

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 972 Session of 1993

INTRODUCED BY BRIGHTBILL, MUSTO, STEWART, SHAFFER, BELAN, ROBBINS, FISHER, JUBELIRER, LOEPER, MELLOW, LINCOLN, FUMO, BELL, HELFRICK, STAPLETON, RHOADES, JONES, GREENLEAF, PECORA, HOLL, SCHWARTZ, PETERSON, DAWIDA, ARMSTRONG, FATTAH, MADIGAN, LEWIS, MOWERY, SCANLON, PUNT, WILLIAMS, SALVATORE, SHUMAKER, LAVALLE, WENGER, CORMAN, LEMMOND, STOUT, O'PAKE, BAKER, REIBMAN, PORTERFIELD, AFFLERBACH, BODACK, BORTNER AND STINSON, APRIL 22, 1993

AS AMENDED ON THIRD CONSIDERATION, APRIL 18, 1994

AN ACT

1 Providing for the recycling of existing industrial and
2 commercial sites; further defining the cleanup liability of
3 new industries and tenants; establishing a framework for
4 setting environmental remediation standards; establishing the
5 Voluntary Cleanup Loan Fund and the Industrial Land Recycling
6 Fund to aid industrial site cleanups; assigning powers and
7 duties to the Environmental Quality Board and the Department
8 of Environmental Resources; and making 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 Land
14 Recycling and Environmental Remediation Standards 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.

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

8 (4) It is necessary for the General Assembly to adopt a
9 statute which sets environmental remediation standards to
10 provide a uniform framework for cleanup decisions because few
11 environmental statutes set cleanup standards and to avoid
12 potentially conflicting and confusing environmental
13 standards. The General Assembly also has a duty to implement
14 the provisions of section 27 of Article I of the Constitution
15 of Pennsylvania with respect to environmental remediation
16 activities.

17 (5) Cleanup plans should be based on the actual risk
18 that contamination on the site may pose to public health and
19 the environment, taking into account its future use and the
20 degree to which contamination can spread offsite and expose
21 the public or the environment to risk, not on cleanup
22 policies requiring every site in this Commonwealth to be
23 returned to a pristine condition.

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

29 (7) The public is entitled to understand how remediation
30 standards are applied to a site through a plain language

1 description of contamination present on a site, the risk it
2 poses to public health and the environment and any proposed
3 cleanup measure.

4 Section 103. Definitions.

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

8 "ASTM." The American Society of FOR Testing AND Materials. ←

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

12 "Background." The concentration of a regulated substance
13 determined by appropriate statistical methods that is present in ←
14 ~~the immediate vicinity of the site~~ but is not related to the
15 release of regulated substances at the site.

16 "BADCT" or "Best Available Demonstrated Control Technology."
17 The commercially available engineering technology which has
18 demonstrated at full scale on a consistent basis that it most
19 effectively achieves the standard for a remediation action for a
20 regulated substance at a contaminated site under similar
21 applications.

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

24 "Carcinogen." A cancer-causing agent, chemical, biological
25 or physical, defined by the Environmental Protection Agency as a
26 carcinogen.

27 "Control." To apply engineering measures, such as capping or
28 treatment, or institutional measures, such as deed restrictions,
29 to sites with contaminated media.

30 "Department." The Department of Environmental Resources of

1 the Commonwealth.

2 "EPA." The Environmental Protection Agency or its successor
3 agency.

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

8 "Groundwater." Water below the land surface in a zone of
9 saturation.

10 "Hazard index." The sum of more than one hazard quotient for
11 multiple substances and multiple exposure pathways. The hazard
12 index is calculated separately for chronic, subchronic and
13 shorter duration exposures.

14 "Hazard quotient." The ratio of a single substance exposure
15 level over a specified period, e.g. subchronic, to a reference
16 dose for that substance derived from a similar exposure period.

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

20 "Industrial activity." Commercial, manufacturing, public
21 utility, mining or any other activity done to further either the
22 development, manufacturing or distribution of goods and
23 services, including, but not limited to, administration of
24 business activities, research and development, warehousing,
25 shipping, transport, remanufacturing, stockpiling, storage,
26 solid waste management, repair and maintenance of raw materials,
27 intermediate and final products and solid waste created during
28 such activities, commercial machinery and equipment.

29 "INSTITUTIONAL CONTROLS." A MEASURE UNDERTAKEN TO LIMIT OR
30 PROHIBIT CERTAIN ACTIVITIES THAT MAY INTERFERE WITH THE

<—

1 INTEGRITY OF A REMEDIAL ACTION OR RESULT IN EXPOSURE TO
2 REGULATED SUBSTANCES AT A SITE. THESE INCLUDE, BUT ARE NOT
3 LIMITED TO, FENCING OR RESTRICTIONS ON THE FUTURE USE OF THE
4 SITE.

5 "Medium-specific concentration." The concentration
6 associated with a specified environmental medium for potential
7 risk exposures.

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

11 "Nonresidential property." Any real property on which
12 commercial, industrial, manufacturing or any other activity is
13 done to further either the development, manufacturing or
14 distribution of goods and services, including, but not limited
15 to, administration of business activities, research and
16 development, warehousing, shipping, transport, remanufacturing,
17 stockpiling of raw materials, storage, repair and maintenance of
18 commercial machinery and equipment or intermediate and final
19 products and solid waste management. THIS TERM SHALL NOT INCLUDE ←
20 SCHOOLS, NURSING HOMES OR OTHER RESIDENTIAL-STYLE FACILITIES.

21 "Person." An individual, firm, corporation, association,
22 partnership, consortium, joint venture, commercial entity,
23 authority, nonprofit corporation, interstate body or other legal
24 entity which is recognized by law as the subject of rights and
25 duties. The term includes the Federal Government, State
26 government, political subdivisions and Commonwealth
27 instrumentalities.

28 "Point of compliance." For the purposes of determining
29 compliance with groundwater standards, the property boundary at
30 the time the area of contamination is defined or such point

1 beyond the property boundary as the Department of Environmental
2 Resources may determine to be appropriate.

3 "Practical quantitation limit." The lowest limit that can be
4 reliably achieved within specified limits of precision and
5 accuracy under routine laboratory conditions for a specified
6 matrix and based on quantitation, precision and accuracy, normal
7 operation of a laboratory and the practical need in a
8 compliance-monitoring program to have a sufficient number of
9 laboratories available to conduct the analyses.

