

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 972 Session of
1993

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REIBMAN, PORTERFIELD, AFFLERBACH, BODACK, BORTNER AND
STINSON, APRIL 22, 1993

AS REPORTED FROM COMMITTEE ON CONSERVATION, HOUSE OF
REPRESENTATIVES, AS AMENDED, OCTOBER 5, 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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1 SECTION 1704. EFFECTIVE DATE.

2 The General Assembly of the Commonwealth of Pennsylvania
3 hereby enacts as follows:

4 CHAPTER 1

<—

5 GENERAL PROVISIONS

6 ~~Section 101. Short title.~~

7 ~~This act shall be known and may be cited as the Land
8 Recycling and Environmental Remediation Standards Act.~~

9 ~~Section 102. Declaration of policy.~~

10 ~~The General Assembly finds and declares as follows:~~

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

20 ~~(2) Incentives should be put in place to encourage
21 responsible persons to voluntarily develop and implement
22 cleanup plans without the use of taxpayer funds or the need
23 for adversarial enforcement actions by the Department of
24 Environmental Resources which frequently only serve to delay
25 cleanups and increase their cost.~~

26 ~~(3) Public health and environmental hazards cannot be
27 eliminated without clear, predictable environmental
28 remediation standards and a process for developing those
29 standards. Any remediation standards adopted by this
30 Commonwealth must provide for the protection of public health~~

1 ~~and the environment.~~

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

11 ~~(5) Cleanup plans should be based on the actual risk~~
12 ~~that contamination on the site may pose to public health and~~
13 ~~the environment, taking into account its future use and the~~
14 ~~degree to which contamination can spread offsite and expose~~
15 ~~the public or the environment to risk, not on cleanup~~
16 ~~policies requiring every site in this Commonwealth to be~~
17 ~~returned to a pristine condition.~~

18 ~~(6) The Department of Environmental Resources now~~
19 ~~routinely through its permitting policies determines when~~
20 ~~contamination will and will not pose a significant risk to~~
21 ~~public health or the environment. Similar concepts should be~~
22 ~~used in establishing cleanup policies.~~

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

28 ~~Section 103. Definitions.~~

29 ~~The following words and phrases when used in this act shall~~
30 ~~have the meanings given to them in this section unless the~~

1 ~~context clearly indicates otherwise.~~

2 ~~"ASTM."—The American Society for Testing and Materials.~~

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

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

10 ~~"BADCT" or "Best Available Demonstrated Control Technology."~~
11 ~~The commercially available engineering technology which has~~
12 ~~demonstrated at full scale on a consistent basis that it most~~
13 ~~effectively achieves the standard for a remediation action for a~~
14 ~~regulated substance at a contaminated site under similar~~
15 ~~applications.~~

16 ~~"Board."—The Cleanup Standards Scientific Advisory Board~~
17 ~~established in section 105.~~

18 ~~"Carcinogen."—A cancer causing agent, chemical, biological~~
19 ~~or physical, defined by the Environmental Protection Agency as a~~
20 ~~carcinogen.~~

21 ~~"Control."—To apply engineering measures, such as capping or~~
22 ~~treatment, or institutional measures, such as deed restrictions,~~
23 ~~to sites with contaminated media.~~

24 ~~"Department."—The Department of Environmental Resources of~~
25 ~~the Commonwealth.~~

26 ~~"EPA."—The Environmental Protection Agency or its successor~~
27 ~~agency.~~

28 ~~"Fate and transport."—A term used to describe the~~
29 ~~degradation of a chemical over time, and where chemicals are~~
30 ~~likely to move given their physical and other properties and the~~

1 ~~environmental medium they are moving through.~~

2 ~~"Groundwater."—Water below the land surface in a zone of~~
3 ~~saturation.~~

4 ~~"Hazard index."—The sum of more than one hazard quotient for~~
5 ~~multiple substances and multiple exposure pathways. The hazard~~
6 ~~index is calculated separately for chronic, subchronic and~~
7 ~~shorter duration exposures.~~

8 ~~"Hazard quotient."—The ratio of a single substance exposure~~
9 ~~level over a specified period, e.g. subchronic, to a reference~~
10 ~~dose for that substance derived from a similar exposure period.~~

11 ~~"Hazardous Sites Cleanup Fund."—The fund established under~~
12 ~~the act of October 18, 1988 (P.L.756, No.108), known as the~~
13 ~~Hazardous Sites Cleanup Act.~~

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

23 ~~"Institutional controls."—A measure undertaken to limit or~~
24 ~~prohibit certain activities that may interfere with the~~
25 ~~integrity of a remedial action or result in exposure to~~
26 ~~regulated substances at a site. These include, but are not~~
27 ~~limited to, fencing or restrictions on the future use of the~~
28 ~~site.~~

29 ~~"Medium specific concentration."—The concentration~~
30 ~~associated with a specified environmental medium for potential~~

1 ~~risk exposures.~~

2 ~~"Mitigation measures."— Any remediation action performed by a~~
3 ~~person prior to or during implementation of a remediation plan~~
4 ~~with the intent to protect human health and the environment.~~

5 ~~"Nonresidential property."— Any real property on which~~
6 ~~commercial, industrial, manufacturing or any other activity is~~
7 ~~done to further either the development, manufacturing or~~
8 ~~distribution of goods and services, including, but not limited~~
9 ~~to, administration of business activities, research and~~
10 ~~development, warehousing, shipping, transport, remanufacturing,~~
11 ~~stockpiling of raw materials, storage, repair and maintenance of~~
12 ~~commercial machinery and equipment or intermediate and final~~
13 ~~products and solid waste management. This term shall not include~~
14 ~~schools, nursing homes or other residential style facilities.~~

15 ~~"Person."— An individual, firm, corporation, association,~~
16 ~~partnership, consortium, joint venture, commercial entity,~~
17 ~~authority, nonprofit corporation, interstate body or other legal~~
18 ~~entity which is recognized by law as the subject of rights and~~
19 ~~duties. The term includes the Federal Government, State~~
20 ~~government, political subdivisions and Commonwealth~~
21 ~~instrumentalities.~~

22 ~~"Point of compliance."— For the purposes of determining~~
23 ~~compliance with groundwater standards, the property boundary at~~
24 ~~the time the area of contamination is defined or such point~~
25 ~~beyond the property boundary as the Department of Environmental~~
26 ~~Resources may determine to be appropriate.~~

27 ~~"Practical quantitation limit."— The lowest limit that can be~~
28 ~~reliably achieved within specified limits of precision and~~
29 ~~accuracy under routine laboratory conditions for a specified~~
30 ~~matrix and based on quantitation, precision and accuracy, normal~~

1 ~~operation of a laboratory and the practical need in a~~
2 ~~compliance monitoring program to have a sufficient number of~~
3 ~~laboratories available to conduct the analyses.~~

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

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

17 ~~"Release." Spilling, leaking, pumping, pouring, emitting,~~
18 ~~emptying, discharging, injecting, escaping, leaching, dumping or~~
19 ~~disposing of a regulated substance into the environment in a~~
20 ~~manner not authorized by the Department of Environmental~~
21 ~~Resources. The term includes the abandonment or discarding of~~
22 ~~barrels, containers, vessels and other receptacles containing a~~
23 ~~regulated substance.~~

24 ~~"Remediation." To clean up, mitigate, correct, abate,~~
25 ~~minimize, eliminate, control or prevent a release of a regulated~~
26 ~~substance into the environment in order to protect the present~~
27 ~~or future public health, safety, welfare or the environment,~~
28 ~~including preliminary actions to study or assess the release.~~

29 ~~"Residential property." Any property or portion of the~~
30 ~~property which does not meet the definition of "nonresidential~~

1 ~~property."~~

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

14 ~~"Secretary." The Secretary of Environmental Resources of the~~
15 ~~Commonwealth.~~

16 ~~"Site." The extent of contamination and all areas in close~~
17 ~~proximity to the contamination necessary for the implementation~~
18 ~~of remediation activities.~~

19 ~~"Systemic toxicant." A material that manifests its toxic~~
20 ~~effect in humans in a form other than cancer.~~

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

24 ~~Section 104. Powers and duties.~~

25 ~~(a) Environmental Quality Board. The Environmental Quality~~
26 ~~Board shall have the power and its duty shall be to adopt by~~
27 ~~regulation Statewide health standards, appropriate~~
28 ~~mathematically valid statistical tests to define compliance with~~
29 ~~this act and other regulations that may be needed to implement~~
30 ~~the provisions of this act. Any regulations needed to implement~~

~~1 this act shall be proposed by the department no later than 12
2 months after the effective date of this act and shall be
3 finalized no later than 24 months after the effective date of
4 this act, unless otherwise specified in this act.~~

~~5 (b) Department. The department shall have the power and its
6 duty shall be to implement the provisions of this act.~~

~~7 Section 105. Cleanup Standards Scientific Advisory Board.~~

~~8 (a) Establishment. There is hereby created a 13 member
9 Cleanup Standards Scientific Advisory Board for the purpose of
10 assisting the department and the Environmental Quality Board in
11 developing Statewide health standards, determining the
12 appropriate statistically and scientifically valid procedures to
13 be used, determining the appropriate risk factors and providing
14 other technical and scientific advice as needed to implement the
15 provisions of this act.~~

~~16 (b) Membership. Five members shall be appointed by the
17 secretary and two members each by the President pro tempore of
18 the Senate, the Minority Leader of the Senate, the Speaker of
19 the House of Representatives and the Minority Leader of the
20 House of Representatives. Members shall have a background in
21 engineering, biology, hydrogeology, statistics, medicine,
22 chemistry, toxicology or other related scientific education or
23 experience that relates to problems and issues likely to be
24 encountered in developing health based cleanup standards and
25 other procedures needed to implement the provisions of this act.
26 The board membership shall include representatives of local
27 government, the public and the regulated community. The members
28 shall serve for a period of four years. The initial terms of the
29 members shall be staggered so that at least one half of the
30 members' terms expire in two years.~~

1 ~~(c) Organization. The board shall elect a chairperson by~~
2 ~~majority vote and may adopt any bylaws or procedures it deems~~
3 ~~necessary to accomplish its purpose. Recommendations, positions~~
4 ~~or other actions of the board shall be by a majority of its~~
5 ~~members.~~

6 ~~(d) Expenses. Members of the board shall be reimbursed for~~
7 ~~their travel expenses to attend meetings as authorized by the~~
8 ~~executive board.~~

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

18 ~~(f) Interested persons list. The department shall maintain~~
19 ~~a mailing list of persons interested in receiving notice of~~
20 ~~meetings and the activities of the board. The department shall~~
21 ~~name a contact person to be responsible for board meetings and~~
22 ~~to serve as a contact for the public to ask questions and get~~
23 ~~information about the board.~~

24 ~~(g) Access to documents. The board shall have access to all~~
25 ~~policies and procedures, draft proposed or final regulations or~~
26 ~~issue papers which the board determines are necessary to~~
27 ~~achieving its purpose.~~

28 ~~Section 106. Scope.~~

29 ~~The environmental remediation standards established under~~
30 ~~this act shall be used whenever site remediation and cleanup is~~

1 ~~conducted under the act of June 22, 1937 (P.L.1987, No.394),~~
2 ~~known as The Clean Streams Law, the act of January 8, 1960 (1959~~
3 ~~P.L.2119, No.787), known as the Air Pollution Control Act, the~~
4 ~~act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste~~
5 ~~Management Act, the act of July 13, 1988 (P.L.525, No.93),~~
6 ~~referred to as the Infectious and Chemotherapeutic Waste Law,~~
7 ~~the act of October 18, 1988 (P.L.756, No.108), known as the~~
8 ~~Hazardous Sites Cleanup Act, and the act of July 6, 1989~~
9 ~~(P.L.169, No.32), known as the Storage Tank and Spill Prevention~~
10 ~~Act, to be eligible for cleanup liability protection under~~
11 ~~Chapter 5.~~

12 ~~Section 107. Existing standards.~~

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

24 ~~CHAPTER 3~~

25 ~~REMEDIATION STANDARDS AND REVIEW PROCEDURES~~

26 ~~Section 301. Remediation standards.~~

27 ~~(a) Standards. Any person who proposes to respond to the~~
28 ~~release of a regulated substance at a site and to be eligible~~
29 ~~for the cleanup liability protection under Chapter 5 shall~~
30 ~~select and attain compliance with one or more of the following~~

1 ~~environmental standards when conducting remediation activities:~~

2 ~~(1) a background standard which achieves background or~~
3 ~~the practical quantitation limit as further specified in~~
4 ~~section 302;~~

5 ~~(2) a Statewide health standard adopted by the~~
6 ~~Environmental Quality Board which achieves a uniform~~
7 ~~Statewide health based level so that any substantial present~~
8 ~~or probable future risk to human health and the environment~~
9 ~~is eliminated as specified in section 303; 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 is eliminated or reduced to protective~~
14 ~~levels based upon the present or currently planned future use~~
15 ~~of the property comprising the site as specified in section~~
16 ~~304.~~

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 ~~Section 302. Background standard.~~

23 ~~(a) Standard. Persons selecting the background standard~~
24 ~~shall meet a standard that is the greater of either of the~~
25 ~~following concentrations for each regulated substance in each~~
26 ~~environmental medium:~~

27 ~~(1) background as represented by the results of analyses~~
28 ~~of representative samples; or~~

29 ~~(2) the achievable practical quantitation limit.~~

30 ~~(b) Attainment. Final certification that a site or portion~~

1 ~~of a site meets the background standard shall be documented in~~
2 ~~the following manner:~~

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

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

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

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

26 ~~(3) Where remediation measures do not involve removal or~~
27 ~~treatment of a contaminant to the background standard, the~~
28 ~~final report shall demonstrate that any remaining~~
29 ~~contaminants on the site will meet Statewide health standards~~
30 ~~and show compliance with any postremediation care~~

1 ~~requirements that may be needed to maintain compliance with~~
2 ~~the Statewide health standards.~~

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

7 ~~(c) Authority reserved. If a person fails to demonstrate~~
8 ~~attainment of the background standard, the department may~~
9 ~~require that additional remediation measures be taken in order~~
10 ~~to meet the background standard or the person may select to meet~~
11 ~~the requirements of section 303 or 304.~~

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

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

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

27 ~~(i) A notice of intent to remediate a site shall be~~
28 ~~submitted to the department which, to the extent known,~~
29 ~~provides a brief description of the location of the site,~~
30 ~~a listing of the contaminant or contaminants involved, a~~

1 ~~description of the intended future use of the property~~
2 ~~for employment opportunities, housing, open space,~~
3 ~~recreation or other uses, and the proposed remediation~~
4 ~~measures. The department shall publish an acknowledgment~~
5 ~~noting receipt of the notice of intent in the~~
6 ~~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 in the Pennsylvania Bulletin.~~

