
27 standard.

28 (3) Where remediation measures do not involve removal or
29 treatment of a contaminant to the background standard the
30 final report shall demonstrate that any remaining

1 contaminants on the site will meet Statewide health standards
2 and show compliance with any postremediation care
3 requirements that may be needed to maintain compliance with
4 the Statewide health standards.

5 (4) Institutional controls such as fencing and future
6 land use restrictions on a site may not be used to attain the
7 background standard. Institutional controls may be used to
8 maintain the background standard after remediation occurs.

9 (c) Authority reserved.--If a person fails to demonstrate
10 attainment of the background standard and fails to meet the
11 requirements of sections 503 or 504, the department may require
12 that additional remediation measures be taken in order to meet
13 any one or a combination of environmental standards selected by
14 such person.

15 (d) Deed notice.--Persons attaining and demonstrating
16 compliance with the background standard for all regulated
17 substances throughout a site shall not be subject to the deed
18 acknowledgment requirements of the act of July 7, 1980 (P.L.380,
19 No.97), known as the Solid Waste Management Act, or the act of
20 October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites
21 Cleanup Act. An existing acknowledgment contained in a deed
22 prior to demonstrating compliance with the background standard
23 may be removed.

24 (e) Notice and review provisions.--Persons utilizing the
25 background standard shall comply with the following requirements
26 notifying the public and the department of planned remediation
27 activities:

28 (1) Notice of intent to initiate remediation activities
29 shall be made in the following manner:

30 (i) A notice of intent to remediate a site shall be

1 submitted to the department which, to the extent known,
2 provides a brief description of the location of the site,
3 a listing of the contaminant or contaminants involved,
4 and the proposed remediation measures. The department
5 shall publish an acknowledgment noting receipt of the
6 notice of intent in the Pennsylvania Bulletin.

7 (ii) At the same time a notice of intent to
8 remediate a site is submitted to the department, a copy
9 of the notice shall be provided to the municipality in
10 which the site is located and a summary of the notice of
11 intent shall be published in a newspaper of general
12 circulation serving the area in which the site is
13 located.

14 (2) Notice of the submission of the final report
15 demonstrating attainment of the background standard shall be
16 given to the municipality in which the remediation site is
17 located, published in a newspaper of general circulation
18 serving the area and published in the Pennsylvania Bulletin
19 by the department.

20 (3) The department shall review the final report
21 demonstrating attainment of the background standard within 90
22 days of its receipt or notify the person submitting the
23 report of substantive deficiencies. If the department does
24 not respond with deficiencies within 90 days, the final
25 report shall be deemed approved.

26 (4) In the case of a release occurring after the
27 effective date of this act, where the person responding
28 intends to meet the background standard and to submit the
29 final report demonstrating attainment to the department
30 within 90 days of the release, the notices provided for in

paragraphs (1) and (2) need not be made nor published. If the final report demonstrating attainment is not submitted to the department within 90 days of the release, all notices and procedures required by this subsection shall apply.

Section 503. Statewide health standards.

(a) Standards.--The Environmental Quality Board shall promulgate Statewide health standards for regulated substances for each environmental medium. The standards shall include any existing numerical residential and nonresidential health-based standards adopted by the Federal Government by regulation or statute, or United States Environmental Protection Agency Health Advisory Levels (HALs) and standards adopted by the department which are no more stringent than Federal standards. For those health-based standards not already established by regulation, the department shall, by regulation, propose residential and nonresidential medium-specific concentrations within 18 months of the effective date of this act. The Environmental Quality Board shall also promulgate, along with the standards, the methods used to calculate the standards.

(b) Medium-specific requirements.--The following requirements shall be used in defining a medium-specific concentration limit:

(1) Any discharge or release into surface water occurring during or after attainment of the Statewide health standard shall comply with applicable laws and regulations relating to surface-water discharges.

(2) Any emissions to the outdoor air occurring during or after attainment of the Statewide health standard shall comply with applicable laws and regulations relating to emissions into the outdoor air.

1 (3) The concentration of regulated substance in ground
2 water in aquifers used or currently planned to be used for
3 drinking water or for agricultural purposes shall comply with
4 the maximum contaminant level or HAL established for drinking
5 water. Where no maximum contaminant level or HAL has been
6 established, the ingestion medium-specific concentration
7 level for residential exposure shall be used. If the
8 groundwater at the site has naturally occurring background
9 total dissolved solids concentrations greater than 2,500
10 milligrams per liter, the remediation standard for a
11 regulated substance dissolved in the groundwater may be
12 adjusted by multiplying the medium-specific concentration for
13 groundwater in aquifers by 100. The resulting value becomes
14 the medium-specific concentration level for groundwater.

15 (4) For the residential standard, the concentration of a
16 regulated substance in soil shall not exceed either the
17 direct contact soil medium-specific concentration based on
18 residential exposure factors within a depth of 15 feet from
19 the existing ground surface, or, the soil-to-groundwater
20 pathway numeric value throughout the soil column, the latter
21 to be determined by any one of following methods:

22 (i) A value which is 100 times the medium-specific
23 concentration for groundwater.

24 (ii) A concentration in soil at the site that does
25 not produce a leachate in excess of the medium-specific
26 concentrations for groundwater in the aquifer when
27 subjected to the Synthetic Precipitation Leaching
28 Procedures, Method 1312 of SW 846, Test Methods for
29 Evaluating Solid Waste, promulgated by the EPA.