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

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

23 "Release." Spilling, leaking, pumping, pouring, emitting,
24 emptying, discharging, injecting, escaping, leaching, dumping or
25 disposing of a regulated substance into the environment in
26 ~~violation of State law~~ A MANNER NOT AUTHORIZED BY THE DEPARTMENT <—
27 OF ENVIRONMENTAL RESOURCES. The term includes the abandonment or
28 discarding of barrels, containers, vessels and other receptacles
29 containing a regulated substance.

30 "Remediation." To clean up, mitigate, correct, abate,

1 minimize, eliminate, control or prevent a release of a regulated
2 substance into the environment in order to protect the present
3 or future public health, safety, welfare or the environment,
4 including preliminary actions to study or assess the release.

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

8 "Responsible person." The term shall have the same meaning
9 as given to it in the act of October 18, 1988 (P.L.756, No.108),
10 known as the Hazardous Sites Cleanup Act, and shall include a
11 person subject to enforcement actions for substances covered by
12 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean
13 Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787),
14 known as the Air Pollution Control Act, the act of July 7, 1980
15 (P.L.380, No.97), known as the Solid Waste Management Act, the
16 act of July 13, 1988 (P.L.525, No.93), referred to as the
17 Infectious and Chemotherapeutic Waste Law, and the act of July
18 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill
19 Prevention Act.

20 "Secretary." The Secretary of Environmental Resources of the
21 Commonwealth.

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

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

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

30 Section 104. Powers and duties.

1 (a) Environmental Quality Board.--The Environmental Quality
2 Board shall have the power and its duty shall be to adopt by
3 regulation Statewide health standards, appropriate
4 mathematically valid statistical tests to define compliance with
5 this act and other regulations that may be needed to implement
6 the provisions of this act. Any regulations needed to implement
7 this act shall be proposed by the department no later than 12
8 months after the effective date of this act and shall be
9 finalized no later than 24 months after the effective date of
10 this act, unless otherwise specified in this act.

11 (b) Department.--The department shall have the power and its
12 duty shall be to implement the provisions of this act.

13 Section 105. Cleanup Standards Scientific Advisory Board.

14 (a) Establishment.--There is hereby created a 13-member
15 Cleanup Standards Scientific Advisory Board for the purpose of
16 assisting the department and the Environmental Quality Board in
17 developing Statewide health standards, determining the
18 appropriate statistically and scientifically valid procedures to
19 be used, determining the appropriate risk factors and providing
20 other technical and scientific advice as needed to implement the
21 provisions of this act.

22 (b) Membership.--Five members shall be appointed by the
23 secretary and two members each by the President pro tempore of
24 the Senate, the Minority Leader of the Senate, the Speaker of
25 the House of Representatives and the Minority Leader of the
26 House of Representatives. Members shall have a background in
27 engineering, biology, hydrogeology, statistics, medicine,
28 chemistry, toxicology or other related scientific education or
29 experience that relates to problems and issues likely to be
30 encountered in developing health-based cleanup standards and

1 other procedures needed to implement the provisions of this act.
2 The board membership shall include representatives of local
3 government, the public and the regulated community. The members
4 shall serve for a period of four years. The initial terms of the
5 members shall be staggered so that at least one-half of the
6 members' terms expire in two years.

7 (c) Organization.--The board shall elect a chairperson by
8 majority vote and may adopt any bylaws or procedures it deems
9 necessary to accomplish its purpose. Recommendations, positions
10 or other actions of the board shall be by a majority of its
11 members.

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

15 (e) Support.--The department shall provide the appropriate
16 administrative and technical support needed by the board in
17 order to accomplish its purpose, including support for surveys
18 and technical studies the board may wish to undertake. The
19 department shall publish a notice of meeting dates, times and
20 locations and a list of topics to be discussed at any meeting no
21 less than 14 days prior to the meeting, published in the same
22 manner as required by the act of July 3, 1986 (P.L.388, No.84),
23 known as the Sunshine Act.

24 (f) Interested persons list.--The department shall maintain
25 a mailing list of persons interested in receiving notice of
26 meetings and the activities of the board. The department shall
27 name a contact person to be responsible for board meetings and
28 to serve as a contact for the public to ask questions and get
29 information about the board.

30 (g) Access to documents.--The board shall have access to all

1 policies and procedures, draft proposed or final regulations or
2 issue papers which the board determines are necessary to
3 achieving its purpose.

4 Section 106. Scope.

5 The environmental remediation standards established under
6 this act shall be used whenever site remediation and cleanup is
7 conducted under the act of June 22, 1937 (P.L.1987, No.394),
8 known as The Clean Streams Law, the act of January 8, 1960 (1959
9 P.L.2119, No.787), known as the Air Pollution Control Act, the
10 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste
11 Management Act, the act of July 13, 1988 (P.L.525, No.93),
12 referred to as the Infectious and Chemotherapeutic Waste Law,
13 the act of October 18, 1988 (P.L.756, No.108), known as the
14 Hazardous Sites Cleanup Act, and the act of July 6, 1989
15 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
16 Act, TO BE ELIGIBLE FOR CLEANUP LIABILITY PROTECTION UNDER <—
17 CHAPTER 5.

18 Section 107. Existing standards.

19 The department may continue to use cleanup standards not
20 adopted under to the provisions of this act for a period of up
21 to three years after the effective date of this act, unless such
22 existing standards are revised or replaced by regulations
23 adopted under this act. All regulations, policies, guidance
24 documents and procedures which were not adopted under the
25 provisions of this act shall expire three years after the
26 effective date of this act. The standards established in
27 sections 302, 303(b)(3) and 304 shall be available for use on
28 the effective date of this act and shall supersede existing
29 regulations, policies, guidance documents and procedures.

1 REMEDIATION STANDARDS AND REVIEW PROCEDURES

2 Section 301. Remediation standards.

3 (a) Standards.--Any person who proposes to respond to the
4 release of a regulated substance at a site and to be eligible
5 for the cleanup liability protection under Chapter 5 shall
6 select and attain compliance with one or more of the following
7 environmental standards when conducting remediation activities:

8 (1) a background standard which achieves background or
9 the practical quantitation limit as further specified in
10 section 302;

11 (2) a Statewide health standard adopted by the
12 Environmental Quality Board which achieves a uniform
13 Statewide health-based level so that any substantial present
14 or probable future risk to human health and the environment
15 is eliminated as specified in section 303; or

16 (3) a site-specific standard which achieves remediation
17 levels based on a site-specific risk assessment so that any
18 substantial present or probable future risk to human health
19 and the environment is eliminated or reduced to protective
20 levels based upon the present or currently planned future use
21 of the property comprising the site as specified in section
22 304.