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

25 ~~Section 303. Statewide health standard.~~

26 ~~(a) Standard. The Environmental Quality Board shall~~
27 ~~promulgate Statewide health standards for regulated substances~~
28 ~~for each environmental medium. The standards shall include any~~
29 ~~existing numerical residential and nonresidential health based~~
30 ~~standards adopted by the department and by the Federal~~

1 ~~Government by regulation or statute. For those health based~~
2 ~~standards not already established by regulation, the department~~
3 ~~shall, by regulation, propose residential and nonresidential~~
4 ~~medium specific concentrations within 12 months of the effective~~
5 ~~date of this act. The Environmental Quality Board shall also~~
6 ~~promulgate, along with the standards, the methods used to~~
7 ~~calculate the standards.~~

8 ~~(b) Medium specific requirements. The following~~
9 ~~requirements shall be used in defining a medium specific~~
10 ~~concentration limit:~~

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

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

19 ~~(3) The concentration of a regulated substance in~~
20 ~~groundwater in aquifers used or currently planned to be used~~
21 ~~for drinking water or for agricultural purposes shall comply~~
22 ~~with the maximum contaminant level established for drinking~~
23 ~~water. Where no maximum contaminant level has been~~
24 ~~established, the ingestion medium specific concentration~~
25 ~~level for residential exposure shall be used. If the~~
26 ~~groundwater at the site has naturally occurring background~~
27 ~~total dissolved solids concentrations greater than 2,500~~
28 ~~milligrams per liter, the remediation standard for a~~
29 ~~regulated substance dissolved in the groundwater may be~~
30 ~~adjusted by multiplying the medium specific concentration for~~

1 ~~groundwater in aquifers by 100. The resulting value becomes~~
2 ~~the maximum contaminant level for groundwater.~~

3 ~~(4) The concentration of a regulated substance~~
4 ~~throughout the soil column shall not exceed the lower of the~~
5 ~~soil medium specific concentration based on residential~~
6 ~~exposure factors or the soil to groundwater pathway numeric~~
7 ~~value determined by the following:~~

8 ~~(i) A value which is 100 times the medium specific~~
9 ~~concentration for groundwater.~~

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

18 ~~(5) Exposure scenarios for medium specific~~
19 ~~concentrations for nonresidential conditions shall be~~
20 ~~established using valid scientific methods reflecting worker~~
21 ~~exposure.~~

22 ~~(c) Additional limits. For those regulated substances where~~
23 ~~medium specific concentration limits cannot be established using~~
24 ~~the procedures in subsection (b), the medium specific~~
25 ~~concentration limits for the ingestion of groundwater,~~
26 ~~inhalation of soils, ingestion and inhalation of volatiles and~~
27 ~~particulates from the soils shall be calculated by the~~
28 ~~department using valid scientific methods, reasonable exposure~~
29 ~~pathway assumptions and exposure factors for residential and~~
30 ~~nonresidential land use which are no more stringent than the~~

1 ~~standard default exposure factors established by EPA based on~~
2 ~~the following levels of risk:~~

3 ~~(1) For a regulated substance which is a carcinogen, the~~
4 ~~medium specific concentration is the concentration which~~
5 ~~represents an excess upper bound lifetime cancer target risk~~
6 ~~of between 1 in 10,000 and 1 in 1,000,000 due to continuous~~
7 ~~lifetime exposure for residential scenarios and a~~
8 ~~noncontinuous exposure for nonresidential exposure scenarios.~~

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

15 ~~(d) Relationship to background. The concentration of a~~
16 ~~regulated substance in an environmental media of concern on a~~
17 ~~site where the Statewide health standard has been selected shall~~
18 ~~not be required to meet the Statewide health standard if the~~
19 ~~Statewide health standard is numerically less than the~~
20 ~~achievable practical quantitative limit. In such cases, the~~
21 ~~achievable practical quantitative limit shall apply.~~

22 ~~(e) Attainment. Final certification that a site or portion~~
23 ~~of a site meets the Statewide health standard shall be~~
24 ~~documented in the following manner:~~

25 ~~(1) Attainment of cleanup levels shall be demonstrated~~
26 ~~by collection and analysis of representative samples from the~~
27 ~~environmental medium of concern, including soils, and~~
28 ~~groundwater in aquifers at the point of compliance through~~
29 ~~the application of statistical tests set forth in regulation~~
30 ~~or, if no regulations have been adopted, in a demonstration~~

1 ~~of a mathematically valid application of statistical tests.~~
2 ~~The Department of Environmental Resources shall also~~
3 ~~recognize those methods of attainment demonstration generally~~
4 ~~recognized as appropriate for that particular remediation.~~

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

21 ~~(3) Institutional controls such as fencing and future~~
22 ~~land use restrictions on a site may not be used to attain the~~
23 ~~Statewide health standard. Institutional controls may be used~~
24 ~~to maintain the Statewide health standard after remediation~~
25 ~~occurs.~~

26 ~~(f) Authority reserved. If a person fails to demonstrate~~
27 ~~attainment of the Statewide health standard, the department may~~
28 ~~require that additional remediation measures be taken in order~~
29 ~~to meet the health standard or the person may select to meet the~~
30 ~~requirements of section 302 or 304.~~

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

13 ~~(h) Notice and review provisions. Persons utilizing the~~
14 ~~Statewide health standard shall comply with the following~~
15 ~~requirements for notifying the public and the department of~~
16 ~~planned remediation activities:~~

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

19 ~~(i) A notice of intent to remediate a site shall be~~
20 ~~submitted to the department which provides, to the extent~~
21 ~~known, a brief description of the location of the site, a~~
22 ~~listing of the contaminant or contaminants involved, a~~
23 ~~description of the intended future use of the property~~
24 ~~for employment opportunities, housing, open space,~~
25 ~~recreation or other uses and the proposed remediation~~
26 ~~measures. The department shall publish an acknowledgment~~
27 ~~noting receipt of the notice of intent in the~~
28 ~~Pennsylvania Bulletin.~~

29 ~~(ii) At the same time a notice of intent to~~
30 ~~remediate a site is submitted to the department, a copy~~

1 ~~of the notice shall be provided to the municipality in~~
2 ~~which the site is located and a summary of the notice of~~
3 ~~intent shall be published in a newspaper of general~~
4 ~~circulation serving the area in which the site is~~
5 ~~located.~~

6 ~~(2) Notice of the submission of the final report~~
7 ~~demonstrating attainment of the Statewide health standard~~
8 ~~shall be given to the municipality in which the remediation~~
9 ~~site is located, published in a newspaper of general~~
10 ~~circulation serving the area and in the Pennsylvania~~
11 ~~Bulletin.~~

12 ~~(3) The department shall review the final report~~
13 ~~demonstrating attainment of the Statewide health standard~~
14 ~~within 45 days of its receipt or notify the person submitting~~
15 ~~the report of substantive deficiencies. If the department~~
16 ~~does not respond with deficiencies within 45 days, the final~~
17 ~~report shall be deemed approved.~~

18 ~~Section 304. Site specific standard.~~

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

25 ~~(b) Carcinogens. For known or suspected carcinogens, soil~~
26 ~~and groundwater cleanup standards shall be established at~~
27 ~~exposures which represent an excess upper bound lifetime risk of~~
28 ~~between 1 in 10,000 and 1 in 1,000,000. The cumulative excess~~
29 ~~risk to exposed populations, including sensitive subgroups,~~
30 ~~shall not be greater than 1 in 10,000.~~

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

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

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

15 ~~(i) The current and probable future use of~~
16 ~~groundwater shall be identified and protected.~~
17 ~~Groundwater that has a background total dissolved solids~~
18 ~~content greater than 2,500 milligrams per liter or is not~~
19 ~~capable of transmitting water to a pumping well in usable~~
20 ~~and sustainable quantities shall not be considered a~~
21 ~~current or potential source of drinking water.~~

22 ~~(ii) Site specific sources of contaminants and~~
23 ~~potential receptors shall be identified.~~

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

28 ~~(2) Groundwater not in aquifers shall be evaluated using~~
29 ~~current or probable future exposure scenarios. Appropriate~~
30 ~~management actions shall be instituted at the point of~~

1 ~~exposure where a person is exposed to groundwater by~~
2 ~~ingestion or other avenues to protect human health and the~~
3 ~~environment. This shall not preclude taking appropriate~~
4 ~~source management actions by the responsible party to achieve~~
5 ~~the equivalent level of protection.~~

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

20 ~~(f) Factors. In determining soil and groundwater cleanup~~
21 ~~standards under subsections (d) and (e), the following factors~~
22 ~~shall also be considered:~~

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

27 ~~(2) Use of appropriate statistical techniques,~~
28 ~~including, but not limited to, Monte Carlo simulations, to~~
29 ~~establish statistically valid cleanup standards.~~

30 ~~(3) The potential of human ingestion of regulated~~

1 ~~substances in surface water or other site specific surface~~
2 ~~water exposure pathways, if applicable.~~

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

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

15 ~~(h) Relationship to background. The concentration of a~~
16 ~~regulated substance in an environmental medium of concern on a~~
17 ~~site where the site specific standard has been selected shall~~
18 ~~not be required to meet the site specific standard if the site-~~
19 ~~specific standard is numerically less than the achievable~~
20 ~~practical quantitative limit. In such cases, the achievable~~
21 ~~practical quantitative limit shall apply.~~

22 ~~(i) Combination of measures. The standards may be attained~~
23 ~~through a combination of remediation activities that can include~~
24 ~~treatment, removal, engineering or institutional controls and~~
25 ~~can include innovative or other demonstrated measures.~~

26 ~~(j) Remedy evaluation. The final remediation plan for a~~
27 ~~site submitted to the department shall include remediation~~
28 ~~alternatives and a final remedy which consider each of the~~
29 ~~following factors:~~

30 ~~(1) Long term risks and effectiveness of the proposed~~

1 ~~remedy that includes an evaluation of:~~

2 ~~(i) The magnitude of risks remaining after~~
3 ~~completion of the remedial action.~~

4 ~~(ii) The type, degree and duration of~~
5 ~~postremediation care required, including, but not limited~~
6 ~~to, operation and maintenance, monitoring, inspections~~
7 ~~and reports and their frequencies or other activities~~
8 ~~which will be necessary to protect human health and the~~
9 ~~environment.~~

10 ~~(iii) Potential for exposure of human and~~
11 ~~environmental receptors to regulated substances remaining~~
12 ~~at the site.~~

13 ~~(iv) Long term reliability of any engineering and~~
14 ~~voluntary institutional controls.~~

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

17 ~~(vi) Time to achieve cleanup standards.~~

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

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

30 ~~(4) The ease or difficulty of implementing the proposed~~

1 ~~remedy, including commercially available remedial measures~~
2 ~~which are BADCT, degree of difficulty associated with~~
3 ~~constructing the remedy, expected operational reliability,~~
4 ~~available capacity and location of needed treatment, storage~~
5 ~~and disposal services for wastes, time to initiate remedial~~
6 ~~efforts and approvals necessary to implement the remedial~~
7 ~~efforts.~~

8 ~~(5) The cost of the remediation measure, including~~
9 ~~capital costs, operation and maintenance costs, net present~~
10 ~~value of capital and operation and maintenance costs and the~~
11 ~~total costs and effectiveness of the system.~~

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

16 ~~(k) Attainment. Compliance with the site specific standard~~
17 ~~is attained for a site or portion of a site when a remedy~~
18 ~~approved by the department has been implemented in compliance~~
19 ~~with the following criteria:~~

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

23 ~~(2) Attainment of the site specific standard shall be~~
24 ~~demonstrated by collection and analysis of samples from~~
25 ~~affected media, as applicable, such as surface water, soil,~~
26 ~~groundwater in aquifers at the point of compliance through~~
27 ~~the application of statistical tests set forth in regulation~~
28 ~~or, if no regulations have been adopted, in a demonstration~~
29 ~~of a mathematically valid application of statistical tests.~~

30 ~~The Department of Environmental Resources shall also~~

1 ~~recognize those methods of attainment demonstration generally~~
2 ~~recognized as appropriate for that particular remediation.~~

3 ~~(1) Site investigation and remedy selection. Any person~~
4 ~~selecting to comply with site specific standards established by~~
5 ~~this section shall submit the following reports and evaluations,~~
6 ~~as required under this section, for review and approval by the~~
7 ~~department:~~

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

10 ~~(i) Documentation and descriptions of procedures and~~
11 ~~conclusions from the site investigation to characterize~~
12 ~~the nature, extent, direction, rate of movement, volume~~
13 ~~and composition of regulated substances.~~

14 ~~(ii) The concentration of regulated substances in~~
15 ~~environmental media of concern, including summaries of~~
16 ~~sampling methodology and analytical results, and~~
17 ~~information obtained from attempts to comply with the~~
18 ~~background or Statewide health standards, if any.~~

19 ~~(iii) A description of the existing or potential~~
20 ~~public benefits of the use or reuse of the property for~~
21 ~~employment opportunities, housing, open space, recreation~~
22 ~~or other uses.~~

23 ~~(iv) A fate and transport analysis may be included~~
24 ~~in the report to demonstrate that no present or future~~
25 ~~exposure pathways exist.~~

26 ~~(v) If no exposure pathways exist, a risk assessment~~
27 ~~report and cleanup plan are not required and no remedy is~~
28 ~~required to be proposed or completed.~~

29 ~~(2) If required, a risk assessment report shall describe~~
30 ~~the potential adverse effects under both current and planned~~

1 ~~future conditions caused by the presence of a regulated~~
2 ~~substance in the absence of any further control, remediation~~
3 ~~or mitigation measures. A baseline risk assessment report is~~
4 ~~not required where it is determined that a specific~~
5 ~~remediation measure can be implemented to attain the site-~~
6 ~~specific standard.~~

7 ~~(3) A cleanup plan shall evaluate the relative abilities~~
8 ~~and effectiveness of potential remedies to achieve the~~
9 ~~requirements for remedies described in subsection (k) when~~
10 ~~considering the evaluation factors described in subsection~~
11 ~~(j). The plan shall select a remedy which achieves the~~
12 ~~requirements for remedies described in subsection (k). The~~
13 ~~department may require a further evaluation of the selected~~
14 ~~remedy or an evaluation of one or more additional remedies in~~
15 ~~response to comments received from the community surrounding~~
16 ~~the site as a result of the community involvement plan~~
17 ~~established in subsection (o) which are based on the factors~~
18 ~~described in subsection (j) or as a result of its own~~
19 ~~analysis which are based on the evaluation factors described~~
20 ~~in subsection (j).~~

21 ~~(4) A final report demonstrating that the approved~~
22 ~~remedy has been completed in accordance with the cleanup plan~~
23 ~~shall be submitted to the department.~~

24 ~~(5) Nothing in this section shall preclude a person from~~
25 ~~submitting a remedial investigation report, risk assessment~~
26 ~~report and cleanup plan at one time to the department for~~
27 ~~review.~~