30 (iii) A generic value determined not to produce a

1 concentration in groundwater in the aquifer in excess of
2 the medium-specific concentration for groundwater based
3 on a valid, peer-reviewed scientific method which
4 properly accounts for factors affecting the fate,
5 transport and attenuation of the regulated substance
6 throughout the soil column.

7 (5) For the nonresidential standard, the concentration
8 of a regulated substance throughout the soil column shall be
9 based on exposure scenarios using valid scientific methods
10 reflecting worker exposure, or, to assure that soil will not
11 cause the medium-specific concentration for groundwater in
12 the aquifer to be exceeded, the soil-to-groundwater pathway
13 numeric value determined in accordance in paragraph (4).

14 (c) Additional limits.--For those regulated substances where
15 medium-specific concentration limits cannot be established using
16 the procedures in subsection (b), the medium-specific
17 concentration limits for the ingestion of groundwater,
18 inhalation of soils, ingestion and inhalation of volatiles and
19 particulate from the soils shall be calculated by the department
20 using valid scientific methods, reasonable exposure pathway
21 assumptions and exposure factors for residential and
22 nonresidential land use as promulgated by the Environmental
23 Quality Board which are no more stringent than the standard
24 default exposure factors established by the United States
25 Environmental Protection Agency based on the following levels of
26 risk:

27 (1) For a regulated substance which is a carcinogen, the
28 medium-specific concentration is the concentration which
29 represents an excess upper bound lifetime cancer target risk
30 between one in 10,000 and one in 1,000,000 due to continuous

lifetime exposure for residential scenarios and a noncontinuous exposure for nonresidential exposure scenarios.

(2) For a regulated substance which is a systemic toxicant, the medium-specific concentration is the concentration to which human populations could be exposed by direct ingestion or inhalation on a daily basis without appreciable risk of deleterious effects for the exposed population.

(d) Attainment.--Final certification that a site or portion of a site meets the Statewide health standard shall be documented in the following manner:

(1) Attainment of cleanup levels shall be demonstrated by collection and analysis of representative samples from the environmental medium of concern, including soils, and groundwater in aquifers at the point of compliance through the application of statistical tests set forth in regulation or, if no regulations have been adopted, in a demonstration of a mathematically valid application of statistical tests. The department shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.

(2) A final report that documents attainment of the Statewide health standard shall be submitted to the department which includes the descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, rate of movement off the site and cumulative effects, if any, volume, composition, concentration of contaminants in environmental media, the basis for selecting environmental media of concern, documentation supporting the selection of residential or

1 nonresidential exposure factors, descriptions of removal or
2 decontamination procedures performed in remediation,
3 summaries of sampling methodology and analytical results
4 which demonstrate that contaminants have been removed or
5 decontaminated to applicable levels and documentation of
6 compliance with postremediation care requirements if they are
7 needed to maintain the Statewide health standard.

8 (3) Institutional controls such as fencing and future
9 land use restrictions on a site may not be used to attain the
10 Statewide health standard. Institutional controls may be used
11 to maintain the Statewide health standard after remediation
12 occurs.

13 (e) Authority reserved.--If a person fails to demonstrate
14 attainment of the Statewide health standard and fails to meet
15 the requirements of section 504, the department may require that
16 additional remediation measures be taken in order to meet any
17 one or a combination of environmental standards selected by such
18 person.

19 (f) Deed notice.--Persons attaining and demonstrating
20 compliance with the Statewide health standard considering
21 residential exposure factors for a regulated substance on the
22 entire site shall not be subject to the deed acknowledgment
23 requirements of the act of July 7, 1980 (P.L.380, No.97), known
24 as the Solid Waste Management Act, or the act of October 18,
25 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
26 Act. An existing acknowledgment contained in a deed prior to
27 demonstrating compliance with the residential Statewide health
28 standard may be removed. The deed acknowledgment requirements
29 shall apply where nonresidential exposure factors were used to
30 comply with the Statewide health standard.

1 (g) Notice and review provisions.--Persons utilizing the
2 Statewide health standard shall comply with the following
3 requirements for notifying the public and the department of
4 planned remediation activities:

5 (1) Notice of intent to initiate remediation activities
6 shall be made in the following manner:

7 (i) A notice of intent to remediate a site shall be
8 submitted to the department which provides, to the extent
9 known, a brief description of the location of the site, a
10 listing of the contaminant or contaminants involved, a
11 description of the intended future use of the property
12 for employment opportunities, housing, open space,
13 recreation or other uses and the proposed remediation
14 measures. The department shall publish an acknowledgment
15 nothing receipt of the notice of intent in the
16 Pennsylvania Bulletin.

17 (ii) At the same time a notice of intent to
18 remediate a site is submitted to the department, a copy
19 of the notice shall be provided to the municipality in
20 which the site is located and a summary of the notice of
21 intent shall be published in a newspaper of general
22 circulation serving the area in which the site is
23 located.

24 (2) Notice of the submission of the final report
25 demonstrating attainment of the Statewide health standard
26 shall be given to the municipality in which the remediation
27 site is located, published in a newspaper of general
28 circulation serving the area and published in the
29 Pennsylvania Bulletin by the department.

30 (3) The department shall review the final report

1 demonstrating attainment of the Statewide health standard
2 within 90 days of its receipt or notify the person submitting
3 the report of substantive deficiencies. If the department
4 does not find deficiencies and respond within 90 days, the
5 final report is approved.