23 (b) Combination of standards.--A person may use a
24 combination of the remediation standards to implement a site
25 remediation plan and may propose to use the site-specific
26 standard whether or not efforts have been made to attain the
27 background or Statewide health standard.

28 Section 302. Background standard.

29 (a) Standard.--Persons selecting the background standard
30 shall meet a standard that is the greater of either of the

1 following concentrations for each regulated substance in each
2 environmental medium:

3 (1) background as represented by the results of analyses
4 of representative samples; or

5 (2) the achievable practical quantitation limit.

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

9 (1) Attainment of the background standard shall be
10 demonstrated by collection and analysis of representative
11 samples from environmental media of concern, including soils
12 and groundwater in aquifers in the area where the
13 contamination occurs through the application of statistical
14 tests set forth in regulation or, if no regulations have been
15 adopted, in a demonstration of a mathematically valid
16 application of statistical tests. THE DEPARTMENT OF ←
17 ENVIRONMENTAL RESOURCES SHALL ALSO RECOGNIZE THOSE METHODS OF
18 ATTAINMENT DEMONSTRATION GENERALLY RECOGNIZED AS APPROPRIATE
19 FOR THAT PARTICULAR REMEDIATION.

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

23 (i) The descriptions of procedures and conclusions
24 of the site investigation to characterize the nature,
25 extent, direction, volume and composition.

26 (ii) The basis for selecting environmental media of
27 concern, descriptions of removal or decontamination
28 procedures performed in remediation, summaries of
29 sampling methodology and analytical results which
30 demonstrate that remediation has attained the background

1 standard.

2 (3) Where remediation measures do not involve removal OR <—
3 TREATMENT of a contaminant to the ~~achievable practical~~ <—
4 ~~quantitation limit~~ BACKGROUND STANDARD, the final report <—
5 shall demonstrate that any remaining contaminants on the site
6 will meet Statewide health standards and show compliance with
7 any postremediation care requirements that may be needed to
8 maintain compliance with the Statewide health standards.

9 (4) INSTITUTIONAL CONTROLS SUCH AS FENCING AND FUTURE <—
10 LAND USE RESTRICTIONS ON A SITE MAY NOT BE USED TO ATTAIN THE
11 BACKGROUND STANDARD. INSTITUTIONAL CONTROLS MAY BE USED TO
12 MAINTAIN THE BACKGROUND STANDARD AFTER REMEDIATION OCCURS.

13 (c) Authority reserved.--If a person fails to demonstrate
14 attainment of the background standard, the department may
15 require that additional remediation measures be taken in order
16 to meet the background standard or the person may select to meet
17 the requirements of section 303 or 304.

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

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

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

3 (i) A notice of intent to remediate a site shall be
4 submitted to the department which, to the extent known,
5 provides a brief description of the location of the site,
6 a listing of the contaminant or contaminants involved, a
7 description of the intended future use of the property
8 for employment opportunities, housing, open space,
9 recreation or other uses, and the proposed remediation
10 measures. The department shall publish an acknowledgment
11 noting receipt of the notice of intent in the
12 Pennsylvania Bulletin.

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

20 (2) Notice of the submission of the final report
21 demonstrating attainment of the background standard shall be
22 given to the municipality in which the remediation site is
23 located, published in a newspaper of general circulation
24 serving the area and in the Pennsylvania Bulletin.

25 (3) The department shall review the final report
26 demonstrating attainment of the background standard within 45
27 days of its receipt or notify the person submitting the
28 report of substantive deficiencies. If the department does
29 not respond with deficiencies within 45 days, the final
30 report shall be deemed approved.

1 Section 303. Statewide health standard.

2 (a) Standard.--The Environmental Quality Board shall
3 promulgate Statewide health standards for regulated substances
4 for each environmental medium. The standards shall include any
5 existing numerical residential and nonresidential health-based
6 standards adopted by the department and by the Federal
7 Government by regulation or statute. For those health-based
8 standards not already established by regulation, the department
9 shall, by regulation, propose residential and nonresidential
10 medium-specific concentrations within 12 months of the effective
11 date of this act. The Environmental Quality Board shall also
12 promulgate, along with the standards, the methods used to
13 calculate the standards.

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

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

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

25 (3) The concentration of a regulated substance in
26 groundwater in aquifers used or currently planned to be used
27 for drinking water or for agricultural purposes shall comply
28 with the maximum contaminant level established for drinking
29 water. Where no maximum contaminant level has been
30 established, the ingestion medium-specific concentration

1 level for residential exposure shall be used. If the
2 groundwater at the site has naturally occurring background
3 total dissolved solids concentrations greater than 2,500
4 milligrams per liter, the remediation standard for a
5 regulated substance dissolved in the groundwater may be
6 adjusted by multiplying the medium-specific concentration for
7 groundwater in aquifers by 100. The resulting value becomes
8 the maximum contaminant level for groundwater.

9 (4) The concentration of a regulated substance
10 throughout the soil column shall not exceed the lower of the
11 soil medium-specific concentration based on residential
12 exposure factors or the soil-to-groundwater pathway numeric
13 value determined by the following:

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

16 (ii) A concentration in soil that does not produce a
17 leachate in excess of medium-specific concentrations for
18 groundwater when subjected to the Synthetic Precipitation
19 Leaching Procedures, Method 1312 of SW 846, Test Methods
20 for Evaluating Solid Waste, promulgated by EPA. Other
21 test methods that accurately simulate conditions at the
22 site may be used in the demonstration in place of this
23 method.

24 (5) Exposure scenarios for medium-specific
25 concentrations for nonresidential conditions shall be
26 established using valid scientific methods reflecting worker
27 exposure.

28 (c) Additional limits.--For those regulated substances where
29 medium-specific concentration limits cannot be established using
30 the procedures in subsection (b), the medium-specific

1 concentration limits for the ingestion of groundwater,
2 inhalation of soils, ingestion and inhalation of volatiles and
3 particulates from the soils shall be calculated by the
4 department using valid scientific methods, reasonable exposure
5 pathway assumptions and exposure factors for residential and
6 nonresidential land use which are no more stringent than the
7 standard default exposure factors established by EPA based on
8 the following levels of risk:

9 (1) For a regulated substance which is a carcinogen, the
10 medium-specific concentration is the concentration which
11 represents an excess upper bound lifetime cancer target risk
12 of between 1 in 10,000 and 1 in 1,000,000 due to continuous
13 lifetime exposure for residential scenarios and a
14 noncontinuous exposure for nonresidential exposure scenarios.