28 ~~(6) Decisions by the department involving the reports~~
29 ~~and evaluations required under this section shall be~~
30 ~~considered appealable actions under the act of July 13, 1988~~

1 ~~(P.L.530, No.94), known as the Environmental Hearing Board~~
2 ~~Act.~~

3 ~~(m) Deed notice. Persons attaining and demonstrating~~
4 ~~compliance with site specific standards for a regulated~~
5 ~~substance on a site shall be subject to the deed acknowledgment~~
6 ~~requirements of the act of July 7, 1980 (P.L.380, No.97), known~~
7 ~~as the Solid Waste Management Act, or the act of October 18,~~
8 ~~1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup~~
9 ~~Act. The notice shall include whether residential or~~
10 ~~nonresidential exposure factors were used to comply with the~~
11 ~~site specific standard.~~

12 ~~(n) Notice and review provisions. Persons utilizing the~~
13 ~~site specific standard shall comply with the following~~
14 ~~requirements for notifying the public and the department of~~
15 ~~planned remediation activities:~~

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

29 ~~(ii) The notices required by this paragraph shall~~
30 ~~include a 30 day public and municipal comment period~~

1 ~~during which the community can request to be involved in~~
2 ~~the development of the cleanup and reuse plans for the~~
3 ~~site. If requested by the community, the person~~
4 ~~undertaking the cleanup shall develop and implement a~~
5 ~~public involvement program plan which meets the~~
6 ~~requirements of subsection (o). Persons undertaking the~~
7 ~~cleanup are encouraged to develop a proactive approach to~~
8 ~~working with the community in developing and implementing~~
9 ~~cleanup and reuse plans.~~

10 ~~(2) The following notice and review provisions apply~~
11 ~~each time a remedial investigation report, risk assessment~~
12 ~~report, cleanup plan and final report demonstrating~~
13 ~~compliance with the site specific standard is submitted to~~
14 ~~the department:~~

15 ~~(i) When the report or plan is submitted to the~~
16 ~~department, a notice of its submission shall be provided~~
17 ~~to the municipality in which the site is located and a~~
18 ~~notice summarizing the findings and recommendations of~~
19 ~~the report or plan shall be published in a newspaper of~~
20 ~~general circulation serving the area in which the site is~~
21 ~~located. If the community requested to be involved in the~~
22 ~~development of the cleanup and reuse plans, the reports~~
23 ~~and plans shall also include the comments submitted by~~
24 ~~the community and the responses from the persons~~
25 ~~preparing the reports and plans.~~

26 ~~(ii) The department shall review the report or plan~~
27 ~~within no more than 45 days of its receipt or notify the~~
28 ~~person submitting the report of deficiencies. If the~~
29 ~~department does not respond with deficiencies within 45~~
30 ~~days, the report shall be deemed approved.~~

1 ~~(3) If the remedial investigation report, risk~~
2 ~~assessment report and cleanup plan are submitted at the same~~
3 ~~time to the department, the department shall notify persons~~
4 ~~of any deficiencies in 90 days. If the department does not~~
5 ~~respond with deficiencies within 90 days, the reports are~~
6 ~~deemed approved.~~

7 ~~(o) Community involvement. Persons using site specific~~
8 ~~standards are required to develop a community involvement plan~~
9 ~~which involves the community in the cleanup and use of the~~
10 ~~property if the community requests to be involved in the cleanup~~
11 ~~and reuse plans for the site. The plan shall propose measures to~~
12 ~~involve the community in the development and review of the~~
13 ~~remedial investigation report, risk assessment report, cleanup~~
14 ~~plan and final report. Depending on the site involved,~~
15 ~~techniques such as developing a proactive community information~~
16 ~~and consultation program that includes public meetings and~~
17 ~~roundtable discussions, convenient locations where documents~~
18 ~~related to a cleanup can be made available to the public and~~
19 ~~designating a single contact person to whom community residents~~
20 ~~can ask questions; the formation of a community based group~~
21 ~~which is used to solicit suggestions and comments on the various~~
22 ~~reports required by this section; if needed, the retention of~~
23 ~~trained, independent third parties to facilitate meetings and~~
24 ~~discussions and perform mediation services.~~

25 ~~Section 305. Special industrial areas.~~

26 ~~(a) Special sites. For property used for industrial~~
27 ~~activities where there is now no financially viable responsible~~
28 ~~person to clean up contamination or for land located within~~
29 ~~enterprise zones designated pursuant to the requirements of the~~
30 ~~Department of Community Affairs, the review procedures of this~~

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

4 ~~(b) Baseline report. A baseline environmental report shall~~
5 ~~be conducted on the property based on a work plan approved by~~
6 ~~the department to establish a reference point showing existing~~
7 ~~contamination on the site. The report shall describe the~~
8 ~~proposed remediation measures to be undertaken within the limits~~
9 ~~of cleanup liability found in section 502. The report shall also~~
10 ~~include a description of the existing or potential public~~
11 ~~benefits of the use or reuse of the property for employment~~
12 ~~opportunities, housing, open space, recreation or other use.~~

13 ~~(c) Public review. Persons undertaking the cleanup and~~
14 ~~reuse of sites under this section shall comply with the~~
15 ~~following public notice and review requirements:~~

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

28 ~~(2) The notices required by this subsection shall~~
29 ~~include a 30 day public and municipal comment period during~~
30 ~~which the community can request to be involved in the~~

1 ~~development of the cleanup and reuse plans for the site. If~~
2 ~~requested by the community, the person undertaking the~~
3 ~~cleanup shall develop and implement a public involvement~~
4 ~~program plan which meets the requirements of section 304(o).~~
5 ~~Persons undertaking the cleanup are encouraged to develop a~~
6 ~~proactive approach to working with the community in~~
7 ~~developing and implementing cleanup and reuse plans.~~

8 ~~(d) Department review. No later than 90 days after the~~
9 ~~completed environmental report is submitted for review, the~~
10 ~~department shall determine whether the report adequately~~
11 ~~identifies the environmental hazards and risks posed by the~~
12 ~~site. The comments obtained as a result of a community~~
13 ~~involvement plan developed pursuant to section 304(o) shall also~~
14 ~~be considered by the department. The department shall notify the~~
15 ~~person submitting the report of deficiencies within 90 days. If~~
16 ~~the department does not respond within 90 days, the study is~~
17 ~~deemed approved.~~

18 ~~(e) Agreement. The department and the person undertaking~~
19 ~~the reuse of a special industrial site shall enter into an~~
20 ~~agreement based on the environmental report which outlines~~
21 ~~cleanup liability for the property.~~

22 ~~(f) Department actions. A person entering into an agreement~~
23 ~~pursuant to this section shall not interfere with any subsequent~~
24 ~~remediation efforts by the department or others to deal with~~
25 ~~contamination identified in the baseline environmental report so~~
26 ~~long as it does not disrupt the use of the property.~~

27 ~~(g) Deed notice. Persons entering into agreements pursuant~~
28 ~~to this section shall be subject to the deed acknowledgment~~
29 ~~requirements of the act of July 7, 1980 (P.L.380, No.97), known~~
30 ~~as the Solid Waste Management Act, or the act of October 18,~~

1 ~~1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup~~
2 ~~Act, where applicable.~~

3 ~~Section 306.— Privatization.~~

4 ~~(a) General.— The department shall develop a program to use~~
5 ~~private firms to undertake a portion of the technical reviews~~
6 ~~required under this act. As part of the program, the department~~
7 ~~may:~~

8 ~~(1) Develop a system of prequalified firms which~~
9 ~~supervise the development and implementation of cleanup plans~~
10 ~~and certify properties as meeting the environmental~~
11 ~~remediation standards established in this chapter.~~

12 ~~(2) Develop programs in which private firms perform the~~
13 ~~technical review of remedial investigation reports, risk~~
14 ~~assessment reports, cleanup plans and final reports required~~
15 ~~to be submitted pursuant to this chapter.~~

16 ~~(b) Audits.— The department shall develop an auditing~~
17 ~~program sufficient to insure that private firms meet the~~
18 ~~requirements of the program.~~

19 ~~(c) Report.— The department shall on October 1 of each year~~
20 ~~report to the General Assembly on the activities the department~~
21 ~~has undertaken pursuant to this section.~~

22 ~~Section 307.— Local land development controls.~~

23 ~~This act shall not affect the ability of local governments to~~
24 ~~regulate land development under the act of July 31, 1968~~
25 ~~(P.L.805, No.247), known as the Pennsylvania Municipalities~~
26 ~~Planning Code. The use of the identified property and any deed~~
27 ~~restrictions used as part of a remediation plan shall comply~~
28 ~~with local land development controls adopted under the~~
29 ~~Pennsylvania Municipalities Planning Code.~~

30 ~~Section 308.— Immediate response.~~

1 ~~actions brought by responsible persons. The cleanup liability~~
2 ~~protection provided by this chapter applies to the following~~
3 ~~persons:~~

4 ~~(1) The current or future owner of the identified~~
5 ~~property, who participated in the remediation of the site.~~

6 ~~(2) A person who develops or otherwise occupies the~~
7 ~~identified site.~~

8 ~~(3) A successor or assign of any person to whom the~~
9 ~~liability protection applies.~~

10 ~~(4) A public utility to the extent the public utility~~
11 ~~performs activities on the identified site.~~

12 ~~(b) 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 imposed as~~
15 ~~the result of the illegal disposal of waste or for the pollution~~
16 ~~of the land, air or waters of this Commonwealth on the~~
17 ~~identified site.~~

18 ~~Section 502. Special industrial sites.~~

19 ~~(a) Agreement. The department and the person undertaking~~
20 ~~the reuse of an abandoned industrial site under section 305~~
21 ~~shall enter into an agreement based on the environmental report~~
22 ~~which outlines cleanup liability for the site. Any person~~
23 ~~included in such an agreement shall not be subject to a citizen~~
24 ~~suit or other contribution actions brought by responsible~~
25 ~~persons not participating in the environmental remediation of~~
26 ~~the site.~~

27 ~~(b) Liability. The cleanup liabilities for the person~~
28 ~~undertaking the report shall include the following:~~

29 ~~(1) The person shall only be responsible for remediation~~
30 ~~of any immediate, direct or imminent threats to public health~~

1 ~~or the environment, such as drummed waste, which would~~
2 ~~prevent the site from being occupied for its intended~~
3 ~~purpose.~~

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

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

11 ~~(c) Developer or occupier. A person who develops or~~
12 ~~occupies the site shall not be considered a responsible person~~
13 ~~for purposes of assigning cleanup liability.~~

14 ~~(d) Successor or assign. A successor or assign of any~~
15 ~~person to whom cleanup liability protection applies for a 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 ~~(e) Public utility. A public utility shall not be~~
21 ~~considered a responsible person for purposes of assigning~~
22 ~~cleanup liability to the extent the public utility performs~~
23 ~~activities on the identified site, provided the public utility~~
24 ~~is not a person responsible for contamination on the property.~~

25 ~~Section 503. Existing exclusions.~~

26 ~~The protection from cleanup liability afforded under this act~~
27 ~~shall be in addition to the exclusions from being a responsible~~
28 ~~person under the statutes listed in section 106.~~

29 ~~Section 504. New liability.~~

30 ~~Nothing in this act shall relieve a person receiving~~

1 ~~protection from cleanup liability under this chapter from any~~
2 ~~cleanup liability for contamination later caused by that person~~
3 ~~on a site which has demonstrated compliance with one or more of~~
4 ~~the environmental remediation standards established in Chapter~~
5 ~~3.~~

6 ~~Section 505.—Reopeners.~~

7 ~~Any person who completes remediation in compliance with this~~
8 ~~act shall not be required to undertake additional remediation~~
9 ~~actions unless:~~

10 ~~(1) fraud was committed in the certification of the site~~
11 ~~that resulted in avoiding the need for further cleanup of the~~
12 ~~site;~~

13 ~~(2) new information confirms the existence of an area of~~
14 ~~previously unknown contamination;~~

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

17 ~~(4) substantial changes in exposure conditions, such as~~
18 ~~a change from nonresidential to a residential use, or new~~
19 ~~information about regulated substances associated with the~~
20 ~~site which results in the level of risk being increased~~
21 ~~beyond the acceptable risk range.~~

22 ~~Section 506.—Authority reserved.~~

23 ~~Except for the performance of further remediation of the~~
24 ~~site, nothing in this act shall affect the ability or authority~~
25 ~~of any person to seek any relief available against any party who~~
26 ~~may have liability with respect to this site. This act shall not~~
27 ~~affect the ability or authority to seek a contribution from any~~
28 ~~person who may have liability with respect to the site and did~~
29 ~~not participate in the environmental remediation actions.~~

30

CHAPTER 7

1 ~~assessment or transaction screen on a property. Nothing in this~~
2 ~~section relieves a person of any liability for failure to~~
3 ~~exercise due diligence in performing an environmental assessment~~
4 ~~or transaction screen.~~

5 ~~Section 703. Review deadline.~~

6 ~~The department shall make a decision on whether or not to~~
7 ~~issue a no action determination no later than 90 days after a~~
8 ~~request is made unless the department and the person requesting~~
9 ~~the determination agree to an extension of the review to a date~~
10 ~~certain.~~

11 ~~Section 704. Applicability.~~

12 ~~The no action determination shall also apply to any person~~
13 ~~providing financing to the person named in the determination for~~
14 ~~the identified property and to any person developing or~~
15 ~~occupying the identified property as the result of a lease or~~
16 ~~rent agreement or to the activities of a public utility on the~~
17 ~~identified property.~~

18 ~~Section 705. Entry.~~

19 ~~The property owner must allow entry to the property by the~~
20 ~~department or its representatives for the purpose of taking any~~
21 ~~remediation and response actions needed to address contamination~~
22 ~~on the adjacent site and not interfere with any response action.~~

23 ~~Section 706. Transferability.~~

24 ~~A no action determination may be transferred by the property~~
25 ~~owner to successors and assigns if the successors and assigns~~
26 ~~are not otherwise responsible for any contamination on the~~
27 ~~adjacent property. A no action determination shall also be~~
28 ~~extended to the successors and assigns of parties identified in~~
29 ~~section 704.~~

30 ~~Section 707. Third parties.~~

1 ~~No person who is the subject of a no action determination~~
2 ~~issued by the department or who is granted liability protection~~
3 ~~under section 703 shall be subject to either citizen suits or~~
4 ~~other contribution actions brought by responsible persons for a~~
5 ~~release or potential release identified in the no action~~
6 ~~determination.~~

7 ~~CHAPTER 9~~

8 ~~INDUSTRIAL LAND RECYCLING FUND~~

9 ~~Section 901. Industrial Land Recycling Fund.~~

10 ~~(a) Fund. There is hereby established a separate account in~~
11 ~~the State Treasury, to be known as the Industrial Land Recycling~~
12 ~~Fund, which shall be a special fund administered by the~~
13 ~~department.~~