6 (4) In the case of a release occurring after the
7 effective date of this act, where the person responding
8 intends to meet the Statewide health standard and to submit
9 the final report demonstrating attainment to the department
10 within 90 days of the release, the notices required by
11 paragraphs (1) and (2) need not be made or published. If the
12 final report demonstrating attainment is not submitted to the
13 department within 90 days of the release, all notices and
14 procedures required by this subsection shall apply.

15 Section 504. Site-specific standard.

16 (a) General.--Where a site-specific standard is selected as
17 the environmental remediation standard or where the background
18 or Statewide health standard is selected but not achieved, site
19 investigation, risk assessment, cleanup plans and final reports
20 shall be developed using the procedures and factors established
21 by this section.

22 (b) Carcinogens.--For known or suspected carcinogens, soil
23 and groundwater remediation standards shall be established at
24 exposures which represent an excess upper bound lifetime cancer
25 target risk between one in 10,000 and one in 1,000,000 due to
26 continuous lifetime exposure for residential scenarios and a
27 noncontinuous exposure for nonresidential exposure scenarios.
28 The cumulative excess risk to exposed populations, including
29 sensitive subgroups, shall not be greater than one in 10,000.

30 (c) Systemic toxicants.--For systemic toxicants, soil and

groundwater cleanup standards shall represent levels to which the human population could be exposed on a daily basis without appreciable risk of deleterious effect to the exposed population. Where several systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index shall not exceed one. The hazard index is the sum of the hazard quotients for multiple systemic toxicants acting through a single-medium exposure pathway or through multiple-media exposure pathways.

(d) Groundwater.--Cleanup standards for groundwater shall be established using the following considerations:

(1) For groundwater in aquifers, site-specific standards shall be established using the following procedures:

(i) The current and probable future use of groundwater shall be identified and protected.

Groundwater that has a background total dissolved solids content greater than 2,500 milligrams per liter or is not capable of transmitting water to a pumping well in usable and sustainable quantities shall not be considered a current or potential source of drinking water.

(ii) Site-specific sources of contaminants and potential receptors shall be identified.

(iii) Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(2) Groundwater not in aquifers shall be evaluated using current or probable future exposure scenarios. Appropriate management actions shall be instituted at the point of exposure where a person is exposed to groundwater by

1 ingestion or other avenues to protect human health and the
2 environment. This shall not preclude taking appropriate
3 source management actions by the responsible party to achieve
4 the equivalent level of protection.

5 (e) Soil.--Concentrations of released regulated substances
6 in soil shall not exceed: values calculated in accordance with
7 subsections (c) and (h) based on human ingestion of soil where
8 direct-contact exposure to the soil may reasonably occur; values
9 calculated to protect groundwater in aquifers at levels
10 determined in accordance with subsections (b), (c) and (d); and
11 values calculated to satisfy the requirements of subsection (g)
12 with respect to discharges or releases to surface water or
13 emissions to the outdoor air. Such determinations shall take
14 into account the effects of institutional and engineering
15 controls, if any, and shall be based on sound scientific
16 principles, including fate and transport analysis of the
17 migration of a regulated substance in relation to receptor
18 exposures.

19 (f) Factors.--In determining soil and groundwater cleanup
20 standards under subsections (d) and (e), the department shall
21 utilize the following factors:

22 (1) Appropriate exposure factors for the land use of the
23 site with reference to current and currently planned future
24 land use and the effectiveness of institutional or legal
25 controls placed on the future use of the land.

26 (2) Appropriate statistical techniques, including, but
27 not limited to, Monte Carlo simulations, to establish
28 statistically valid cleanup standards.

29 (3) The potential of human ingestion of regulated
30 substances in surface water or other site-specific surface-

1 water exposure pathways, if applicable.

2 (4) The potential of human inhalation of regulated
3 substances from the outdoor air and other site-specific air
4 exposure pathways, if applicable.

5 (g) Air and surface water.--Any discharge into surface water
6 or any emissions to the outdoor air which occur during or after
7 attainment of the site-specific standard shall comply with
8 applicable laws and regulations relating to surface-water
9 discharges or emissions into the outdoor air.

10 (h) Combination of measures.--The standards may be attained
11 through a combination of remediation activities that can include
12 treatment, removal, engineering or institutional controls and
13 can include innovative or other demonstrated measures.

14 (i) Remedy evaluation.--The final remediation plan for a
15 site shall be submitted to the department and shall include
16 remediation alternatives and a final remedy which consider each
17 of the following factors:

18 (1) Long-term risks and effectiveness of the proposed
19 remedy that includes an evaluation of:

20 (i) The magnitude of risks remaining after
21 completion of the remedial action.

22 (ii) The type, degree and duration of
23 postremediation care required, including, but not limited
24 to, operation and maintenance, monitoring, inspections
25 and reports and their frequencies or other activities
26 which will be necessary to protect human health and the
27 environment.

28 (iii) Potential for exposure of human and
29 environmental receptors to regulated substances remaining
30 at the site.

(iv) Long-term reliability of any engineering and voluntary institutional controls.

(v) Potential need for repair, maintenance or replacement of components of the remedy.

(vi) Time to achieve cleanup standards.

(2) Reduction of the toxicity, mobility or volume of regulated substances, including the amount of regulated substances that will be removed, contained, treated or destroyed, the degree of expected reduction in toxicity, mobility or volume and the type, quantity, toxicity and mobility of regulated substances remaining after implementation of the remedy.

(3) Short-term risks and effectiveness of the remedy, including the short-term risks that may be posed to the community, workers or the environment during implementation of the remedy and the effectiveness and reliability of protective measures to address short-term risks.