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

21 (d) Relationship to background.--The concentration of a
22 regulated substance in an environmental media of concern on a
23 site where the Statewide health standard has been selected shall
24 not be required to meet the Statewide health standard if the
25 Statewide health standard is numerically less than the
26 achievable practical quantitative limit. In such cases, the
27 achievable practical quantitative limit shall apply.

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

1 (1) Attainment of cleanup levels shall be demonstrated
2 by collection and analysis of representative samples from the
3 environmental medium of concern, including soils, and
4 groundwater in aquifers at the point of compliance through
5 the application of statistical tests set forth in regulation
6 or, if no regulations have been adopted, in a demonstration
7 of a mathematically valid application of statistical tests.

8 THE DEPARTMENT OF ENVIRONMENTAL RESOURCES SHALL ALSO ←
9 RECOGNIZE THOSE METHODS OF ATTAINMENT DEMONSTRATION GENERALLY
10 RECOGNIZED AS APPROPRIATE FOR THAT PARTICULAR REMEDIATION.

11 (2) A final report that documents attainment of the
12 Statewide health standard shall be submitted to the
13 department which includes the descriptions of procedures and
14 conclusions of the site investigation to characterize the
15 nature, extent, direction, rate of movement off the site and
16 cumulative effects, if any, volume, composition,
17 concentration of contaminants in environmental media, the
18 basis for selecting environmental media of concern,
19 documentation supporting the selection of residential or
20 nonresidential exposure factors, descriptions of removal or
21 decontamination procedures performed in remediation,
22 summaries of sampling methodology and analytical results
23 which demonstrate that contaminants have been removed or
24 decontaminated to applicable levels and documentation of
25 compliance with postremediation care requirements if they are
26 needed to maintain the Statewide health standard.

27 (3) INSTITUTIONAL CONTROLS SUCH AS FENCING AND FUTURE ←
28 LAND USE RESTRICTIONS ON A SITE MAY NOT BE USED TO ATTAIN THE
29 STATEWIDE HEALTH STANDARD. INSTITUTIONAL CONTROLS MAY BE USED
30 TO MAINTAIN THE STATEWIDE HEALTH STANDARD AFTER REMEDIATION

1 OCCURS.

2 (f) Authority reserved.--If a person fails to demonstrate
3 attainment of the Statewide health standard, the department may
4 require that additional remediation measures be taken in order
5 to meet the health standard or the person may select to meet the
6 requirements of section 302 or 304.

7 (g) Deed notice.--Persons attaining and demonstrating
8 compliance with the Statewide health standard considering
9 residential exposure factors for a regulated substance on the
10 entire site shall not be subject to the deed acknowledgment
11 requirements of the act of July 7, 1980 (P.L.380, No.97), known
12 as the Solid Waste Management Act, or the act of October 18,
13 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
14 Act. An existing acknowledgment contained in a deed prior to
15 demonstrating compliance with the residential Statewide health
16 standard may be removed. The deed acknowledgment requirements
17 shall apply where nonresidential exposure factors were used to
18 comply with the Statewide health standard.

19 (h) Notice and review provisions.--Persons utilizing the
20 Statewide health standard shall comply with the following
21 requirements for notifying the public and the department of
22 planned remediation activities:

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

25 (i) A notice of intent to remediate a site shall be
26 submitted to the department which provides, to the extent
27 known, a brief description of the location of the site, a
28 listing of the contaminant or contaminants involved, a
29 description of the intended future use of the property
30 for employment opportunities, housing, open space,

1 recreation or other uses and the proposed remediation
2 measures. The department shall publish an acknowledgment
3 noting receipt of the notice of intent in the
4 Pennsylvania Bulletin.

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

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

18 (3) The department shall review the final report
19 demonstrating attainment of the Statewide health standard
20 within 45 days of its receipt or notify the person submitting
21 the report of substantive deficiencies. If the department
22 does not respond with deficiencies within 45 days, the final
23 report shall be deemed approved.

24 Section 304. Site-specific standard.

25 (a) General.--Where a site-specific standard is selected as
26 the environmental remediation standard or where the background
27 or Statewide health standard is selected but not achieved, site
28 investigation, risk assessment, cleanup plans and final reports
29 shall be developed using the procedures and factors established
30 by this section.

1 (b) Carcinogens.--For known or suspected carcinogens, soil
2 and groundwater cleanup standards shall be established at
3 exposures which represent an excess upper-bound lifetime risk of
4 between 1 in 10,000 and 1 in 1,000,000. The cumulative excess
5 risk to exposed populations, including sensitive subgroups,
6 shall not be greater than 1 in 10,000.

7 (c) Systemic toxicants.--For systemic toxicants, soil and
8 groundwater cleanup standards shall represent levels to which
9 the human population could be exposed on a daily basis without
10 appreciable risk of deleterious effect to the exposed
11 population. Where several systemic toxicants affect the same
12 target organ or act by the same method of toxicity, the hazard
13 index shall not exceed one. The hazard index is the sum of the
14 hazard quotients for multiple systemic toxicants acting through
15 a single-medium exposure pathway or through multiple-media
16 exposure pathways.

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

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

21 (i) The current and probable future use of
22 groundwater shall be identified and protected.
23 Groundwater that has a background total dissolved solids
24 content greater than 2,500 milligrams per liter or is not
25 capable of transmitting water to a pumping well in usable
26 and sustainable quantities shall not be considered a
27 current or potential source of drinking water.

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

30 (iii) Natural environmental conditions affecting the

1 fate and transport of contaminants, such as natural
2 attenuation, shall be determined by appropriate
3 scientific methods.

4 (2) Groundwater not in aquifers shall be evaluated using
5 current or probable future exposure scenarios. Appropriate
6 management actions shall be instituted at the point of
7 exposure where a person is exposed to groundwater by
8 ingestion or other avenues to protect human health and the
9 environment. This shall not preclude taking appropriate
10 source management actions by the responsible party to achieve
11 the equivalent level of protection.

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

26 (f) Factors.--In determining soil and groundwater cleanup
27 standards under subsections (d) and (e), the following factors
28 shall also be considered:

29 (1) Use of standard exposure factors for the land use of
30 the site with reference to current and currently planned

1 future land use and the effectiveness of institutional or
2 legal controls placed on the future use of the land.

3 (2) Use of appropriate statistical techniques,
4 including, but not limited to, Monte Carlo simulations, to
5 establish statistically valid cleanup standards.