14 ~~(b) Purpose. The moneys deposited in this fund shall be~~
15 ~~used by the department for the purpose of implementing the~~
16 ~~provisions of this act. Moneys from the Hazardous Sites Cleanup~~
17 ~~Fund shall also be available to the department to remediate a~~
18 ~~release or threatened release on a property covered by the~~
19 ~~provisions of this act.~~

20 ~~(c) Funds. In addition to any funds appropriated by the~~
21 ~~General Assembly, Federal funds and private contributions and~~
22 ~~any fines and penalties assessed under this act shall be~~
23 ~~deposited into the fund.~~

24 ~~(d) Annual report. The department shall on October 1 of~~
25 ~~each year report to the General Assembly on the expenditures and~~
26 ~~commitments made from the Industrial Land Recycling Fund.~~

27 ~~Section 902. Voluntary Cleanup Loan Program.~~

28 ~~(a) Establishment. There is hereby established a separate~~
29 ~~account in the State Treasury, to be known as the Voluntary~~
30 ~~Cleanup Loan Fund, which shall be a special fund administered by~~

1 ~~the Department of Commerce. Within 60 days of the effective date~~
2 ~~of this act, the Department of Commerce shall finalize~~
3 ~~guidelines and issue application forms to administer this fund.~~

4 ~~(b) Purpose. The Voluntary Cleanup Loan Fund is to help~~
5 ~~provide funding to persons undertaking the voluntary remediation~~
6 ~~of a property. The funding shall be in the form of low interest~~
7 ~~loans and grants for up to 75% of the costs incurred for~~
8 ~~completing an environmental study and for implementing a cleanup~~
9 ~~plan for the following categories of applicants:~~

10 ~~(1) Local economic development agencies shall be~~
11 ~~eligible for grants and for low interest loans at a rate of~~
12 ~~not more than 2% for the purpose of completing environmental~~
13 ~~studies and implementing cleanup plans.~~

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

17 ~~(c) Funds. In addition to any funds appropriated by the~~
18 ~~General Assembly, at least \$5,000,000 shall be transferred on~~
19 ~~July 1 of each year from the Hazardous Sites Cleanup Fund~~
20 ~~established by the act of October 18, 1988 (P.L.756, No.108),~~
21 ~~known as the Hazardous Sites Cleanup Act, to the Voluntary~~
22 ~~Cleanup Loan Fund for the purpose of implementing the program~~
23 ~~established in this section. Moneys received by the Department~~
24 ~~of Commerce as repayment of outstanding loans shall be deposited~~
25 ~~in the fund. Any interest earned by moneys in the fund shall~~
26 ~~remain in the fund. The first transfer of funds from the~~
27 ~~Hazardous Sites Cleanup Fund required by this subsection shall~~
28 ~~occur within 60 days of the effective date of this act.~~

29 ~~(d) Annual report. The Department of Commerce shall on~~
30 ~~October 1 of each year report to the General Assembly on the~~

1 ~~grants, loans, expenditures and commitments made from the fund.~~

2 ~~Section 903. Fees.~~

3 ~~(a) Amount. The department shall collect the following fees~~
4 ~~for the review of reports required to be submitted to implement~~
5 ~~the provisions of this act:~~

6 ~~(1) A person utilizing the background or Statewide~~
7 ~~health standards for environmental remediation shall pay a~~
8 ~~fee of \$250 upon submission of the report certifying~~
9 ~~compliance with the standards.~~

10 ~~(2) A person utilizing site specific standards for~~
11 ~~environmental remediation shall pay a fee of \$250 each upon~~
12 ~~the submission of a remedial investigation, risk assessment~~
13 ~~and cleanup plan and an additional \$500 at the time of~~
14 ~~submission of the final report certifying compliance with the~~
15 ~~standards.~~

16 ~~(3) A person utilizing a combination of background,~~
17 ~~Statewide and site specific standards shall pay the fees~~
18 ~~required by paragraphs (1) and (2), as applicable.~~

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

22 ~~(b) Deposit. Fees imposed under this section shall be~~
23 ~~deposited in the Industrial Land Recycling Fund established~~
24 ~~under section 901.~~

25 ~~Section 904. Transfer of funds.~~

26 ~~The complement of the department is increased by seven~~
27 ~~positions for the purpose of implementing this act. The sum of~~
28 ~~\$500,000 is hereby appropriated to the Department of~~
29 ~~Environmental Resources for fiscal year 1994 1995 from the~~
30 ~~Hazardous Sites Cleanup Fund for the purpose of implementing~~

1 ~~this act.~~

2 CHAPTER 11

3 MISCELLANEOUS PROVISIONS

4 ~~Section 1101. Plain language.~~

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

12 ~~Section 1102. Permits.~~

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

16 ~~Section 1103. Future actions.~~

17 ~~At any time, a request may be made to the department to~~
18 ~~change the land use of the site from nonresidential to~~
19 ~~residential. The department shall only approve the request upon~~
20 ~~a demonstration that the site meets all the applicable cleanup~~
21 ~~standards for residential use of the property. Any existing deed~~
22 ~~acknowledgment contained in the deed prior to the demonstrating~~
23 ~~compliance with the residential use standard may be removed.~~

24 ~~Section 1104. Relationship to Federal and State programs.~~

25 ~~(a) Federal. The provisions of this act shall not prevent~~
26 ~~the Commonwealth from enforcing specific numerical cleanup~~
27 ~~standards, monitoring or compliance requirements required to be~~
28 ~~enforced by the Federal Government as a condition of primacy or~~
29 ~~to receive Federal funds.~~

30 ~~(b) State priority list. Any remediation undertaken on a~~

1 ~~site included on the State priority list established under the~~
2 ~~act of October 18, 1988 (P.L.756, No.108), known as the~~
3 ~~Hazardous Sites Cleanup Act, shall attain the site specific~~
4 ~~standard established in section 304 and shall be performed in~~
5 ~~compliance with the administrative record and other procedural~~
6 ~~and public review requirements of Chapter 5 of the Hazardous~~
7 ~~Sites Cleanup Act.~~

8 ~~(c) Storage tanks. The environmental remediation standards~~
9 ~~established under this act shall be used in corrective actions~~
10 ~~undertaken pursuant to the act of July 6, 1989 (P.L.169, No.32),~~
11 ~~known as the Storage Tank and Spill Prevention Act. However, the~~
12 ~~procedures in the Storage Tank and Spill Prevention Act for~~
13 ~~reviewing and approving corrective actions shall be used in lieu~~
14 ~~of the procedures and reviews required by this act.~~

15 ~~Section 1105. Enforcement.~~

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

29 ~~(b) Fraud. Any person who willfully commits fraud~~
30 ~~demonstrating attainment with one or more standards established~~

1 ~~under this act shall, upon conviction, be subject to an~~
2 ~~additional penalty of \$50,000 for each separate offense or to~~
3 ~~imprisonment for a period of not more than one year for each~~
4 ~~separate offense, or both. Each day shall be a separate offense.~~

5 ~~Section 1106.— Past penalties.~~

6 ~~Persons who have no responsibility for contamination on a~~
7 ~~site and participate in environmental remediation activities~~
8 ~~under this act shall not be responsible for paying any fines or~~
9 ~~penalties levied against any person responsible for~~
10 ~~contamination on the property.~~

11 ~~Section 1107.— Repeals.~~

12 ~~(a) Absolute.— Section 504(b) through (f) and (h) of the act~~
13 ~~of October 18, 1988 (P.L.756, No.108), known as the Hazardous~~
14 ~~Sites Cleanup Act, are repealed.~~

15 ~~(b) General.— All other acts and parts of acts are repealed~~
16 ~~insofar as they are inconsistent with this act and related to~~
17 ~~environmental remediation.~~

18 ~~Section 1108.— Effective date.~~

19 ~~This act shall take effect in 60 days.~~

20 CHAPTER 1

21 GENERAL PROVISIONS

22 SECTION 101. SHORT TITLE.

23 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE INDUSTRIAL
24 SITES REMEDIATION AND REUSE ACT.

25 SECTION 102. FINDINGS AND DECLARATION OF POLICY.

26 (A) LEGISLATIVE FINDINGS.--THE GENERAL ASSEMBLY FINDS AS
27 FOLLOWS:

28 (1) THE CITIZENS OF THIS COMMONWEALTH HAVE A RIGHT TO
29 PURE WATER AND A HEALTHY ENVIRONMENT, AS ESTABLISHED IN
30 SECTION 27 OF ARTICLE I OF THE CONSTITUTION OF PENNSYLVANIA,

1 AND THE GENERAL ASSEMBLY HAS A RESPONSIBILITY TO ENSURE
2 PROTECTION OF THAT RIGHT.

3 (2) THE CLEANUP OF REGULATED SUBSTANCES IN THIS
4 COMMONWEALTH IS A MATTER OF SIGNIFICANT PUBLIC POLICY WITH
5 SERIOUS ECONOMIC AND ENVIRONMENTAL CONSEQUENCES.

6 (3) INDUSTRIAL AND COMMERCIAL ACTIVITIES HAVE BEEN
7 CONDUCTED IN MANY AREAS OF THIS COMMONWEALTH FOR MANY YEARS.

8 (4) MANY SITES SUFFER FROM CONTAMINATION WHICH OCCURRED
9 PRIOR TO ADOPTION OF MODERN ENVIRONMENTAL LAWS.

10 (5) THE DIFFICULTY OF REMEDIATING SUCH SITES TO MEET
11 PRESENTLY APPLICABLE ENVIRONMENTAL STANDARDS DISCOURAGES
12 THEIR FULL ECONOMIC USE.

13 (6) THE REUSE OF THESE SITES IS AN IMPORTANT COMPONENT
14 OF A SOUND LAND USE POLICY THAT WILL HELP PREVENT THE
15 NEEDLESS DEVELOPMENT OF PRIME FARMLAND, OPEN SPACE AND
16 NATURAL AREAS.

17 (7) THIS COMMONWEALTH SHOULD IDENTIFY SPECIAL REMEDIAL
18 REQUIREMENTS TO FACILITATE CLEANUP OF THESE SITES AND
19 ENCOURAGE THE RETURN OF SUCH SITES TO THEIR FULL AND
20 PRODUCTIVE USE.

21 (8) CLEANUPS WHICH WILL LIMIT FUTURE USES OF SITES
22 SHOULD BE REVIEWED BY AFFECTED LOCAL INTERESTS.

23 (B) DECLARATION OF PURPOSE.--THE GENERAL ASSEMBLY DECLARES
24 THE FOLLOWING TO BE THE PURPOSES OF THIS ACT:

25 (1) TO PROTECT THE PUBLIC HEALTH, SAFETY AND WELFARE AND
26 THE ENVIRONMENT, INCLUDING NATURAL RESOURCES OF THIS
27 COMMONWEALTH, FROM THE SHORT-TERM AND LONG-TERM EFFECTS OF
28 THE RELEASE OF REGULATED SUBSTANCES.

29 (2) TO IMPLEMENT SECTION 27 OF ARTICLE I OF THE
30 CONSTITUTION OF PENNSYLVANIA.

1 (3) TO ENCOURAGE THE REUSE OF PREVIOUSLY CONTAMINATED
2 DEVELOPED SITES.

3 (4) TO AUTHORIZE PROMPT DEVELOPMENT OF GENERIC SOIL
4 CLEANUP STANDARDS BASED UPON LIMITED EXPOSURE TO REGULATED
5 SUBSTANCES CONSISTENT WITH FUTURE USES OF THE SITE.

6 (5) TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENTAL
7 RESOURCES TO PUBLISH THE NECESSARY GUIDANCE TO CARRY OUT THE
8 PURPOSES OF THIS ACT.

9 SECTION 103. DEFINITIONS.

10 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
11 HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
12 CONTEXT CLEARLY INDICATES OTHERWISE:

13 "AREA OF PERVASIVE GROUNDWATER CONTAMINATION." AN AREA WHERE
14 HYDROLOGICALLY CONNECTED GROUNDWATER BENEATH BOTH A SITE
15 PROPOSED FOR A VOLUNTARY RESPONSE ACTION AND CONTIGUOUS OR
16 NEARBY PROPERTIES CONTAINS ONE OR MORE REGULATED SUBSTANCES AT
17 LEVELS GREATER THAN BACKGROUND AND WHERE AT LEAST ONE SOURCE OF
18 THE ELEVATED LEVELS IS NOT LOCATED ON THE SITE PROPOSED FOR THE
19 VOLUNTARY RESPONSE ACTION.

20 "BACKGROUND." CONCENTRATION OF A REGULATED SUBSTANCE NOT
21 NATURALLY OCCURRING, BACKGROUND SHALL BE ANY CONCENTRATION BELOW
22 THE MINIMUM LEVEL WHICH CAN BE DETECTED WITH RELIABILITY. FOR
23 REGULATED SUBSTANCES NATURALLY OCCURRING, BACKGROUND SHALL BE
24 THE MINIMUM LEVEL WHICH CAN BE QUANTIFIED WITH RELIABILITY OR
25 THE ACTUAL VALUE, WHICHEVER IS HIGHER.

26 "BOARD." THE ENVIRONMENTAL QUALITY BOARD.

27 "CARCINOGEN." A SUBSTANCE KNOWN OR SUSPECTED TO BE CAPABLE
28 OF INDUCING A CANCER RESPONSE, INCLUDING, BUT NOT LIMITED TO,
29 CLASS A AND CLASS B CARCINOGENS AS SPECIFIED IN THE U.S.

30 ENVIRONMENTAL PROTECTION AGENCY'S INTEGRATED RISK INFORMATION

1 SYSTEM (IRIS) OR ITS SUCCESSOR.

2 "CLEANUP STANDARD." CONCENTRATION OF A REGULATED SUBSTANCE,
3 EXPRESSED AS A NUMERICAL VALUE, WHICH SATISFIES ONE OR MORE
4 REQUIREMENTS OF SECTION 702, 703 OR 704.

5 "DEPARTMENT." THE DEPARTMENT OF ENVIRONMENTAL RESOURCES OF
6 THE COMMONWEALTH.

7 "ECOSYSTEM." A COMMUNITY OF PLANTS, ANIMALS AND MICROBES,
8 ITS PHYSICAL ENVIRONMENT AND THEIR INTERACTIONS AND
9 INTERRELATIONSHIPS.

10 "EMERGENCY MEASURES." RESPONSE ACTIONS TAKEN IN A TIMELY
11 MANNER TO ABATE IMMINENT AND SUBSTANTIAL THREATS TO HUMAN HEALTH
12 AND SAFETY AND THE ENVIRONMENT.