(4) The ease or difficulty of implementing the proposed remedy by using commercially available technology which has been demonstrated on a consistent basis to effectively achieve the applicable standard under similar applications, degree of difficulty associated with constructing the remedy, expected operational reliability, available capacity and location of needed treatment, storage and disposal services for wastes, time to initiate remedial efforts and approvals necessary to implement the remedial efforts.

(5) The cost of the remediation measures, including capital costs, operation and maintenance costs, net present value of capital and operation and maintenance costs and the initial costs and effectiveness of the system.

(6) The incremental health and economic benefits shall be evaluated by comparing those benefits to the incremental health and economic costs associated with implementation of remedial measures.

(j) Attainment.--Compliance with the site-specific standard is attained for a site or portion of a site when a remedy approved by the department has been implemented in compliance with the following criteria:

(1) Soil, groundwater, surface water and air emission standards as determined under subsections (a) through (h) have been attained.

(2) Attainment of the site-specific standard shall be demonstrated by collection and analysis of samples from affected media, as applicable, such as surface water, soil, groundwater in aquifers at the point of compliance through the application of statistical tests set forth in regulation or, if no regulations have been adopted, in a demonstration of a mathematically valid application of statistical tests. The department shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.

(k) Site investigation and remedy selection.--Any person electing to comply with site-specific standards established by this section shall submit the following reports and evaluations, as required under this section, for review and approval by the department:

(1) A remedial investigation report shall be submitted which includes:

(i) Documentation and descriptions of procedures and conclusions from the site investigation to characterize

1 the nature, extent, direction, rate of movement, volume
2 and composition of regulated substances.

3 (ii) The concentration of regulated substances in
4 environmental media of concern, including summaries of
5 sampling methodology and analytical results, and
6 information obtained from attempts to comply with the
7 background or Statewide health standards, if any.

8 (iii) A description of the existing or potential
9 public benefits of the use or reuse of the property for
10 employment opportunities, housing, open space, recreation
11 or other uses.

12 (iv) A fate and transport analysis may be included
13 in the report to demonstrate whether any present or
14 future exposure pathways exist.

15 (v) If no exposure pathways exist, a risk assessment
16 report and cleanup plan are not required and no remedy is
17 required to be proposed or completed.

18 (2) If required, a risk assessment report shall describe
19 the potential adverse effects under both current and planned
20 future conditions caused by the presence of a regulated
21 substance in the absence of any further control, remediation
22 or mitigation measures. A baseline risk assessment report is
23 not required where it is determined that a specific
24 remediation measure can be implemented to attain the site-
25 specific standard.

26 (3) A cleanup plan shall be submitted which evaluates
27 the relative abilities and effectiveness of potential
28 remedies to achieve the requirements for remedies described
29 in subsection (j) when considering the evaluation factors
30 described in subsection (i). The plan shall select a remedy

1 which achieves the requirements for remedies described in
2 subsection (j). The department may require a further
3 evaluation of the selected remedy or an evaluation of one or
4 more additional remedies in response to comments received
5 from the community surrounding the site as a result of the
6 community involvement plan established in subsection (n)
7 which are based on the factors described in subsection (i) or
8 as a result of its own analyses which are based on the
9 evaluation factors described in subsection (i).

10 (4) A final report demonstrating that the approved
11 remedy has been completed in accordance with the cleanup plan
12 shall be submitted to the department.

13 (5) Nothing in this section shall preclude a person from
14 submitting a remedial investigation report, risk assessment
15 report and cleanup plan at one time to the department for
16 review.

17 (6) Decisions by the department involving the reports
18 and evaluations required under this section shall be
19 considered appealable actions under the act of July 13, 1988
20 (P.L.530, No.94), known as the Environmental Hearing Board
21 Act.

22 (1) Deed notice.--Persons attaining and demonstrating
23 compliance with site-specific standards for a regulated
24 substance on a site shall be subject to the deed acknowledgment
25 requirements of the act of July 7, 1980 (P.L.380, No.97), known
26 as the Solid Waste Management Act, or the act of October 18,
27 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
28 Act. The notice shall include whether residential or
29 nonresidential exposure factors were used to comply with the
30 site-specific standard.

(m) Notice and review provisions.--Persons utilizing the site-specific standard shall comply with the following requirements for notifying the public and the department of planned remediation activities:

(1) (i) A notice of intent to remediate a site shall be submitted to the department which provides, to the extent known, a brief description of the location of the site, a listing of the contaminant or contaminants involved and the proposed remediation measures. The department shall publish an acknowledgment noting receipt of the notice of intent in the Pennsylvania Bulletin. At the same time a notice of intent to remediate a site is submitted to the department, a copy of the notice shall be provided to the municipality in which the site is located and a summary of the notice of intent shall be published in a newspaper of general circulation serving the area in which the site is located.

(ii) The notices required by this paragraph shall include a 30-day public and municipal comment period during which the community can request to be involved in the development of the cleanup and reuse plans for the site. If requested by the community, the person undertaking the cleanup shall develop and implement a public involvement program plan which meets the requirements of subsection (n). Persons undertaking the cleanup are encouraged to develop a proactive approach to working with the community in developing and implementing cleanup and reuse plans.

(2) The following notice and review provisions apply each time a remedial investigation report, risk assessment

1 report, cleanup plan and final report demonstrating
2 compliance with the site-specific standard is submitted to
3 the department:

4 (i) When the report or plan is submitted to the
5 department, a notice of its submission shall be provided
6 to the municipality in which the site is located and a
7 notice summarizing the findings and recommendations of
8 the report or plan shall be published in a newspaper of
9 general circulation serving the area in which the site is
10 located. If the community requested to be involved in the
11 development of the cleanup and reuse plans, the reports
12 and plans shall also include the comments submitted by
13 the community and the responses from the persons
14 preparing the reports and plans.