6 (3) The potential of human ingestion of regulated
7 substances in surface water or other site-specific surface
8 water exposure pathways, if applicable.

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

12 (g) Air and surface water.--Any discharge into surface water
13 or any emissions to the outdoor air which occur during or after
14 attainment of the site-specific standard shall comply with
15 applicable laws and regulations relating to surface water
16 discharges or emissions into the outdoor air, unless the site
17 investigation and site assessment demonstrate, using the latest
18 peer-reviewed toxicological data, that a standard other than
19 those in applicable laws and regulations would protect public
20 health and the environment.

21 (h) Relationship to background.--The concentration of a
22 regulated substance in an environmental medium of concern on a
23 site where the site-specific standard has been selected shall
24 not be required to meet the site-specific standard if the site-
25 specific standard is numerically less than the achievable
26 practical quantitative limit. In such cases, the achievable
27 practical quantitative limit shall apply.

28 (i) Combination of measures.--The standards may be attained
29 through a combination of remediation activities that can include
30 treatment, removal, engineering or institutional controls and

1 can include innovative or other demonstrated measures.

2 (j) Remedy evaluation.--The final remediation plan for a
3 site submitted to the department shall include remediation
4 alternatives and a final remedy which consider each of the
5 following factors:

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

8 (i) The magnitude of risks remaining after
9 completion of the remedial action.

10 (ii) The type, degree and duration of
11 postremediation care required, including, but not limited
12 to, operation and maintenance, monitoring, inspections
13 and reports and their frequencies or other activities
14 which will be necessary to protect human health and the
15 environment.

16 (iii) Potential for exposure of human and
17 environmental receptors to regulated substances remaining
18 at the site.

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

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

23 (vi) Time to achieve cleanup standards.

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

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

6 (4) The ease or difficulty of implementing the proposed
7 remedy, including commercially available remedial measures
8 which are BADCT, degree of difficulty associated with
9 constructing the remedy, expected operational reliability,
10 available capacity and location of needed treatment, storage
11 and disposal services for wastes, time to initiate remedial
12 efforts and approvals necessary to implement the remedial
13 efforts.

14 (5) The cost of the remediation measure, including
15 capital costs, operation and maintenance costs, net present
16 value of capital and operation and maintenance costs and the
17 total costs and effectiveness of the system.

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

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

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

29 (2) Attainment of the site-specific standard shall be
30 demonstrated by collection and analysis of samples from

1 affected media, as applicable, such as surface water, soil,
2 groundwater in aquifers at the point of compliance through
3 the application of statistical tests set forth in regulation
4 or, if no regulations have been adopted, in a demonstration
5 of a mathematically valid application of statistical tests.

6 THE DEPARTMENT OF ENVIRONMENTAL RESOURCES SHALL ALSO ←
7 RECOGNIZE THOSE METHODS OF ATTAINMENT DEMONSTRATION GENERALLY
8 RECOGNIZED AS APPROPRIATE FOR THAT PARTICULAR REMEDIATION.

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

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

16 (i) Documentation and descriptions of procedures and
17 conclusions from the site investigation to characterize
18 the nature, extent, direction, rate of movement, volume
19 and composition of regulated substances.

20 (ii) The concentration of regulated substances in
21 environmental media of concern, including summaries of
22 sampling methodology and analytical results, and
23 information obtained from attempts to comply with the
24 background or Statewide health standards, if any.

25 (iii) A description of the existing or potential
26 public benefits of the use or reuse of the property for
27 employment opportunities, housing, open space, recreation
28 or other uses.

29 (iv) A fate and transport analysis may be included
30 in the report to demonstrate that no present or future

1 exposure pathways exist.

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

5 (2) If required, a risk assessment report shall describe
6 the potential adverse effects under both current and planned
7 future conditions caused by the presence of a regulated
8 substance in the absence of any further control, remediation
9 or mitigation measures. ~~No remediation measures are required~~ ←
10 ~~to be proposed if it is demonstrated that the use of deed~~
11 ~~restrictions and other institutional controls can attain the~~
12 ~~site specific cleanup standard.~~ A baseline risk assessment
13 report is not required where it is determined that a specific
14 remediation measure can be implemented to attain the site-
15 specific standard.

16 (3) A cleanup plan shall evaluate the relative abilities
17 and effectiveness of potential remedies to achieve the
18 requirements for remedies described in subsection (k) when
19 considering the evaluation factors described in subsection
20 (j). The plan shall select a remedy which achieves the
21 requirements for remedies described in subsection (k). The
22 department may require a further evaluation of the selected
23 remedy or an evaluation of one or more additional remedies in
24 response to comments received from the community surrounding
25 the site as a result of the community involvement plan
26 established in subsection (o) which are based on the factors
27 described in subsection (j) or as a result of its own
28 analysis which are based on the evaluation factors described
29 in subsection (j).

30 (4) A final report demonstrating that the approved

1 remedy has been completed in accordance with the cleanup plan
2 shall be submitted to the department.

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

7 (6) Decisions by the department involving the reports
8 and evaluations required under this section shall be
9 considered appealable actions under the act of July 13, 1988
10 (P.L.530, No.94), known as the Environmental Hearing Board
11 Act.

12 (m) Deed notice.--Persons attaining and demonstrating
13 compliance with site-specific standards for a regulated
14 substance on a site shall be subject to the deed acknowledgment
15 requirements of the act of July 7, 1980 (P.L.380, No.97), known
16 as the Solid Waste Management Act, or the act of October 18,
17 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
18 Act. The notice shall include whether residential or
19 nonresidential exposure factors were used to comply with the
20 site-specific standard.

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

25 (1) (i) A notice of intent to remediate a site shall be
26 submitted to the department which provides, to the extent
27 known, a brief description of the location of the site, a
28 listing of the contaminant or contaminants involved and
29 the proposed remediation measures. The department shall
30 publish an acknowledgment noting receipt of the notice of

1 intent in the Pennsylvania Bulletin. At the same time a
2 notice of intent to remediate a site is submitted to the
3 department, a copy of the notice shall be provided to the
4 municipality in which the site is located and a summary
5 of the notice of intent shall be published in a newspaper
6 of general circulation serving the area in which the site
7 is located.