13 "ENGINEERED CONTROLS." RESPONSE ACTIONS WHICH GENERALLY RELY
14 UPON PHYSICAL MEASURES TO CONTAIN OR CONTROL THE MIGRATION OF
15 REGULATED SUBSTANCES THROUGH THE ENVIRONMENT OR TO ELIMINATE OR
16 PREVENT EXPOSURE TO REGULATED SUBSTANCES. THESE INCLUDE, BUT ARE
17 NOT LIMITED TO: SLURRY WALLS, LINER SYSTEMS, CAPS, LEACHATE
18 COLLECTION SYSTEMS AND GROUNDWATER RECOVERY TRENCHES, FENCES OR
19 OTHER SECURITY MEASURES USED TO PREVENT EXPOSURE TO REGULATED
20 SUBSTANCES.

21 "FUND." THE ENVIRONMENTAL RESPONSE LOAN FUND ESTABLISHED
22 UNDER CHAPTER 15.

23 "GENERIC CLEANUP STANDARDS." CLEANUP STANDARDS ESTABLISHED
24 UNDER CHAPTER 11 THAT MAY BE USED IN A VOLUNTARY RESPONSE ACTION
25 IN THIS COMMONWEALTH.

26 "GROUNDWATER." WATER BENEATH THE SURFACE OF THE GROUND THAT
27 EXISTS IN A ZONE OF SATURATION. THE TERM DOES NOT INCLUDE WATER
28 TRAPPED WITHIN AN OIL OR GAS POOL WHICH HAS NO POTENTIAL
29 DRINKING WATER VALUE OR WATER WHICH HAS A NATURAL CONCENTRATION
30 OF TOTAL DISSOLVED SOLIDS GREATER THAN 10,000 MILLIGRAMS PER

1 LITER.

2 "HAZARD INDEX." AN INDEX WHICH ESTABLISHES THE SYSTEMIC RISK
3 OR TOXICITY OF ONE, OR ANY COMBINATION OF MORE THAN ONE,
4 REGULATED SUBSTANCES. THE HAZARD INDEX IS EQUAL TO THE SUM OF
5 THE RATIOS OF THE EXPOSURE TO EACH SUBSTANCE TO THE REFERENCE
6 DOSE FOR THAT SUBSTANCE.

7 "HISTORIC GROUNDWATER OR SOIL CONTAMINATION." THE PRESENCE
8 OF REGULATED SUBSTANCES IN GROUNDWATER OR SOIL AT CONCENTRATIONS
9 GREATER THAN BACKGROUND CAUSED SOLELY BY ONE OR MORE RELEASES
10 WHICH INITIALLY OCCURRED PRIOR TO JANUARY 1, 1986.

11 "INDUSTRIAL ACTIVITIES." MANUFACTURING OR PROCESSING OF
12 MATERIALS, MARINE TERMINAL AND TRANSPORTATION AREAS AND
13 FACILITIES, FABRICATION, ASSEMBLY, TREATMENT OR DISTRIBUTION OF
14 MANUFACTURED PRODUCTS OR STORAGE OF MANUFACTURED MATERIALS.

15 "INSTITUTIONAL CONTROLS." RESPONSE ACTIONS DIRECTED
16 EXCLUSIVELY TOWARD ISOLATING ACTUAL OR POTENTIALLY EXPOSED
17 RECEPTORS FROM REGULATED SUBSTANCES IN SOIL, GROUNDWATER OR
18 SEDIMENT. THESE INCLUDE, BUT ARE NOT LIMITED TO: RELOCATION OF
19 RESIDENTS, BUSINESSES OR COMMUNITY FACILITIES, PROVISION OF
20 ALTERNATIVE WATER SUPPLIES OR RESTRICTIONS ON FUTURE USE OF THE
21 SITE.

22 "LIMITED ACCESS USE." USE OF PROPERTY AFTER COMPLETION OF A
23 VOLUNTARY RESPONSE FOR:

24 (1) THOSE INDUSTRIAL ACTIVITIES DESIGNATED BY THE BOARD
25 WHICH PREVENT ACCESS BY THE PUBLIC TO AREAS WHERE REGULATED
26 SUBSTANCES MAY BE PRESENT IN THE SOIL AND FOR WHICH CLEANUP
27 STANDARDS MEETING THE REQUIREMENTS OF THIS ACT CAN BE
28 DEVELOPED BASED UPON SOLELY OCCUPATIONAL EXPOSURE ASSUMPTIONS
29 CONSISTENT WITH SUCH USE.

30 (2) SUCH OTHER PROPERTY USES DESIGNATED BY THE BOARD

1 WHICH LIMIT THE PUBLIC FROM ACCESS TO AREAS WHERE REGULATED
2 SUBSTANCE MAY BE PRESENT IN THE SOIL AND FOR WHICH CLEANUP
3 STANDARDS MEETING THE REQUIREMENTS OF THIS ACT CAN BE
4 DEVELOPED BASED UPON PUBLIC AND OCCUPATIONAL EXPOSURE
5 ASSUMPTIONS CONSISTENT WITH SUCH USES.

6 "LOCAL AGENCY." THE LOCAL OR COUNTY GOVERNMENTAL AGENCY
7 HAVING JURISDICTION OVER LAND USE DECISIONS.

8 "NONTHRESHOLD EFFECT." AN ADVERSE IMPACT, INCLUDING CANCER,
9 FOR WHICH NO EXPOSURE GREATER THAN ZERO ASSURES PROTECTION TO
10 THE EXPOSED INDIVIDUAL. THE TERM INCLUDES ADVERSE IMPACTS FROM
11 REGULATED SUBSTANCES FOR WHICH THERE IS NO REFERENCE DOSE OR
12 CANCER POTENCY SLOPE FACTOR.

13 "PERSON." AN INDIVIDUAL, FIRM, CORPORATION, ASSOCIATION,
14 PARTNERSHIP, CONSORTIUM, JOINT VENTURE, COMMERCIAL ENTITY,
15 AUTHORITY, NONPROFIT CORPORATION, INTERSTATE BODY OR OTHER LEGAL
16 ENTITY WHICH IS RECOGNIZED BY LAW AS THE SUBJECT OF RIGHTS AND
17 DUTIES. THE TERM INCLUDES THE FEDERAL GOVERNMENT, STATE
18 GOVERNMENT, POLITICAL SUBDIVISIONS AND COMMONWEALTH
19 INSTRUMENTALITIES.

20 "REGULATED SUBSTANCES." HAZARDOUS SUBSTANCES REGULATED UNDER
21 THE ACT OF OCTOBER 18, 1988 (P.L.756, NO.108), KNOWN AS THE
22 HAZARDOUS SITES CLEANUP ACT, REGULATED SUBSTANCES UNDER THE ACT
23 OF JULY 6, 1989 (P.L.169, NO.32), KNOWN AS THE STORAGE TANK AND
24 SPILL PREVENTION ACT, AND SUBSTANCES COVERED BY THE ACT OF JUNE
25 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN STREAMS LAW, THE
26 STORAGE TANK AND SPILL PREVENTION ACT, THE ACT OF JANUARY 8,
27 1960 (1959 P.L.2119, NO.787), KNOWN AS THE AIR POLLUTION CONTROL
28 ACT, THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN AS THE
29 SOLID WASTE MANAGEMENT ACT, AND THE ACT OF JULY 13, 1988
30 (P.L.525, NO.93), REFERRED TO AS THE INFECTIOUS AND

1 CHEMOTHERAPEUTIC WASTE LAW.

2 "RELEASE." SPILLING, LEAKING, PUMPING, POURING, EMITTING,
3 EMPTYING, DISCHARGING, INJECTING, ESCAPING, LEACHING, DUMPING,
4 PLACING OR DISPOSAL OF ANY REGULATED SUBSTANCES INTO THE
5 ENVIRONMENT. THE TERM INCLUDES THE ABANDONMENT OR DISCARDING OF
6 BARRELS, CONTAINERS, VESSELS OR OTHER RECEPTACLES CONTAINING OR
7 WHICH PREVIOUSLY CONTAINED A REGULATED SUBSTANCE; THE MIGRATION
8 OF LANDFILL GAS FROM A WASTE MANAGEMENT AREA IN A MANNER OR
9 DIRECTION CAUSING A POTENTIAL HAZARD TO HUMAN HEALTH AND SAFETY
10 OR THE ENVIRONMENT; AND THE MIGRATION OF REGULATED SUBSTANCE
11 FROM SOIL TO GROUNDWATER AND SURFACE WATER.

12 "REMOVAL." TRANSPORTING OF REGULATED SUBSTANCES OFFSITE FOR
13 THE PURPOSES OF TREATMENT OR DISPOSAL.

14 "RESPONSE ACTION." AN ACTION TAKEN TO CLEAN UP, MITIGATE,
15 REMEDIATE, CORRECT, CONTAIN, CONTROL, ABATE, MINIMIZE, ELIMINATE
16 OR PREVENT A RELEASE OR THREAT OF A RELEASE OR EXPOSURE TO A
17 REGULATED SUBSTANCE INTO THE ENVIRONMENT IN ORDER TO PROTECT THE
18 PRESENT OR FUTURE PUBLIC HEALTH, SAFETY AND WELFARE AND THE
19 ENVIRONMENT.

20 "RESPONSIBLE PERSON." THIS TERM SHALL HAVE THE SAME MEANING
21 AS GIVEN TO IT IN THE ACT OF OCTOBER 18, 1988 (P.L.756, NO.108),
22 KNOWN AS THE HAZARDOUS SITES CLEANUP ACT, AND SHALL INCLUDE
23 PERSONS SUBJECT TO ENFORCEMENT ACTIONS FOR SUBSTANCES COVERED BY
24 THE ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN
25 STREAMS LAW, THE ACT OF JULY 6, 1989 (P.L.169, NO.32), KNOWN AS
26 THE STORAGE TANK AND SPILL PREVENTION ACT, THE ACT OF JANUARY 8,
27 1960 (1959 P.L.2119, NO.787), KNOWN AS THE AIR POLLUTION CONTROL
28 ACT, THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN AS THE
29 SOLID WASTE MANAGEMENT ACT, AND THE ACT OF JULY 13, 1988
30 (P.L.525, NO.93), REFERRED TO AS THE INFECTIOUS AND

1 CHEMOTHERAPEUTIC WASTE LAW.

2 "SECRETARY." THE SECRETARY OF ENVIRONMENTAL RESOURCES OF THE
3 COMMONWEALTH.

4 "SEDIMENT." SOLID MATERIAL WHICH IS ASSOCIATED WITH A
5 DRAINAGE AREA, SWALE, CHANNEL OR STREAM OR OTHER AQUATIC REGIME
6 AND IS OR HAS BEEN TRANSPORTED BY, SUSPENDED IN, OR DEPOSITED BY
7 WATER AND WHICH FORMS OR FORMED ON THE EARTH'S SURFACE IN A
8 LOOSE, UNCONSOLIDATED FORM SUCH AS SAND, GRAVEL, SILT AND MUD.

9 "SITE." THE AREA OF THE RELEASE OF THE REGULATED SUBSTANCE
10 AND ALL LOCATIONS IN CLOSE PROXIMITY NECESSARY FOR THE
11 IMPLEMENTATION OF VOLUNTARY RESPONSE ACTIONS.

12 "SOIL." SOLID FRAGMENTAL MATERIAL, OR A MASS OF SUCH
13 MATERIAL, EITHER INORGANIC OR ORGANIC, THAT ORIGINATES FROM
14 WEATHERING OF ROCKS AND ORGANIC MATERIALS AND IS LOCATED OVER
15 BEDROCK.

16 "THRESHOLD EFFECT." AN ADVERSE IMPACT THAT OCCURS IN THE
17 EXPOSED INDIVIDUAL ONLY AFTER THE INDIVIDUAL'S PROTECTIVE
18 MECHANISMS ARE OVERCOME. THE TERM INCLUDES MOST SYSTEMIC EFFECTS
19 AND DEVELOPMENTAL TOXICITY, INCLUDING BIRTH DEFECTS.

20 "TREATMENT." AN IN SITU OR EXTRACTIVE METHOD, TECHNIQUE OR
21 PROCESS, WHICH IS DESIGNED TO CHANGE THE PHYSICAL, CHEMICAL OR
22 BIOLOGICAL CHARACTER OR COMPOSITION OF A REGULATED SUBSTANCE AND
23 WHICH RESULTS IN THE REDUCTION IN CONCENTRATION, TOXICITY,
24 MOBILITY OR VOLUME OF REGULATED SUBSTANCES IN SOIL, GROUNDWATER
25 OR SEDIMENT.

26 "TREATMENT OR REMOVAL." TREATMENT OR REMOVAL OR BOTH.

27 "VOLUNTARY RESPONSE ACTION." A RESPONSE ACTION WHICH IS
28 COMMENCED PRIOR TO INITIATION OF AN ENFORCEMENT ACTION BY THE
29 DEPARTMENT OF ENVIRONMENTAL RESOURCES OR WHICH IS AGREED TO IN A
30 LEGALLY BINDING DOCUMENT EXECUTED NO LATER THAN 120 DAYS AFTER

1 THE INITIATION OF AN ENFORCEMENT ACTION BY THE DEPARTMENT. FOR
2 PURPOSES OF THIS DEFINITION, A RESPONSE ACTION SHALL BE
3 CONSIDERED COMMENCED IF SUBSTANTIAL AND LEGALLY BINDING
4 COMMITMENTS FOR THE CONDUCT OF A RESPONSE ACTION SATISFYING THE
5 REQUIREMENTS OF THIS ACT HAVE BEEN MADE. FOR PURPOSES OF THIS
6 DEFINITION, INITIATION OF AN ENFORCEMENT ACTION SHALL MEAN THE
7 ISSUANCE OF AN ADMINISTRATIVE ORDER OR THE INITIATION OF ANY
8 PROCEEDING IN A COURT OF RECORD BY THE DEPARTMENT OF
9 ENVIRONMENTAL RESOURCES OR SITE CHARACTERIZATION OR RESPONSE
10 ACTION OR THE ISSUANCE OF PRELISTING NOTIFICATIONS PURSUANT TO
11 SECTION 502 OF THE ACT OF OCTOBER 18, 1988 (P.L.756, NO.108),
12 KNOWN AS THE HAZARDOUS SITES CLEANUP ACT.

13 SECTION 104. SCOPE.

14 THE REQUIREMENTS FOR REGULATED SUBSTANCES ESTABLISHED
15 PURSUANT TO THIS ACT SHALL BE APPLICABLE WHENEVER A VOLUNTARY
16 RESPONSE ACTION IS CONDUCTED UNDER THE ACT OF OCTOBER 18, 1988
17 (P.L.756, NO.108), KNOWN AS THE HAZARDOUS SITES CLEANUP ACT, THE
18 ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN
19 STREAMS LAW, THE ACT OF JULY 6, 1989 (P.L.169, NO.32), KNOWN AS
20 THE STORAGE TANK AND SPILL PREVENTION ACT, THE ACT OF JANUARY 8,
21 1960 (1959 P.L.2119, NO.787), KNOWN AS THE AIR POLLUTION CONTROL
22 ACT, THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN AS THE
23 SOLID WASTE MANAGEMENT ACT, AND THE ACT OF JULY 13, 1988
24 (P.L.525, NO.93), REFERRED TO AS THE INFECTIOUS AND
25 CHEMOTHERAPEUTIC WASTE LAW.