15 (ii) The department shall review the report or plan
16 within no more than 90 days of its receipt or notify the
17 person submitting the report of deficiencies. If the
18 department does not respond with deficiencies within 90
19 days, the report shall be deemed approved.

20 (3) When the remedial investigation report, risk
21 assessment report and cleanup plan are submitted to the
22 department, the department shall notify persons of any
23 deficiencies within 120 days of last submission. If the
24 department does not find deficiencies and respond within 120
25 days, the reports are approved.

26 (n) Community involvement.--Persons using site-specific
27 standards are required to develop a community involvement plan
28 which involves the community in the cleanup and use of the
29 property if the community requests to be involved in the cleanup
30 and reuse plans for the site. The plan shall propose measures to

1 involve the community in the development and review of the
2 remedial investigation report, risk assessment report, cleanup
3 plan and final report. Depending on the site involved,
4 techniques such as developing a proactive community information
5 and consultation program that includes public meetings and
6 roundtable discussions, convenient locations where documents
7 related to a cleanup can be made available to the public and
8 designating a single contact person to whom community residents
9 can ask questions; the formation of a community-based group
10 which is used to solicit suggestions and comments on the various
11 reports required by this section; if needed, the retention of
12 trained, independent third parties to facilitate meetings and
13 discussions and perform mediation services.

14 Section 505. Reuse of industrial areas.

15 (a) Special sites.--The current owner of a property used for
16 industrial activities and a prospective innocent purchaser of
17 such property may jointly elect to follow the review procedures
18 of this section. Such joint election shall be submitted to the
19 department in writing signed by both the property owner and the
20 prospective innocent purchaser.

21 (b) Baseline report.--A baseline environmental report shall
22 be prepared for the property based on a work plan approved by
23 the department to establish a reference point showing existing
24 contamination on the site. The report shall describe the
25 proposed remediation measures to be undertaken within the limits
26 of cleanup liability found in section 702. The report shall also
27 include a description of the existing or potential public
28 impacts, both beneficial and detrimental, of the use or reuse of
29 the property for employment opportunities, housing, open space,
30 recreation or other use.

1 (c) Public review.--Persons undertaking the cleanup and
2 reuse of sites under this section shall comply with the
3 following public notice and review requirements:

4 (1) A notice of intent to remediate a site shall be
5 submitted to the department which provides, to the extent
6 known, a brief description of the location of the site, a
7 listing of the contaminant or contaminants involved and the
8 proposed remediation measures. The department shall publish
9 an acknowledgment noting receipt of the notice of intent in
10 the Pennsylvania Bulletin. At the same time a notice of
11 intent to remediate a site is submitted to the department,
12 the person undertaking the cleanup shall provide a copy of
13 the notice to the municipality in which the site is located
14 and shall publish a summary of the notice of intent in a
15 newspaper of general circulation serving the area in which
16 the site is located.

17 (2) The notices required by this subsection shall
18 include a 30-day public and municipal comment period during
19 which the community can request to be involved in the
20 development of the cleanup and reuse plans for the site. If
21 requested by the community, the person undertaking the
22 cleanup shall develop and implement a public involvement
23 program plan which meets the requirements of section 504(n).
24 Persons undertaking the cleanup are encouraged to develop a
25 proactive approach to working with the community in
26 developing and implementing cleanup and reuse plans.

27 (d) Department review.--No later than 90 days after the
28 completed environmental report is submitted for review, the
29 department shall determine whether the report adequately
30 identifies the environmental hazards and risks posed by the

1 site. The comments obtained as a result of a community
2 involvement plan developed pursuant to section 504(n) shall also
3 be considered by the department. The department shall notify the
4 person submitting the report of deficiencies within 90 days. If
5 the department does not respond within 90 days, the study is
6 deemed approved.

7 (e) Agreement.--The department and the prospective innocent
8 purchaser undertaking the reuse of a special industrial site
9 shall enter into an agreement, based on the environmental
10 report, which outlines cleanup responsibility for the property,
11 if any, consistent with the provisions of Chapter 7.

12 (f) Department actions.--A person entering into an agreement
13 pursuant to this section shall not interfere with any subsequent
14 remediation efforts by the department or others to deal with
15 contamination identified in the baseline environmental report so
16 long as it does not disrupt the use of the property.

17 (g) Deed notice.--Persons entering into agreements pursuant
18 to this section shall be subject to the deed acknowledgment
19 requirements of the act of July 7, 1980 (P.L.380, No.97), known
20 as the Solid Waste Management Act, or the act of October 18,
21 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
22 Act, where applicable.

23 (h) Allocation.--In the event that the department determines
24 that remediation measures beyond those required by section
25 702(b) are necessary at a site subject to this section, and such
26 measures are not voluntarily undertaken pursuant to sections 502
27 through 504, the department shall gather necessary information
28 and shall develop an initial mandatory proportionate allocation
29 of cleanup liability among those parties determined by the
30 department to be responsible persons under applicable law. Any

1 environmental remediation undertaken pursuant to this section
2 shall comply with one or more of the standards established in
3 this chapter.

4 (1) The department shall consider the following factors
5 as appropriate in developing an initial mandatory
6 proportionate allocation of cleanup liability:

7 (i) The extent to which each person's contribution
8 to the release of a regulated substance can be
9 distinguished.