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

19 (2) The following notice and review provisions apply
20 each time a remedial investigation report, risk assessment
21 report, cleanup plan and final report demonstrating
22 compliance with the site-specific standard is submitted to
23 the department:

24 (i) When the report or plan is submitted to the
25 department, a notice of its submission shall be provided
26 to the municipality in which the site is located and a
27 notice summarizing the findings and recommendations of
28 the report or plan shall be published in a newspaper of
29 general circulation serving the area in which the site is
30 located. If the community requested to be involved in the

1 development of the cleanup and reuse plans, the reports
2 and plans shall also include the comments submitted by
3 the community and the responses from the persons
4 preparing the reports and plans.

5 (ii) The department shall review the report or plan
6 within no more than 45 days of its receipt or notify the
7 person submitting the report of deficiencies. If the
8 department does not respond with deficiencies within 45
9 days, the report shall be deemed approved.

10 (3) If the remedial investigation report, risk
11 assessment report and cleanup plan are submitted at the same
12 time to the department, the department shall notify persons
13 of any deficiencies in 90 days. If the department does not
14 respond with deficiencies within 90 days, the reports are
15 deemed approved.

16 (o) Community involvement.--Persons using site-specific
17 standards are required to develop a community involvement plan
18 which involves the community in the cleanup and use of the
19 property if the community requests to be involved in the cleanup
20 and reuse plans for the site. The plan shall propose measures to
21 involve the community in the development and review of the
22 remedial investigation report, risk assessment report, cleanup
23 plan and final report. Depending on the site involved,
24 techniques such as developing a proactive community information
25 and consultation program that includes public meetings and
26 roundtable discussions, convenient locations where documents
27 related to a cleanup can be made available to the public and
28 designating a single contact person to whom community residents
29 can ask questions; the formation of a community-based group
30 which is used to solicit suggestions and comments on the various

1 reports required by this section; if needed, the retention of
2 trained, independent third parties to facilitate meetings and
3 discussions and perform mediation services.

4 Section 305. Special industrial areas.

5 (a) Special sites.--For property used for industrial
6 activities where there is now no financially viable responsible
7 person to clean up contamination or for land located within
8 enterprise zones designated pursuant to the requirements of the
9 Department of Community Affairs, the review procedures of this
10 section shall apply. Any environmental remediation undertaken
11 pursuant to this section shall comply with one or more of the
12 standards established in this chapter.

13 (b) Baseline report.--A baseline environmental report shall
14 be conducted on the property based on a work plan approved by
15 the department to establish a reference point showing existing
16 contamination on the site. The report shall describe the
17 proposed remediation measures to be undertaken within the limits
18 of cleanup liability found in section 502. The report shall also
19 include a description of the existing or potential public
20 benefits of the use or reuse of the property for employment
21 opportunities, housing, open space, recreation or other use.

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

25 (1) A notice of intent to remediate a site shall be
26 submitted to the department which provides, to the extent
27 known, a brief description of the location of the site, a
28 listing of the contaminant or contaminants involved and the
29 proposed remediation measures. The department shall publish
30 an acknowledgment noting receipt of the notice of intent in

1 the Pennsylvania Bulletin. At the same time a notice of
2 intent to remediate a site is submitted to the department, a
3 copy of the notice shall be provided to the municipality in
4 which the site is located and a summary of the notice of
5 intent shall be published in a newspaper of general
6 circulation serving the area in which the site is located.

7 (2) The notices required by this subsection shall
8 include a 30-day public and municipal comment period during
9 which the community can request to be involved in the
10 development of the cleanup and reuse plans for the site. If
11 requested by the community, the person undertaking the
12 cleanup shall develop and implement a public involvement
13 program plan which meets the requirements of section 304(o).
14 Persons undertaking the cleanup are encouraged to develop a
15 proactive approach to working with the community in
16 developing and implementing cleanup and reuse plans.

17 (d) Department review.--No later than 90 days after the
18 completed environmental report is submitted for review, the
19 department shall determine whether the report adequately
20 identifies the environmental hazards and risks posed by the
21 site. The comments obtained as a result of a community
22 involvement plan developed pursuant to section 304(o) shall also
23 be considered by the department. The department shall notify the
24 person submitting the report of deficiencies within 90 days. If
25 the department does not respond within 90 days, the study is
26 deemed approved.

27 (e) Agreement.--The department and the person undertaking
28 the reuse of a special industrial site shall enter into an
29 agreement based on the environmental report which outlines
30 cleanup liability for the property.

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

6 (g) Deed notice.--Persons entering into agreements pursuant
7 to this section shall be subject to the deed acknowledgment
8 requirements of the act of July 7, 1980 (P.L.380, No.97), known
9 as the Solid Waste Management Act, or the act of October 18,
10 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
11 Act, where applicable.

12 Section 306. Privatization.

13 (a) General.--The department shall develop a program to use
14 private firms to undertake a portion of the technical reviews
15 ~~and to certify compliance with environmental remediation~~ ←
16 ~~standards in a portion of the cases~~ required under this act. As
17 part of the program, the department may:

18 (1) Develop a system of prequalified firms which
19 supervise the development and implementation of cleanup plans
20 and certify properties as meeting the environmental
21 remediation standards established in this chapter.

22 (2) Develop programs in which private firms perform the
23 technical review of remedial investigation reports, risk
24 assessment reports, cleanup plans and final reports required
25 to be submitted pursuant to this chapter.

26 (b) Audits.--The department shall develop an auditing
27 program sufficient to insure that private firms meet the
28 requirements of the program.

29 (c) Report.--The department shall on October 1 of each year
30 report to the General Assembly on the activities the department

1 has undertaken pursuant to this section.

2 ~~Section 307. Deed restrictions.~~ <—

3 ~~If deed restrictions are used as part of a remediation plan,~~
4 ~~they shall be compatible with local land development controls in~~
5 ~~existence at the time a final report certifying attainment of a~~
6 ~~standard or cleanup plan is submitted to the department for~~
7 ~~review.~~

8 SECTION 307. LOCAL LAND DEVELOPMENT CONTROLS. <—

9 THIS ACT SHALL NOT AFFECT THE ABILITY OF LOCAL GOVERNMENTS TO
10 REGULATE LAND DEVELOPMENT UNDER THE ACT OF JULY 31, 1968
11 (P.L.805, NO.247), KNOWN AS THE PENNSYLVANIA MUNICIPALITIES
12 PLANNING CODE. THE USE OF THE IDENTIFIED PROPERTY AND ANY DEED
13 RESTRICTIONS USED AS PART OF A REMEDIATION PLAN SHALL COMPLY
14 WITH LOCAL LAND DEVELOPMENT CONTROLS ADOPTED UNDER THE
15 PENNSYLVANIA MUNICIPALITIES PLANNING CODE.