26 CHAPTER 3

27 DEPARTMENT POWERS AND DUTIES

28 SECTION 301. POWERS AND DUTIES OF DEPARTMENT.

29 THE DEPARTMENT SHALL HAVE THE POWER AND ITS DUTIES SHALL BE
30 TO:

1 (1) APPOINT OR UTILIZE SUCH ADVISORY COMMITTEES AS THE
2 SECRETARY DEEMS NECESSARY AND PROPER TO ASSIST THE DEPARTMENT
3 IN CARRYING OUT THIS ACT. THE SECRETARY IS AUTHORIZED TO PAY
4 REASONABLE AND NECESSARY EXPENSES INCURRED BY THE MEMBERS OF
5 THE ADVISORY COMMITTEES IN CARRYING OUT THEIR FUNCTIONS.

6 (2) COOPERATE WITH APPROPRIATE FEDERAL, STATE,
7 INTERSTATE AND LOCAL GOVERNMENT AGENCIES IN CARRYING OUT ITS
8 DUTIES UNDER THIS ACT.

9 (3) INITIATE, CONDUCT AND SUPPORT RESEARCH,
10 DEMONSTRATION PROJECTS AND INVESTIGATIONS AND COORDINATE ALL
11 STATE AGENCY RESEARCH PROGRAMS PERTAINING TO TECHNOLOGIES
12 THAT CAN BE USED IN THE CLEANUP OF REGULATED SUBSTANCE
13 RELEASES.

14 (4) WAIVE STATE PERMITTING AND OR OTHER APPLICABLE
15 REQUIREMENTS.

16 (5) DO ANY AND ALL OTHER ACTS AND THINGS NOT
17 INCONSISTENT WITH ANY PROVISION OF THIS ACT WHICH IT MAY DEEM
18 NECESSARY OR PROPER FOR THE EFFECTIVE IMPLEMENTATION OF THIS
19 ACT.

20 SECTION 302. POWERS AND DUTIES OF BOARD.

21 THE BOARD HAS THE POWER AND DUTY TO PROMULGATE REGULATIONS OF
22 THE DEPARTMENT TO ACCOMPLISH THE PURPOSES AND TO CARRY OUT THE
23 PROVISIONS OF THIS ACT, INCLUDING, BUT NOT LIMITED TO,
24 REGULATIONS RELATING TO GENERIC SOIL CLEANUP STANDARDS,
25 CRITERIA, METHODOLOGIES AND FACTORS FOR THE CALCULATION OF SOIL,
26 GROUNDWATER OR SEDIMENT CLEANUP STANDARDS FOR A SPECIFIC
27 VOLUNTARY RESPONSE ACTION, THE DESIGNATION OF LIMITED ACCESS
28 USES, THE USE OF AN ALTERNATE METHODOLOGY FOR DETERMINING
29 EQUIVALENT PROTECTIVE LEVELS FOR REGULATED SUBSTANCES HAVING
30 THRESHOLD EFFECTS OR OTHER APPROPRIATE REQUIREMENTS FOR

1 VOLUNTARY RESPONSE ACTIONS.

2 CHAPTER 5

3 ELIGIBILITY FOR SPECIAL RESPONSE ACTION

4 REQUIREMENTS

5 SECTION 501. GENERAL PROVISIONS.

6 VOLUNTARY RESPONSE ACTIONS ARE ELIGIBLE FOR THE SPECIAL
7 RESPONSE ACTION REQUIREMENTS OF CHAPTER 7 ONLY IF BOTH OF THE
8 FOLLOWING REQUIREMENTS ARE MET:

9 (1) THE SITE EITHER:

10 (I) IS, IN WHOLE OR IN PART, ON A PROPERTY WHICH HAD
11 INDUSTRIAL ACTIVITIES CONDUCTED ON IT PRIOR TO JANUARY 1,
12 1986;

13 (II) IS IN AN AREA OF PERVASIVE GROUNDWATER
14 CONTAMINATION; OR

15 (III) CONTAINS HISTORIC GROUNDWATER OR SOIL
16 CONTAMINATION.

17 (2) FOLLOWING COMPLETION OF THE VOLUNTARY RESPONSE
18 ACTION, THIS SITE IS UTILIZED FOR A LIMITED ACCESS USE.

19 SECTION 502. DISPUTES REGARDING ELIGIBILITY.

20 IN ANY DISPUTE REGARDING ELIGIBILITY FOR SPECIAL RESPONSE
21 ACTION REQUIREMENTS, THE PERSON CONDUCTING OR PROPOSING TO
22 CONDUCT A VOLUNTARY RESPONSE ACTION SHALL HAVE THE BURDEN OF
23 DEMONSTRATING THAT THE REQUIREMENTS OF THIS CHAPTER HAVE BEEN
24 MET.

25 CHAPTER 7

26 SPECIAL VOLUNTARY RESPONSE ACTION

27 REQUIREMENTS

28 SECTION 701. VOLUNTARY RESPONSE ACTION REQUIREMENTS.

29 (A) GENERAL RULE.--VOLUNTARY RESPONSE ACTIONS SHALL:

30 (1) COMPLY WITH THE REQUIREMENTS FOR SOILS CONTAMINATED

1 WITH REGULATED SUBSTANCES AS DESCRIBED IN SECTION 702.

2 (2) COMPLY WITH THE REQUIREMENTS FOR GROUNDWATER
3 CONTAMINATED WITH REGULATED SUBSTANCES AS DESCRIBED IN
4 SECTION 703.

5 (3) COMPLY WITH THE REQUIREMENTS FOR SEDIMENT
6 CONTAMINATED WITH REGULATED SUBSTANCES AS DESCRIBED IN
7 SECTION 704.

8 (4) COMPLY WITH THE REQUIREMENTS OF SECTION 705 TO
9 PROTECT ECOSYSTEMS.

10 (5) COMPLY WITH ALL APPLICABLE STANDARDS, REQUIREMENTS,
11 CRITERIA OR LIMITATIONS UNLESS WAIVED BY THE DEPARTMENT
12 PURSUANT TO SECTIONS 706 AND 707.

13 (B) EMERGENCY MEASURES.--NOTHING IN THIS ACT SHALL PREVENT
14 THE USE OF EMERGENCY MEASURES IN A TIMELY MANNER TO ABATE
15 IMMINENT AND SUBSTANTIAL THREATS TO HUMAN HEALTH AND SAFETY AND
16 THE ENVIRONMENT, NOR AFFECT EXISTING OBLIGATIONS UNDER OTHER
17 LAWS OR REGULATIONS RELATING TO SUCH IMMINENT AND SUBSTANTIAL
18 THREATS. TO THE EXTENT PRACTICABLE, SUCH MEASURES SHOULD BE
19 SELECTED TO ATTAIN THE REQUIREMENTS ESTABLISHED IN SUBSECTION
20 (A).

21 SECTION 702. REQUIREMENTS FOR SOILS.

22 (A) GENERAL RULE.--VOLUNTARY RESPONSE ACTIONS FOR REGULATED
23 SUBSTANCES IN SOIL SHALL:

24 (1) ENSURE THAT THE HAZARD INDEX DOES NOT EXCEED A VALUE
25 OF 1.0 FOR REGULATED SUBSTANCES THAT AFFECT THE SAME TARGET
26 ORGAN OR ACT BY THE SAME METHOD OF TOXICITY, OR AN EQUIVALENT
27 PROTECTIVE LEVEL WHICH IS ESTABLISHED BY AN ALTERNATE
28 METHODOLOGY FOR EVALUATING ADVERSE IMPACTS CAUSED BY
29 REGULATED SUBSTANCES THAT HAVE THRESHOLD EFFECTS AND WHICH IS
30 ESTABLISHED BY THE BOARD PURSUANT TO SECTION 302.

1 (2) ENSURE THAT CUMULATIVE CARCINOGENIC RISK DOES NOT
2 EXCEED A ONE IN ONE MILLION EXCESS CANCER RISK.

3 (3) PREVENT ADVERSE IMPACTS TO HUMANS CAUSED BY
4 REGULATED SUBSTANCES WHICH HAVE NONTHRESHOLD EFFECTS.

5 (4) PROTECT GROUNDWATER ON THE PROPERTY SO THAT THE
6 REQUIREMENTS OF SECTION 703 CAN BE MET AND MAINTAINED.

7 (5) PREVENT PUBLIC NUISANCES.

8 (B) BASIS FOR CLEANUP STANDARDS.--CLEANUP STANDARDS WHICH
9 SATISFY THE REQUIREMENTS OF SUBSECTION (A) SHALL BE BASED UPON
10 LIMITED ACCESS USE EXPOSURE ASSUMPTIONS PROMULGATED PURSUANT TO
11 SECTION 1101.

12 (C) RESPONSE ACTION REQUIREMENTS.--RESPONSE ACTIONS SHALL
13 MEET THE REQUIREMENTS OF SUBSECTION (A) THROUGH TREATMENT,
14 REMOVAL OR ENGINEERED CONTROLS, OR ANY COMBINATION THEREOF.

15 (D) ALTERNATIVE REQUIREMENTS.--NOTWITHSTANDING THE
16 PROVISIONS OF SUBSECTION (C), VOLUNTARY RESPONSE ACTIONS MAY
17 ALTERNATIVELY MEET THE REQUIREMENTS OF SUBSECTION (A)(2) BY
18 TREATMENT OR REMOVAL WHICH ENSURES THAT CUMULATIVE CARCINOGENIC
19 RISK DOES NOT EXCEED ONE IN TEN THOUSAND AND WHICH IS THEN
20 SUPPLEMENTED BY INSTITUTIONAL OR ENGINEERED CONTROLS.
21 SECTION 703. REQUIREMENTS FOR GROUNDWATER.

22 (A) GENERAL RULE.--VOLUNTARY RESPONSE ACTIONS FOR REGULATED
23 SUBSTANCES IN GROUNDWATER SHALL:

24 (1) ENSURE THAT CONCENTRATIONS OF REGULATED SUBSTANCES
25 IN GROUNDWATER AT THE PROPERTY BOUNDARY ARE NO GREATER THAN
26 THE REPRESENTATIVE CONCENTRATION OF REGULATED SUBSTANCES IN
27 GROUNDWATER IMMEDIATELY UPGRADIENT OF THE PROPERTY.

28 (2) PREVENT DEGRADATION TO EITHER GROUNDWATER OR SURFACE
29 WATER USED FOR DRINKING WATER SUPPLIES OR DEGRADATION OF
30 WATERS DESIGNATED FOR SPECIAL PROTECTION UNDER THE ACT OF

1 JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN STREAMS
2 LAW.

3 (3) PREVENT PUBLIC NUISANCES.

4 (B) RESPONSE ACTION REQUIREMENTS.--RESPONSE ACTIONS SHALL
5 MEET THE REQUIREMENTS OF SUBSECTION (A) THROUGH TREATMENT,
6 REMOVAL OR ENGINEERED CONTROLS, OR ANY COMBINATION THEREOF.

7 (C) DETERMINATION OF PROPERTY BOUNDARY.--FOR PURPOSES OF
8 SUBSECTION (A), THE PROPERTY BOUNDARY SHALL BE DEFINED AS THE
9 BOUNDARY AS IT EXISTED ON THE EFFECTIVE DATE OF THIS ACT.

10 SECTION 704. REQUIREMENTS FOR SEDIMENT.

11 (A) GENERAL RULE.--VOLUNTARY RESPONSE ACTIONS FOR REGULATED
12 SUBSTANCES IN SEDIMENT SHALL:

13 (1) ENSURE THAT THE HAZARD INDEX DOES NOT EXCEED A VALUE
14 OF 1.0 FOR REGULATED SUBSTANCES THAT AFFECT THE SAME TARGET
15 ORGAN OR THAT ACT BY THE SAME METHOD OF TOXICITY, OR AN
16 EQUIVALENT PROTECTIVE LEVEL WHICH IS ESTABLISHED BY AN
17 ALTERNATE METHODOLOGY FOR EVALUATING ADVERSE IMPACTS CAUSED
18 BY REGULATED SUBSTANCES THAT HAVE THRESHOLD EFFECTS AND WHICH
19 IS ESTABLISHED BY THE BOARD PURSUANT TO SECTION 302.

20 (2) ENSURE THAT CUMULATIVE CARCINOGENIC RISK DOES NOT
21 EXCEED A ONE IN ONE MILLION EXCESS CANCER RISK.

22 (3) PREVENT ADVERSE IMPACTS TO HUMANS CAUSED BY
23 REGULATED SUBSTANCES WHICH HAVE NONTHRESHOLD EFFECTS.

24 (4) PREVENT NEW OR CONTINUING DEGRADATION OF SURFACE
25 WATER OR GROUNDWATER.

26 (B) PROTECTION OF FOOD CHAIN.--VOLUNTARY RESPONSE ACTIONS
27 FOR REGULATED SUBSTANCES IN SEDIMENT THAT BIOACCUMULATE OR
28 BIOMAGNIFY SHALL PREVENT THE SUBSTANCES FROM ENTERING THE FOOD
29 CHAIN.

30 (C) RESPONSE ACTION REQUIREMENTS.--RESPONSE ACTIONS SHALL

1 MEET THE REQUIREMENTS OF SUBSECTION (A) AND (B) THROUGH
2 TREATMENT, REMOVAL OR ENGINEERED CONTROLS, OR ANY COMBINATION
3 THEREOF.

4 SECTION 705. PROTECTION OF ECOSYSTEMS.

5 VOLUNTARY RESPONSE ACTIONS SHALL ENSURE THAT REGULATED
6 SUBSTANCES IN SOIL, GROUNDWATER AND SEDIMENT DO NOT CAUSE
7 ADVERSE IMPACT TO ECOSYSTEMS. PARTICULAR CONSIDERATION SHALL BE
8 GIVEN TO ECOSYSTEMS WHICH INCLUDE:

9 (1) RARE, THREATENED OR ENDANGERED SPECIES AND THEIR
10 HABITATS AS DEFINED BY THE UNITED STATE DEPARTMENT OF THE
11 INTERIOR, FISH AND WILDLIFE SERVICE AND BY THE COMMONWEALTH
12 OF PENNSYLVANIA.

13 (2) SPECIES OF SPECIAL CONCERN AS IDENTIFIED BY THE
14 PENNSYLVANIA GAME COMMISSION, THE PENNSYLVANIA FISH AND BOAT
15 COMMISSION OR THE DEPARTMENT.