10 (ii) The amount of regulated substance involved.

11 (iii) The degree of toxicity of the regulated
12 substance involved.

13 (iv) The degree of involvement of and care exercised
14 by each responsible person.

15 (v) The degree of cooperation by each party with
16 Federal, State or local officials to prevent harm to the
17 public health or the environment.

18 (vi) Knowledge of each person of the hazardous
19 nature of the regulated substance.

20 (2) The department shall give written notice to the
21 responsible persons identified as part of the initial
22 mandatory proportionate allocation and shall provide such
23 persons with a copy of the baseline environmental report
24 required by subsection (b). Persons receiving such notice
25 from the department shall have 60 days to comment to the
26 department regarding both the allocation and the baseline
27 environmental report. The department shall consider such
28 comments and within 90 days after the close of the comment
29 period issue a final proportionate allocation of cleanup
30 liability and make modifications, if any, to the baseline

1 environmental report. Notice of the final allocation and
2 modifications, if any, to the baseline environmental report
3 shall be provided to all responsible persons identified in
4 the initial allocation and shall be published in the
5 Pennsylvania Bulletin.

6 (3) Within 30 days of receipt of notification of the
7 final allocation, responsible persons identified by the
8 department shall notify the department in writing whether or
9 not it will accept the final allocation of cleanup liability.
10 Persons accepting the final proportionate allocation of
11 cleanup liability shall enter into an agreement with the
12 department which shall establish proportionate liability for
13 cleanup of the property and provide for remediation pursuant
14 to one or more of the standards established under this act.

15 Section 506. Local land development controls.

16 This act shall not affect the ability of local governments to
17 regulate land development under the act of July 31, 1968
18 (P.L.805, No.247), known as the Pennsylvania Municipalities
19 Planning Code. The use of the identified property and any deed
20 restrictions used as part of a remediation plan shall comply
21 with local land development controls adopted under the
22 Pennsylvania Municipalities Planning Code.

23 Section 507. Immediate response.

24 (a) Emergency response.--The provisions of this chapter
25 shall not prevent or impede the immediate response of the
26 department or responsible person to an emergency which involves
27 an imminent or actual release of a regulated substance which
28 threatens public health or the environment. The final
29 remediation of the site shall comply with the provisions of this
30 chapter which shall not be prejudiced by the mitigation measures

1 undertaken to that point.

2 (b) Interim response.--The provisions of this chapter shall
3 not prevent or impede a responsible person from undertaking
4 mitigation measures to prevent significant impacts on human
5 health or the environment. Those mitigation measures may include
6 limiting public access to the release area, installing drainage
7 controls to prevent runoff, stabilization and maintenance of
8 containment structures, actions to prevent the migration of
9 regulated substances, on-site treatment or other measures not
10 prohibited by the department. The final remediation of the site
11 shall comply with the provisions of this chapter which shall not
12 be prejudiced by the mitigation measures undertaken to that
13 point.

14 CHAPTER 7

15 CLEANUP LIABILITY PROTECTION

16 Section 701. Cleanup liability protection.

17 (a) General.--Any person demonstrating compliance with the
18 environmental remediation standards established in Chapter 5
19 shall be relieved of further liability for the remediation of
20 the site under the statutes outlined in section 104 for any
21 contamination identified in reports submitted to and approved by
22 the department to demonstrate compliance with these standards
23 and shall not be subject to citizen suits or other contribution
24 actions brought by responsible persons. The cleanup liability
25 protection provided by this chapter applies to the following
26 persons:

27 (1) The current or future owner of the identified
28 property who participated in the remediation of the site.

29 (2) A person who develops or otherwise operates or
30 occupies the identified site.

1 (3) A successor or assign of any person to whom the
2 liability protection applies.

3 (4) A public utility to the extent the public utility
4 performs activities on the identified site.

5 (b) Liability.--A person shall not be considered a person
6 responsible for a release or a threatened release of a regulated
7 substance simply by virtue of conducting an environmental
8 assessment or transaction screen on a property. Nothing in this
9 section relieves a person of any liability for failure to
10 exercise due diligence in performing an environmental assessment
11 or transaction screen.

12 (c) Illegal activities.--The provisions of this chapter do
13 not create a defense against the imposition of criminal and
14 civil fines and penalties or administrative penalties otherwise
15 authorized by law and imposed as the result of the illegal
16 disposal of waste or for the pollution of the land, air or
17 waters of this Commonwealth on the identified site.

18 Section 702. Reused industrial sites.

19 (a) Agreement.--The department and the prospective innocent
20 purchaser undertaking the reuse of an industrial site under
21 section 505 shall enter into an agreement, based on the
22 environmental report, which outlines cleanup responsibility for
23 the site. Any person included in such an agreement shall not be
24 subject to a citizen suit or other contribution actions brought
25 by responsible persons or further action by the department to
26 compel site remediation, except as necessary to enforce the
27 terms of the agreement.

28 (b) Liability.--The cleanup liabilities of the prospective
29 innocent purchaser undertaking the reuse of an industrial site
30 under section 505 shall include only the following:

1 (1) The person shall only be responsible for remediation
2 of any immediate, direct or imminent threats to public health
3 or the environment, such as drummed waste, which would
4 prevent the site from being occupied for its intended
5 purpose.

6 (2) The person shall not be held responsible for the
7 remediation of any contamination identified in the
8 environmental report, other than the contamination noted in
9 paragraph (1).