16 Section 308. Immediate response.

17 (a) Emergency response.--The provisions of this chapter
18 shall not prevent or impede the immediate response of the
19 department or responsible person to an emergency which involves
20 an imminent or actual release of a regulated substance which
21 threatens public health or the environment. The final
22 remediation of the site shall comply with the provisions of this
23 chapter which shall not be prejudiced by the mitigation measures
24 undertaken to that point.

25 (b) Interim response.--The provisions of this chapter shall
26 not prevent or impede a responsible person from undertaking
27 mitigation measures to prevent significant impacts on human
28 health or the environment. Those mitigation measures may include
29 limiting public access to the release area, installing drainage
30 controls to prevent runoff, stabilization and maintenance of

1 containment structures, actions to prevent the migration of
2 regulated substances, on-site treatment or other measures not
3 prohibited by the department. The final remediation of the site
4 shall comply with the provisions of this chapter which shall not
5 be prejudiced by the mitigation measures undertaken to that
6 point.

7 CHAPTER 5

8 CLEANUP LIABILITY PROTECTION

9 Section 501. Cleanup liability protection.

10 (a) General.--Any person demonstrating compliance with the
11 environmental remediation standards established in Chapter 3
12 shall be relieved of further liability for the remediation of
13 the site under the statutes outlined in section 106 for any
14 contamination identified in reports submitted to and approved by
15 the department to demonstrate compliance with these standards
16 AND SHALL NOT BE SUBJECT TO CITIZEN SUITS OR OTHER CONTRIBUTION <—
17 ACTIONS BROUGHT BY RESPONSIBLE PERSONS. The cleanup liability
18 protection provided by this chapter applies to the following
19 persons:

20 (1) The current or future owner of the identified
21 property, who participated in the remediation of the ~~property~~ <—
22 SITE. <—

23 (2) A person who develops or otherwise occupies the
24 identified ~~property~~ SITE. <—

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

27 (4) A public utility to the extent the public utility
28 performs activities on the identified ~~property~~ SITE. <—

29 (b) Illegal activities.--The provisions of this chapter do
30 not create a defense against the imposition of criminal and

1 civil fines and penalties or administrative penalties imposed as
2 the result of the illegal disposal of waste or for the pollution
3 of the land, air or waters of this Commonwealth on the
4 identified site.

5 Section 502. Special industrial sites.

6 (a) Agreement.--The department and the person undertaking
7 the reuse of an abandoned industrial site under section 305
8 shall enter into an agreement based on the environmental report
9 which outlines cleanup liability for the ~~property~~ SITE. Any <—
10 person included in such an agreement shall not be subject to a
11 citizen suit or other contribution actions brought by
12 responsible persons not participating in the environmental
13 remediation of the site.

14 (b) Liability.--The cleanup liabilities for the person
15 undertaking the report shall include the following:

16 (1) The person shall only be responsible for remediation
17 of any immediate, direct or imminent threats to public health
18 or the environment, such as drummed waste, which would
19 prevent the ~~property~~ SITE from being occupied for its <—
20 intended purpose.

21 (2) The person shall not be held responsible for the
22 remediation of any contamination identified in the
23 environmental report, other than the contamination noted in
24 paragraph (1).

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

28 (c) Developer or occupier.--A person who develops or
29 occupies the ~~property~~ SITE shall not be considered a responsible <—
30 person for purposes of assigning cleanup liability.

1 (d) Successor or assign.--A successor or assign of any
2 person to whom cleanup liability protection applies for a site
3 shall not be considered a responsible person for purposes of
4 assigning cleanup liability, provided the successor or assign is
5 not a person responsible for contamination on the ~~property~~ SITE ←
6 who did not participate in the environmental remediation action.

7 (e) Public utility.--A public utility shall not be
8 considered a responsible person for purposes of assigning
9 cleanup liability to the extent the public utility performs
10 activities on the identified ~~property~~ SITE, provided the public ←
11 utility is not a person responsible for contamination on the
12 property.

13 Section 503. Existing exclusions.

14 The protection from cleanup liability afforded under this act
15 shall be in addition to the exclusions from being a responsible
16 person under the statutes listed in section 106.

17 Section 504. New liability.

18 Nothing in this act shall relieve a person receiving
19 protection from cleanup liability under this chapter from any
20 cleanup liability for contamination later caused by that person
21 on a site which has demonstrated compliance with one or more of
22 the environmental remediation standards established in Chapter
23 3.

24 Section 505. Reopeners.

25 Any person who completes remediation in compliance with this
26 act shall not be required to undertake additional remediation
27 actions unless:

28 (1) fraud was committed in the certification of the site
29 that resulted in avoiding the need for further cleanup of the
30 site;

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

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

5 (4) substantial changes in exposure conditions, SUCH AS ←
6 A CHANGE FROM NONRESIDENTIAL TO A RESIDENTIAL USE, or new
7 information about regulated substances associated with the
8 site WHICH results in the level of risk being increased ←
9 beyond the acceptable risk range.

10 Section 506. Authority reserved.

11 Except for the performance of further remediation of the
12 site, nothing in this act shall affect the ability or authority
13 of any person to seek any relief available against any party who
14 may have liability with respect to this site. This act shall not
15 affect the ability or authority to seek a contribution from any
16 person who may have liability with respect to the site and did
17 not participate in the environmental remediation actions.

18 CHAPTER 7

19 NO-ACTION DETERMINATIONS

20 Section 701. No-action determinations.

21 Property owners may request and the department shall issue
22 written determinations that it will take no enforcement or
23 cleanup actions against an innocent landowner who owns real
24 property and is otherwise not responsible for any identified
25 contamination or a release or threatened release of a regulated
26 substance where either of the following occurs:

27 (1) An environmental assessment or transaction screen
28 analysis indicates no significant contamination or
29 contamination which does not pose significant actual risk to
30 public health and the environment.

1 (2) Where the department finds that contamination or a
2 release or threatened release of a regulated substance
3 originates from a source on an adjacent or nearby real
4 property.

5 Section 702. Assessment standards.

6 (a) Standards.--The department shall, after an opportunity
7 for public review and comment, adopt standards for conducting
8 environmental assessments. Until such standards are adopted, the
9 department shall follow the most recent versions of Standard E-
10 15-27-93-Standard Practice for Environmental Site Assessments:
11 Phase I Environmental Site Assessment Process as adopted by
12 ASTM. Property transaction screens as required by this chapter
13 shall follow Standard E-15-28-93-Standard Practice for
14 Environmental Sites Assessments: Transaction Screen Process as
15 adopted by ASTM.