16 (3) IMPORTANT HABITATS OF ECOLOGICAL RECEPTORS.

17 (4) REGULATED SUBSTANCES THAT BIOACCUMULATE OR
18 BIOMAGNIFY THROUGH THE FOOD CHAIN.

19 SECTION 706. PERMITS.

20 (A) GENERAL RULE.--NO PERSON SHALL INITIATE AN ACTIVITY
21 REQUIRING A PERMIT UNDER OTHER ENVIRONMENTAL STATUTES AND
22 REGULATIONS IMPLEMENTED BY THE DEPARTMENT WITHOUT HAVING
23 OBTAINED SUCH PERMIT UNLESS OTHERWISE APPROVED BY THE DEPARTMENT
24 PURSUANT TO THIS SECTION.

25 (B) REQUEST TO INITIATE ACTION WITHOUT PERMIT.--THE
26 DEPARTMENT MAY, UPON REQUEST, GRANT WRITTEN APPROVAL TO INITIATE
27 WITHOUT A STATE PERMIT PURSUANT TO SUBSECTION (A) FOR TREATMENT,
28 PROCESSING, STORAGE, DISCHARGE OR DISPOSAL OF REGULATED
29 SUBSTANCES AT OR ON THE SITE.

30 (C) COMPONENTS OF REQUEST.--REQUESTS FOR APPROVAL SHALL

1 INCLUDE THE SITE CHARACTERIZATION REPORT, THE PROPOSED RESPONSE
2 ACTION PLAN, A LIST OF THOSE ACTIONS FOR WHICH APPROVAL TO
3 PROCEED IS BEING SOUGHT AND A DEMONSTRATION THAT THE PROPOSED
4 ACTIONS COMPLY WITH APPLICABLE SUBSTANTIVE PROTECTIVE MEASURES.
5 THE REQUEST SHALL BE PUBLICLY NOTICED PURSUANT TO SECTIONS 903
6 AND 904.

7 (D) APPROVAL BY DEPARTMENT.--THE DEPARTMENT SHALL APPROVE
8 THE REQUEST UNLESS IT DETERMINES THAT THE ACTIVITY AS DEFINED IN
9 THE PROPOSED RESPONSE ACTION PLAN WILL FAIL TO COMPLY WITH THE
10 SUBSTANTIVE PROTECTIVE MEASURES DEFINED BY APPLICABLE LAWS. THE
11 DEPARTMENT MAY CONDITION APPROVALS TO PROCEED WITHOUT A PERMIT
12 OR LIMIT THE TERM OF THE APPROVAL TO THAT TIME NECESSARY TO
13 SECURE A PERMIT.

14 (E) OTHER LAWS UNAFFECTED.--THE GRANTING OF APPROVAL SHALL
15 NOT WAIVE, ALTER OR MODIFY THE OBLIGATION TO COMPLY WITH
16 SUBSTANTIVE MEASURES REQUIRED BY APPLICABLE LAWS.
17 SECTION 707. APPLICABLE REQUIREMENTS OF OTHER STATUTES.

18 (A) GENERAL RULE.--NO PERSON SHALL IMPLEMENT A VOLUNTARY
19 RESPONSE ACTION WHICH DOES NOT COMPLY WITH THE REQUIREMENTS
20 ESTABLISHED UNDER OTHER ENVIRONMENTAL STATUTES AND REGULATIONS
21 UNLESS THE DEPARTMENT HAS APPROVED A WAIVER OF SUCH REQUIREMENTS
22 PURSUANT TO THIS SECTION. THE DEPARTMENT MAY NOT WAIVE THE
23 REQUIREMENTS OF SECTIONS 702, 703, 704 AND 705. THE DEPARTMENT
24 MAY WAIVE OR MODIFY IN WRITING OTHERWISE APPLICABLE REQUIREMENTS
25 WHERE A PERSON REQUESTING A WAIVER OR MODIFICATION DEMONSTRATES
26 THAT ANY OF THE FOLLOWING APPLY:

27 (1) COMPLIANCE WITH A REQUIREMENT AT A SITE WILL RESULT
28 IN GREATER RISK TO HUMAN HEALTH, SAFETY AND WELFARE AND THE
29 ENVIRONMENT THAN ALTERNATIVE OPTIONS;

30 (2) COMPLIANCE WITH A REQUIREMENT AT A SITE WILL

1 SUBSTANTIALLY INTERFERE WITH NATURAL OR ARTIFICIAL STRUCTURES
2 OR FEATURES; OR

3 (3) THE PROPOSED RESPONSE ACTION WILL ATTAIN A STANDARD
4 OF PERFORMANCE THAT IS EQUIVALENT TO THAT REQUIRED UNDER THE
5 OTHERWISE APPLICABLE REQUIREMENT THROUGH THE USE OF AN
6 ALTERNATIVE METHOD OR APPROACH.

7 (B) PUBLIC NOTICE OF WAIVER REQUEST.--THE DEPARTMENT MAY AT
8 ITS DISCRETION REQUIRE PUBLIC NOTICE OF A REQUEST FOR WAIVER
9 PURSUANT TO THIS SECTION. ANY SUCH PUBLIC NOTICE SHALL BE
10 PROVIDED IN ACCORDANCE WITH SECTIONS 903 AND 904.

11 SECTION 708. APPEALS.

12 AN APPROVAL OF A REQUEST MADE PURSUANT TO SECTIONS 706 AND
13 707 IS APPEALABLE TO THE ENVIRONMENTAL HEARING BOARD BY AN
14 AGGRIEVED PERSON.

15 CHAPTER 9

16 PUBLIC PARTICIPATION

17 SECTION 901. LOCAL AGENCY APPROVAL.

18 (A) DETERMINATION BY LOCAL AGENCY.--NO VOLUNTARY RESPONSE
19 ACTION UNDER THIS ACT SHALL SATISFY THE REQUIREMENTS OF SECTIONS
20 702, 703, 704 OR 705 UNLESS THE LOCAL AGENCY DETERMINES THAT A
21 PROPOSED LIMITED ACCESS USE IS APPROPRIATE IN LIGHT OF
22 HISTORICAL, CURRENT AND REASONABLY EXPECTED FUTURE LAND USE OF
23 THE PROPERTY AND LAND USE PLANS AND ZONING ORDINANCES, WHERE
24 EXISTING.

25 (B) PRESUMPTION CREATED.--A PROPOSED LIMITED ACCESS USE
26 WHICH IS CONSISTENT WITH EXISTING ZONING WILL CREATE A
27 PRESUMPTION IN THE LOCAL AGENCY PROCEEDINGS THAT THE PROPOSED
28 LIMITED ACCESS USE IS APPROPRIATE IN LIGHT OF HISTORICAL,
29 CURRENT AND REASONABLY EXPECTED FUTURE LAND USE OF THE PROPERTY
30 AND LAND USE PLANS. THE LOCAL AGENCY MAY DETERMINED THAT THE

1 PROPOSED LIMITED ACCESS USE IS INAPPROPRIATE ONLY WHERE THIS
2 PRESUMPTION IS REBUTTED BY SPECIFIC INFORMATION THAT REASONABLY
3 EXPECTED FUTURE LAND USES WOULD BE IMPEDED BY A PROPOSED LIMITED
4 ACCESS USE AND THE SPECIAL RESPONSE ACTION REQUIREMENTS OF THIS
5 ACT.

6 (C) PROCEDURE.--PURSUANT TO THE REQUIREMENTS OF 2 PA.C.S.
7 CH. 5 SUBCH. B (RELATING TO PRACTICE AND PROCEDURE OF LOCAL
8 AGENCIES), THE LOCAL AGENCY SHALL RENDER A FINAL DETERMINATION
9 UNDER SUBSECTION (A) NO LATER THAN 90 DAYS AFTER RECEIVING FROM
10 ANY PERSON A WRITTEN REQUEST FOR DETERMINATION, WHICH REQUEST
11 SHALL BE ACCOMPANIED BY SUPPORTING ANALYSIS AND INFORMATION.

12 (D) FAILURE OF AGENCY TO ACT TIMELY.--IN THE EVENT THAT A
13 LOCAL AGENCY FAILS TO RENDER A DECISION UPON A REQUEST FOR
14 DETERMINATION WITHIN 90 DAYS OF RECEIPT, THE PROPOSED LIMITED
15 ACCESS USE SHALL BE DEEMED APPROPRIATE IN LIGHT OF HISTORICAL,
16 CURRENT AND REASONABLY EXPECTED FUTURE LAND USE OF THE PROPERTY
17 AND LAND USE PLANS AND ZONING ORDINANCES, WHERE EXISTING.

18 (E) PUBLIC NOTICE REQUIRED.--PERSONS REQUESTING
19 DETERMINATIONS UNDER THIS CHAPTER SHALL PROVIDE PUBLIC NOTICE
20 PURSUANT TO SECTION 903(B).

21 (F) REVIEW OF LOCAL AGENCY DETERMINATION.--JUDICIAL REVIEW
22 OF A LOCAL AGENCY DETERMINATION SHALL BE SOUGHT IN ACCORDANCE
23 WITH 2 PA.C.S. CH. 7 SUBCH. B. (RELATING TO JUDICIAL REVIEW OF
24 LOCAL AGENCY ACTION). ANY APPEAL SHALL BE TAKEN WITHIN 30 DAYS
25 AFTER RECEIPT OF NOTICE OF THE DETERMINATION OR NOTICE THAT A
26 DEEMED DECISION HAS BEEN MADE UNDER SUBSECTION (D).
27 SECTION 902. REVIEW AND COMMENT.

28 (A) GENERAL RULE.--NO VOLUNTARY RESPONSE ACTION SHALL BE
29 ELIGIBLE TO MEET THE REQUIREMENTS OF THIS ACT UNLESS:

30 (1) PERSONS PROPOSING TO CONDUCT A VOLUNTARY RESPONSE

1 ACTION PROVIDE PUBLIC NOTICE OF AVAILABILITY OF THE SITE
2 CHARACTERIZATION REPORT AND PROPOSED RESPONSE ACTION PLAN AT
3 LEAST 60 DAYS PRIOR TO COMMENCEMENT OF THE VOLUNTARY RESPONSE
4 ACTION.

5 (2) THE PUBLIC NOTICE INCLUDES A STATEMENT THAT PERSONS
6 MAY SUBMIT COMMENTS ON THE SITE CHARACTERIZATION REPORT AND
7 PROPOSED RESPONSE ACTION PLAN FOR A PERIOD OF 30 DAYS
8 FOLLOWING THE DATE OF NOTICE AND PROVIDES AN ADDRESS TO WHICH
9 COMMENTS SHOULD BE SENT.

10 (3) COPIES OF THE SITE CHARACTERIZATION REPORT AND
11 PROPOSED RESPONSE ACTION PLAN ARE AVAILABLE AT LOCAL PUBLIC
12 LOCATIONS SUCH AS LIBRARIES OR MUNICIPAL OFFICES AND TO THE
13 DEPARTMENT PRIOR TO THE PUBLIC NOTICE.

14 (B) EMERGENCY MEASURES.--THE REVIEW AND COMMENT PROCEDURES
15 OF SUBSECTION (A) SHALL NOT APPLY TO THE USE OF EMERGENCY
16 MEASURES IN A TIMELY MANNER TO ABATE IMMINENT AND SUBSTANTIAL
17 THREATS TO HUMAN HEALTH AND THE ENVIRONMENT.

18 SECTION 903. PUBLIC NOTICE.

19 (A) DOCUMENTATION.--WITHIN TEN DAYS OF SUBMISSION OF A
20 REQUEST UNDER SECTION 706 OR A REQUEST BY THE DEPARTMENT UNDER
21 SECTION 707(B), PERSONS SHALL DOCUMENT THAT THE REQUIRED PUBLIC
22 NOTICE HAS BEEN PROVIDED.

23 (B) SUMMARY OF INFORMATION.--THE NOTICE SHALL INCLUDE A
24 SUMMARY OF THE INFORMATION CONTAINED IN THE REQUEST TO THE
25 DEPARTMENT.

26 SECTION 904. PUBLICATION IN NEWSPAPERS.

27 PUBLIC NOTICE UNDER SECTIONS 706, 707(B), 902 AND 903 SHALL
28 BE PUBLISHED IN A NEWSPAPER OF GENERAL CIRCULATION IN THE
29 GEOGRAPHICAL AREA OF THE RESPONSE ACTION.

30

CHAPTER 11

1 IMPLEMENTATION AND TRANSITION

2 SECTION 1101. DEVELOPMENT OF GENERIC CLEANUP STANDARDS.

3 WITHIN 180 DAYS OF THE EFFECTIVE DATE OF THIS ACT, THE BOARD
4 WILL PUBLISH A NOTICE OF PROPOSED RULEMAKING IN THE PENNSYLVANIA
5 BULLETIN CONTAINING GENERIC CLEANUP STANDARDS WHICH MEET THE
6 REQUIREMENTS OF SECTION 702(A) AND (B) FOR THOSE INDUSTRIAL
7 ACTIVITIES WHICH PREVENT ACCESS BY THE PUBLIC TO AREAS WHERE
8 REGULATED SUBSTANCES MAY BE PRESENT IN THE SOIL AND FOR WHICH
9 CLEANUP STANDARDS CAN BE DEVELOPED BASED UPON SOLELY
10 OCCUPATIONAL EXPOSURE ASSUMPTIONS CONSISTENT WITH SUCH USE.

11 SECTION 1102. DEVELOPMENT OF METHODOLOGY FOR SPECIFIC RESPONSE
12 ACTIONS.

13 WITHIN 180 DAYS OF THE EFFECTIVE DATE OF THIS ACT, THE BOARD
14 WILL PUBLISH A NOTICE OF PROPOSED RULEMAKING IN THE PENNSYLVANIA
15 BULLETIN CONTAINING:

16 (1) CRITERIA, METHODOLOGIES AND FACTORS FOR DEVELOPING
17 CLEANUP STANDARDS FOR REGULATED SUBSTANCES IN SOIL FOR WHICH
18 NO GENERIC CLEANUP STANDARDS HAVE BEEN DEVELOPED PURSUANT TO
19 THIS CHAPTER WHICH MEET THE REQUIREMENTS OF SECTION 702(A)
20 AND (B).

21 (2) CRITERIA, METHODOLOGIES AND FACTORS FOR DEVELOPING
22 CLEANUP STANDARDS FOR REGULATED SUBSTANCES IN GROUNDWATER FOR
23 A SPECIFIC RESPONSE ACTION AT A LIMITED ACCESS USE PROPERTY
24 WHICH MEET THE REQUIREMENTS OF SECTION 703.