10 (3) Nothing in this act shall relieve the person from
11 any cleanup liability for contamination later caused by that
12 person on the site.

13 (c) Successor, assign, developer or occupier.--A successor
14 or assign of any person to whom cleanup liability protection
15 applies for a site or a future developer or occupier of the site
16 shall not be considered a responsible person for purposes of
17 assigning cleanup liability, provided the successor or assign is
18 not a person responsible for contamination on the site who did
19 not participate in the environmental remediation action.

20 (d) Responsible parties.--Any responsible person accepting
21 the department's final proportionate allocation of cleanup
22 liability and entering into an agreement with the department in
23 accordance with section 505(h) and successfully carrying out the
24 provisions of such agreement shall have satisfied its liability
25 for the site to the Commonwealth and shall not be subject to a
26 citizen suit or other contribution action brought by any other
27 person. Any responsible person not accepting the department's
28 final proportionate allocation shall remain and be subject to
29 any and all actions, proceedings and remedies provided by other
30 applicable law, including, but not limited to, enforcement

1 action by the department, citizen suits or contribution action
2 brought by any other person.

3 (e) Public utility.--A public utility shall not be
4 considered a responsible person for purposes of assigning
5 cleanup liability to the extent the public utility performs
6 activities on the identified site, provided the public utility
7 is not a person responsible for contamination on the property.

8 Section 703. Existing exclusions.

9 The protection from cleanup liability afforded under this act
10 shall be in addition to the exclusions from being a responsible
11 person under the statutes listed in section 104.

12 Section 704. New liability.

13 Nothing in this act shall relieve a person receiving
14 protection from cleanup liability under this chapter from any
15 cleanup liability for contamination later caused by that person
16 on a site which has demonstrated compliance with one or more of
17 the environmental remediation standards established in Chapter
18 5.

19 Section 705. Reopener.

20 Any person who completes remediation in compliance with this
21 act shall not be required to undertake additional remediation
22 actions unless the department can show that:

23 (1) fraud was committed in the certification of the site
24 that resulted in avoiding the need for further cleanup of the
25 site;

26 (2) new information confirms the existence of an area of
27 previously unknown contamination;

28 (3) the remediation method failed to meet one or a
29 combination of the three cleanup standards; or

30 (4) substantial changes in exposure conditions, such as

1 a change from nonresidential to residential use or new
2 information about regulated substances associated with the
3 site which results in the level of risk achieved by meeting
4 the standard set forth in section 504 increasing beyond the
5 acceptable risk range. In the case of change in use, only the
6 person undertaking such a change may be required to complete
7 additional remediation actions.

8 Section 706. Authority reserved.

9 Except as otherwise specifically provided, nothing in this
10 act shall affect the ability or authority of any person to seek
11 any relief available against any party who may have liability
12 with respect to a site. This act shall not affect the ability or
13 authority to seek contribution from any person who may have
14 liability with respect to the site and is not covered by the
15 cleanup liability protection provisions of this act.

16 CHAPTER 9

17 (RESERVED)

18 CHAPTER 11

19 INDUSTRIAL LAND RECYCLING FUND

20 Section 1101. Industrial Land Recycling Fund.

21 (a) Fund.--There is hereby established a separate account in
22 the State Treasury, to be known as the Industrial Land Recycling
23 Fund, which shall be a special fund administered by the
24 department.

25 (b) Purpose.--The moneys deposited in this fund shall be
26 used by the department for the purpose of implementing the
27 provisions of this act. Moneys from the Hazardous Sites Cleanup
28 Fund shall also be available to the department to remediate a
29 release or threatened release on a property covered by the
30 provisions of this act.

1 (c) Funds.--In addition to any funds appropriated by the
2 General Assembly, Federal funds and private contributions and
3 any fines and penalties assessed under this act shall be
4 deposited into the fund.

5 (d) Annual report.--The department shall on October 1 of
6 each year report to the General Assembly on the expenditures and
7 commitments made from the Industrial Land Recycling Fund.

8 Section 1102. Voluntary Cleanup Loan Program.

9 (a) Establishment.--There is hereby established a separate
10 account in the State Treasury, to be known as the Voluntary
11 Cleanup Loan Fund, which shall be a special fund administered by
12 the Department of Commerce. Within 60 days of the effective date
13 of this act, the Department of Commerce shall finalize
14 guidelines and issue application forms to administer this fund.

15 (b) Purpose.--The Voluntary Cleanup Loan Fund is to help
16 provide funding to persons who did not cause or contribute to
17 the contamination on the site and who propose to undertake the
18 voluntary remediation of a property. The funding shall be in the
19 form of low-interest loans and grants for up to 75% of the costs
20 incurred for completing an environmental study and for
21 implementing a cleanup plan for the following categories of
22 applicants:

23 (1) Local economic development agencies shall be
24 eligible for grants and for low-interest loans at a rate of
25 not more than 2% for the purpose of completing environmental
26 studies and implementing cleanup plans.

27 (2) Low-interest loans shall be available at a rate of
28 not more than 2% for the purpose of completing environmental
29 studies and implementing cleanup plans by other applicants.

30 (c) Funds.--In addition to any funds appropriated by the

1 General Assembly, at least \$5,000,000 shall be transferred on
2 July 1 of each year from the Hazardous Sites Cleanup Fund
3 established by the act of October 18, 1988 (P.L.756, No.108),
4 known as the Hazardous Sites Cleanup Act, to the Voluntary
5 Cleanup Loan Fund for the purpose of implementing the program
6 established in this section. Moneys received by the Department
7 of Commerce as repayment of outstanding loans shall be deposited
8 in the fund. Any interest earned by moneys in the fund shall
9 remain in the fund. The first transfer of funds from the
10 Hazardous Sites Cleanup Fund required by this subsection shall
11 occur within 60 days of the effective date of this act.