16 (b) Liability.--A person shall not be considered a person
17 responsible for a release or a threatened release of a regulated
18 substance simply by virtue of conducting an environmental
19 assessment or transaction screen on a property. Nothing in this
20 section relieves a person of any liability for failure to
21 exercise due diligence in performing an environmental assessment
22 or transaction screen.

23 Section 703. Review deadline.

24 The department shall make a decision on whether or not to
25 issue a no-action determination no later than 90 days after a
26 request is made unless the department and the person requesting
27 the determination agree to an extension of the review to a date
28 certain.

29 Section 704. Applicability.

30 The no-action determination shall also apply to any person

1 providing financing to the person named in the determination for
2 the identified property and to any person developing or
3 occupying the identified property as the result of a lease or
4 rent agreement or to the activities of a public utility on the
5 identified property.

6 Section 705. Entry.

7 The property owner must allow entry to the property by the
8 department or its representatives for the purpose of taking any
9 remediation and response actions needed to address contamination
10 on the adjacent site and not interfere with any response action.

11 Section 706. Transferability.

12 A no-action determination may be transferred by the property
13 owner to successors and assigns if the successors and assigns
14 are not otherwise responsible for any contamination on the
15 adjacent property. A no-action determination shall also be
16 extended to the successors and assigns of parties identified in
17 section 704.

18 Section 707. Third parties.

19 No person who is the subject of a no-action determination
20 issued by the department or who is granted liability protection
21 under section 703 shall be subject to either citizen suits or
22 other contribution actions brought by responsible persons for a
23 release or potential release identified in the no-action
24 determination.

25 CHAPTER 9

26 INDUSTRIAL LAND RECYCLING FUND

27 Section 901. Industrial Land Recycling Fund.

28 (a) Fund.--There is hereby established a separate account in
29 the State Treasury, to be known as the Industrial Land Recycling
30 Fund, which shall be a special fund administered by the

1 department.

2 (b) Purpose.--The moneys deposited in this fund shall be
3 used by the department for the purpose of implementing the
4 provisions of this act. Moneys from the Hazardous Sites Cleanup
5 Fund shall also be available to the department to remediate a
6 release or threatened release on a property covered by the
7 provisions of this act.

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

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

15 Section 902. Voluntary Cleanup Loan Program.

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

22 (b) Purpose.--The Voluntary Cleanup Loan Fund is to help
23 provide funding to persons undertaking the voluntary remediation
24 of a property. The funding shall be in the form of low-interest
25 loans and grants for up to 75% of the costs incurred for
26 completing an environmental study and for implementing a cleanup
27 plan for the following categories of applicants:

28 (1) Local economic development agencies shall be
29 eligible for grants and for low-interest loans at a rate of
30 not more than 2% for the purpose of completing environmental

1 studies and implementing cleanup plans.

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

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

17 (d) Annual report.--The Department of Commerce shall on
18 October 1 of each year report to the General Assembly on the
19 grants, loans, expenditures and commitments made from the fund.
20 Section 903. Fees.

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

24 (1) A person utilizing the background or Statewide
25 health standards for environmental remediation shall pay a
26 fee of \$250 upon submission of the report certifying
27 compliance with the standards.

28 (2) A person utilizing site-specific standards for
29 environmental remediation shall pay a fee of \$250 each upon
30 the submission of a remedial investigation, risk assessment

1 and cleanup plan and an additional \$500 at the time of
2 submission of the final report certifying compliance with the
3 standards.

4 (3) A person utilizing a combination of background,
5 Statewide and site-specific standards shall pay the fees
6 required by paragraphs (1) and (2), as applicable.

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

10 (b) Deposit.--Fees imposed under this section shall be
11 deposited in the Industrial Land Recycling Fund established
12 under section 901.

13 Section 904. Transfer of funds.

14 The complement of the department is increased by seven
15 positions for the purpose of implementing this act. The sum of
16 \$500,000 is hereby appropriated to the Department of
17 Environmental Resources for fiscal year 1994-1995 from the
18 Hazardous Sites Cleanup Fund for the purpose of implementing
19 this act.

20 CHAPTER 11

21 MISCELLANEOUS PROVISIONS

22 Section 1101. Plain language.

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

30 Section 1102. Permits.

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

4 Section 1103. Future actions.

5 At any time, a request may be made to the department to
6 change the land use of the site from nonresidential to
7 residential. The department shall only approve the request upon
8 a demonstration that the site meets all the applicable cleanup
9 standards for residential use of the property. Any existing deed
10 acknowledgment contained in the deed prior to the demonstrating
11 compliance with the residential use standard may be removed.

12 Section 1104. Relationship to Federal and State programs.

13 (a) Federal.--The provisions of this act shall not prevent
14 the Commonwealth from enforcing specific numerical cleanup
15 standards, monitoring or compliance requirements required to be
16 enforced by the Federal Government as a condition of primacy or
17 to receive Federal funds.

18 (b) State priority list.--Any remediation undertaken on a
19 site included on the State priority list established under the
20 act of October 18, 1988 (P.L.756, No.108), known as the
21 Hazardous Sites Cleanup Act, shall attain the site-specific
22 standard established in section 304 and shall be performed in
23 compliance with the administrative record and other procedural
24 and public review requirements of Chapter 5 of the Hazardous
25 Sites Cleanup Act.

26 (c) Storage tanks.--The environmental remediation standards
27 established under this act shall be used in corrective actions
28 undertaken pursuant to the act of July 6, 1989 (P.L.169, No.32),
29 known as the Storage Tank and Spill Prevention Act. However, the
30 procedures in the Storage Tank and Spill Prevention Act for

1 reviewing and approving corrective actions shall be used in lieu
2 of the procedures and reviews required by this act.

3 Section 1105. Enforcement.

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

17 (b) Fraud.--Any person who willfully commits fraud
18 demonstrating attainment with one or more standards established
19 under this act shall, upon conviction, be subject to an
20 additional penalty of \$50,000 for each separate offense or to
21 imprisonment for a period of not more than one year for each
22 separate offense, or both. Each day shall be a separate offense.

23 Section 1106. Past penalties.

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

29 Section 1107. Repeals.

30 (a) Absolute.--Section 504(b) through (f) and (h) of the act

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

3 (b) General.--All other acts and parts of acts are repealed
4 insofar as they are inconsistent with this act and related to
5 environmental remediation.

6 Section 1108. Effective date.

7 This act shall take effect in 60 days.