12 (d) Annual report.--The Department of Commerce shall on
13 October 1 of each year report to the General Assembly on the
14 grants, loans, expenditures and commitments made from the fund.
15 Section 1103. Fees.

16 (a) Amount.--The department shall collect the following fees
17 for the review of reports required to be submitted to implement
18 the provisions of this act:

19 (1) A person utilizing the background or Statewide
20 health standards for environmental remediation shall pay a
21 fee of \$250 upon submission of the report certifying
22 compliance with the standards.

23 (2) A person utilizing site-specific standards for
24 environmental remediation shall pay a fee of \$250 each upon
25 the submission of a remedial investigation, risk assessment
26 and cleanup plan and an additional \$500 at the time of
27 submission of the final report certifying compliance with the
28 standards.

29 (3) A person utilizing a combination of background,
30 Statewide and site-specific standards shall pay the fees

required by paragraphs (1) and (2), as applicable.

(4) No fee shall be charged for corrective actions undertaken under the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act.

(b) Deposit.--Fees imposed under this section shall be deposited in the Industrial Land Recycling Fund established under section 1101.

Section 1104. Transfer of funds.

The sum of \$500,000 is hereby appropriated to the Department of Environmental Resources for fiscal year 1994-1995 from the Hazardous Sites Cleanup Fund for the purpose of implementing this act.

CHAPTER 13

MISCELLANEOUS PROVISIONS

Section 1301. Plain language.

Remedial investigation, risk assessment, cleanup plans and other reports and notices required to be submitted to implement the provisions of this act shall contain a summary or special section that includes a plain language description of the information included in the report in order to enhance the opportunity for public involvement and understanding of the remediation process.

Section 1302. Permits.

A State or local permit or permit revisions shall not be required for remediation activities undertaken entirely on the site if they are undertaken pursuant to the requirements of this act.

Section 1303. Future actions.

At any time, a request may be made to the department to change the land use of the site from nonresidential to

1 residential. The department shall only approve the request upon
2 a demonstration that the site meets all the applicable cleanup
3 standards for residential use of the property. Any existing deed
4 acknowledgment contained in the deed prior to demonstrating
5 compliance with the residential use standard may be removed.

6 Section 1304. Relationship to Federal and State programs.

7 (a) Federal.--The provisions of this act shall not prevent
8 the Commonwealth from enforcing specific numerical cleanup
9 standards, monitoring or compliance requirements required to be
10 enforced by the Federal Government as a condition of primacy or
11 to receive Federal funds.

12 (b) State priority list.--Any remediation undertaken on a
13 site included on the State priority list established under the
14 act of October 18, 1988 (P.L.756, No.108), known as the
15 Hazardous Sites Cleanup Act, shall attain the site-specific
16 standard established in section 504 and shall be performed in
17 compliance with the administrative record and other procedural
18 and public review requirements of Chapter 5 of the Hazardous
19 Sites Cleanup Act.

20 (c) Storage tanks.--The environmental remediation standards
21 established under this act shall be used in corrective actions
22 undertaken pursuant to the act of July 6, 1989 (P.L.169, No.32),
23 known as the Storage Tank and Spill Prevention Act. However, the
24 procedures in the Storage Tank and Spill Prevention Act for
25 giving notice and for reviewing and approving corrective actions
26 shall be used in lieu of the procedures, notices and reviews
27 required by this act.

28 Section 1305. Enforcement.

29 (a) General.--The department is authorized to use the
30 enforcement and penalty provisions applicable to the

1 environmental medium or activity of concern, as appropriate,
2 established under the act of June 22, 1937 (P.L.1987, No.394),
3 known as The Clean Streams Law, the act of January 8, 1960 (1959
4 P.L.2119, No.787), known as the Air Pollution Control Act, the
5 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
6 Management Act, the act of July 13, 1988 (P.L.525, No.93),
7 referred to as the Infectious and Chemotherapeutic Waste Law,
8 the act of October 18, 1988 (P.L.756, No.108), known as the
9 Hazardous Sites Cleanup Act, or the act of July 6, 1989
10 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
11 Act, to enforce the provisions of this act.

12 (b) Fraud.--Any person who willfully commits fraud
13 demonstrating attainment with one or more standards established
14 under this act shall, upon conviction, be subject to an
15 additional penalty of up to \$50,000 for each separate offense or
16 to imprisonment for a period of not more than one year for each
17 separate offense, or both. Each day from the date of
18 demonstration of attainment shall be a separate offense.

19 Section 1306. Past penalties.

20 Persons who have no responsibility for contamination on a
21 site and participate in environmental remediation activities
22 under this act shall not be responsible for paying any fines or
23 penalties levied against any person responsible for
24 contamination on the property.

25 Section 1307. Repeals.

26 (a) Absolute.--Section 504(b), (c), (d), (e), (f) and (h) of
27 the act of October 18, 1988 (P.L.756, No.108), known as the
28 Hazardous Sites Cleanup Act, are repealed.

29 (b) General.--All other acts and parts of acts are repealed
30 insofar as they are inconsistent with this act and related to

- 1 environmental remediation.
- 2 Section 1308. Effective date.
- 3 This act shall take effect in 60 days.