25 SECTION 1103. DESIGNATIONS OF CERTAIN LIMITED ACCESS USES.

26 WITHIN 180 DAYS OF THE EFFECTIVE DATE OF THIS ACT, THE BOARD
27 WILL PUBLISH A NOTICE OF PROPOSED RULEMAKING IN THE PENNSYLVANIA
28 BULLETIN DESIGNATING THOSE INDUSTRIAL ACTIVITIES WHICH PREVENT
29 ACCESS BY THE PUBLIC TO AREAS WHERE REGULATED SUBSTANCES MAY BE
30 PRESENT IN THE SOIL AND FOR WHICH CLEANUP STANDARDS MEETING THE

1 REQUIREMENTS OF THIS ACT CAN BE DEVELOPED BASED UPON SOLELY
2 OCCUPATIONAL EXPOSURE ASSUMPTIONS CONSISTENT WITH SUCH USE.
3 SECTION 1104. INTERIM REQUIREMENTS FOR RESPONSE ACTIONS.

4 (A) COMPLIANCE WITH EXISTING STANDARDS.--UNTIL THE NOTICE OF
5 PROPOSED RULEMAKING IS PUBLISHED IN THE PENNSYLVANIA BULLETIN
6 PURSUANT TO SECTION 1101, RESPONSE ACTIONS SHALL COMPLY WITH
7 EXISTING DEPARTMENT GUIDANCE OR DEPARTMENT CLEANUP STANDARDS OR
8 OTHER STANDARDS APPROVED BY THE DEPARTMENT FOR A SPECIFIC
9 RESPONSE ACTION FOR REGULATED SUBSTANCES IN SOIL, GROUNDWATER
10 AND SEDIMENT.

11 (B) EFFECTIVE DATE OF REGULATIONS.--PROPOSED REGULATIONS
12 PUBLISHED PURSUANT TO SECTIONS 1101, 1102 AND 1103 SHALL BE
13 EFFECTIVE AND ESTABLISH ENFORCEABLE AND BINDING LEGAL
14 REQUIREMENTS 30 DAYS AFTER PUBLICATION IN THE PENNSYLVANIA
15 BULLETIN AS PROPOSED RULEMAKING.

16 (C) PROPOSED REGULATIONS.--THE PROPOSED REGULATIONS SHALL
17 HAVE NO EFFECT AFTER ADOPTION OF THE FINAL REGULATIONS OR AFTER
18 THE EXPIRATION OF THE TIME PERIOD ESTABLISHED UNDER SECTION
19 5(B.4) OF THE ACT OF JUNE 25, 1982 (P.L.633, NO.181), KNOWN AS
20 THE REGULATORY REVIEW ACT.

21 (D) FINAL REGULATIONS.--NOTWITHSTANDING THE PROVISIONS OF
22 SUBSECTION (C), THE BOARD SHALL EXPEDITIOUSLY PROMULGATE FINAL
23 REGULATIONS AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD.
24 SECTION 1105. SITE CHARACTERIZATION REPORTS AND RESPONSE ACTION
25 PLANS.

26 (A) NOTICE OF PROPOSED GUIDANCE FOR SITE CHARACTERIZATION
27 REPORTS.--WITHIN 180 DAYS OF THE EFFECTIVE DATE OF THIS ACT, THE
28 DEPARTMENT WILL PUBLISH A NOTICE OF PROPOSED GUIDANCE IN THE
29 PENNSYLVANIA BULLETIN CONTAINING REQUIREMENTS FOR SITE
30 CHARACTERIZATION REPORTS. THE GUIDANCE SHALL DEFINE THOSE

1 ACTIVITIES WHICH ARE NECESSARY TO DETERMINE AN APPROPRIATE
2 RESPONSE ACTION, INCLUDING BUT NOT LIMITED TO, THE COLLECTION,
3 EVALUATION AND INTERPRETATION OF PHYSICAL SITE CHARACTERISTIC
4 INFORMATION, ENVIRONMENTAL DATA IN ORDER TO DETERMINED THE
5 DEGREE AND LOCATION OF RELEASED REGULATED SUBSTANCES, DATA IN
6 ORDER TO DETERMINED THE ACTUAL AND POTENTIAL PATHWAYS OF
7 EXPOSURE TO THE ENVIRONMENT, AND HUMAN AND ECOLOGICAL RECEPTORS
8 AND THE RISK POSED BY EXPOSURE THROUGH IDENTIFIED PATHWAYS.

9 (B) NOTICE OF PROPOSED GUIDANCE FOR RESPONSE ACTION PLAN.--
10 WITHIN 180 DAYS OF THE EFFECTIVE DATE OF THIS ACT, THE
11 DEPARTMENT WILL PUBLISH A NOTICE OF PROPOSED GUIDANCE IN THE
12 PENNSYLVANIA BULLETIN CONTAINING REQUIREMENTS FOR RESPONSE
13 ACTION PLAN. THE GUIDANCE SHALL DEFINED THOSE ACTIVITIES WHICH
14 ARE NECESSARY TO DESCRIBE A PROPOSED RESPONSE ACTION WHICH MEETS
15 THE REQUIREMENTS OF CHAPTER 7, INCLUDING, BUT NOT LIMITED TO, A
16 DESCRIPTION OF EACH PHASE OF THE PROPOSED RESPONSE ACTION
17 INCLUDING OPERATIONAL AND DISCHARGE PARAMETERS, REPRESENTATIVE
18 SAMPLING AND ANALYTICAL PLANS DESIGNED TO DEMONSTRATE COMPLIANCE
19 WITH SECTION 701(A)(1), (2), (3) AND (4) AND A DESCRIPTION AND
20 SCHEDULE FOR RELEVANT POST-RESPONSE REQUIREMENTS.

21 CHAPTER 13

22 FUTURE OBLIGATIONS

23 SECTION 1301. FUTURE OBLIGATIONS.

24 (A) GENERAL RULE.--NO FURTHER RESPONSE ACTION WILL BE
25 REQUIRED SO LONG AS A VOLUNTARY RESPONSE ACTION CONTINUES TO
26 MEET AND MAINTAIN THE REQUIREMENTS OF CHAPTER 7 AND THE USE OF
27 THE PROPERTY AND EXPOSURE PATHWAYS REMAIN CONSISTENT WITH THE
28 EXPOSURE ASSUMPTIONS UPON WHICH THE CLEANUP STANDARDS OF THE
29 VOLUNTARY RESPONSE ACTION WAS BASED.

30 (B) ADDITIONAL RESPONSE ACTION.--NOTHING IN THIS CHAPTER

1 SHALL PREVENT AN OWNER OR OPERATOR FROM CONDUCTING ADDITIONAL
2 RESPONSE ACTION TO EXPAND THE PERMISSIBLE USES OF THE PROPERTY.
3 SECTION 1302. DEED NOTICE AND RESTRICTION.

4 (A) OTHER LAWS UNAFFECTED.--NOTHING IN THIS ACT SHALL ALTER
5 OR OTHERWISE AFFECT THE APPLICABLE DEED ACKNOWLEDGEMENT
6 REQUIREMENTS OF THE ACT OF JULY 7, 1980 (P.L.380, NO.97), KNOWN
7 AS THE SOLID WASTE MANAGEMENT ACT, OR THE ACT OF OCTOBER 18,
8 1988 (P.L.756, NO.108), KNOWN AS THE HAZARDOUS SITES CLEANUP
9 ACT.

10 (B) CONTENTS OF DEED RESTRICTION.--THE FOLLOWING DEED
11 RESTRICTION REQUIREMENTS APPLY TO RESPONSE ACTIONS COMMENCED OR
12 COMPLETED AFTER THE EFFECTIVE DATE OF THIS ACT:

13 (1) THE GRANTOR, IN EVERY DEED FOR CONVEYANCE OF
14 PROPERTY AT WHICH INSTITUTIONAL OR ENGINEERED CONTROLS ARE
15 EMPLOYED IN A RESPONSE ACTION, SHALL INCLUDE IN THE PROPERTY
16 DESCRIPTION SECTION OF THE DEED A DESCRIPTION OF THE CONTROLS
17 EMPLOYED AND LIMITATION PLACED ON THE USE OF THE PROPERTY.
18 THE DEED SHALL STATE THAT THE PROPERTY SHALL NOT BE PUT TO A
19 USE WHICH WOULD DISTURB OR BE INCONSISTENT WITH THE USE OF
20 THESE CONTROLS.

21 (2) THE GRANTOR, IN EVERY DEED FOR CONVEYANCE OF
22 PROPERTY AT WHICH A RESPONSE ACTION PURSUANT TO THIS ACT HAS
23 BEEN CONDUCTED, SHALL INCLUDE IN THE PROPERTY DESCRIPTION
24 SECTION OF THE DEED A DESCRIPTION OF THE LIMITED ACCESS USE
25 DETERMINED BY THE LOCAL AGENCY OR THE DEPARTMENT TO BE
26 CONSISTENT WITH APPLICABLE LAND USE PLANS, ZONING ORDINANCES
27 AND HISTORICAL, CURRENT AND REASONABLY EXPECTED FUTURE USE OF
28 THE PROPERTY. THE DEED SHALL STATE THAT THE PROPERTY SHALL
29 NOT BE PUT TO A USE FOR WHICH CLEANUP STANDARDS BASED ON
30 LIMITED EXPOSURE ASSUMPTIONS ARE NOT APPROPRIATE.

1 (C) OTHER RESTRICTIONS UNAFFECTED.--NOTHING IN THIS
2 SUBSECTION SHALL ALTER OR OTHERWISE AFFECT EXISTING DEED
3 RESTRICTION REQUIREMENTS IMPOSED BY LAW OR AGREEMENT.

4 CHAPTER 15

5 REVOLVING LOAN FUND

6 SECTION 1501. ENVIRONMENTAL RESPONSE LOAN FUND.

7 THERE IS HEREBY CREATED IN THE STATE TREASURY THE
8 ENVIRONMENTAL RESPONSE LOAN FUND. REPAYMENT OF PRINCIPAL AND
9 INTEREST ON ALL LOANS MADE UNDER THIS ACT SHALL BE DEPOSITED IN
10 THE FUND. ALL MONEYS IN THE FUND ARE HEREBY APPROPRIATED, UPON
11 APPROVAL OF THE GOVERNOR, TO THE DEPARTMENT OF COMMERCE TO MAKE
12 LOANS FOR THE PURPOSES OF THIS ACT.

13 SECTION 1502. TERMS AND CONDITIONS OF LOAN.

14 (A) INTEREST RATE AND LENGTH OF LOAN.--MONEY IN THE FUND
15 SHALL BE LOANED TO QUALIFYING ENTITIES FOR CHARACTERIZATION AND
16 CLEANUP OF CONTAMINATED SITES PURSUANT TO THIS ACT AT AN ANNUAL
17 INTEREST RATE AT LEAST EQUAL TO THE PENNSYLVANIA INDUSTRIAL
18 DEVELOPMENT AUTHORITY'S RATE FOR THE AREA IN WHICH THE PROJECT
19 IS LOCATED, AND THE MAXIMUM TERM OF A LOAN SHALL BE TEN YEARS.

20 (B) MAXIMUM LOAN AMOUNT.--THE MAXIMUM LOAN AMOUNT OF A LOAN
21 FOR CHARACTERIZATION SHALL BE \$100,000, AND THE MAXIMUM AMOUNT
22 OF A LOAN FOR RESPONSE ACTION SHALL BE \$1,500,000. NO SITE SHALL
23 BE ELIGIBLE FOR MORE THAN ONE LOAN FOR CHARACTERIZATION AND ONE
24 LOAN FOR RESPONSE ACTION.

25 (C) CRITERIA FOR CHARACTERIZATION LOANS.--IN REVIEWING
26 APPLICATIONS FOR LOANS FOR SITE CHARACTERIZATION, THE DEPARTMENT
27 OF COMMERCE SHALL CONSIDER THE FOLLOWING:

- 28 (1) THE ECONOMIC DEVELOPMENT POTENTIAL OF THE SITE.
29 (2) THE FINANCIAL NEEDS OF THE APPLICANT.
30 (3) THE APPLICANT ABILITY TO REPAY THE LOAN.

1 (D) CRITERIA FOR RESPONSE ACTION LOANS.--IN REVIEWING
2 APPLICATIONS FOR LOANS FOR RESPONSE ACTION, THE DEPARTMENT OF
3 COMMERCE SHALL CONSIDER THE FOLLOWING:

4 (1) THE RISK TO HUMAN HEALTH AND THE ENVIRONMENT POSED
5 BY THE SITE PRIOR TO A RESPONSE ACTION.

6 (2) THE OVERALL ENVIRONMENTAL BENEFIT ACCRUED AS A
7 RESULT OF THE PROPOSED RESPONSE ACTION.

8 (3) THE ECONOMIC DEVELOPMENT POTENTIAL OF THE SITE.

9 (4) THE FINANCIAL NEEDS OF THE APPLICANT.

10 (5) THE APPLICANT ABILITY TO REPAY THE LOAN.

11 SECTION 1503. TRANSFER OF FUNDS.

12 (A) TRANSFER FROM HAZARDOUS SITES CLEANUP FUND.--THE
13 GOVERNOR IS HEREBY AUTHORIZED TO TRANSFER \$10,000,000, OR AS
14 MUCH THEREOF AS MAY BE NECESSARY, FROM THE HAZARDOUS SITES
15 CLEANUP FUND, ESTABLISHED IN SECTION 602.3 OF THE ACT OF MARCH
16 4, 1971 (P.L.6, NO.2), KNOWN AS THE TAX REFORM CODE OF 1971, TO
17 THE ENVIRONMENTAL RESPONSE LOAN FUND.

18 (B) REPAYMENT OF TRANSFERRED FUNDS.--ALL MONEY TRANSFERRED
19 FROM THE HAZARDOUS SITES CLEANUP FUND SHALL BE REPAID TO THAT
20 FUND FROM REPAYMENTS TO THE ENVIRONMENTAL RESPONSE LOAN FUND IN
21 THE FOLLOWING MANNER:

22 (1) BEGINNING IN THE FIFTH YEAR AFTER THE EFFECTIVE DATE
23 OF THIS ACT, ALL PRINCIPAL REPAYMENTS TO THE ENVIRONMENTAL
24 RESPONSE LOAN FUND SHALL BE TRANSFERRED BY THE DEPARTMENT OF
25 COMMERCE TO THE HAZARDOUS SITES CLEANUP FUND UNTIL THE ENTIRE
26 \$10,000,000 HAS BEEN REPAID.

27 (2) AT THE END OF THE TEN-YEAR PERIOD FROM THE EFFECTIVE
28 DATE OF THIS ACT, ANY FUNDS REMAINING IN THE ENVIRONMENTAL
29 RESPONSE LOAN FUND SHALL BE TRANSFERRED TO THE HAZARDOUS
30 SITES CLEANUP FUND.

1 (3) ANY PRINCIPAL AND INTEREST PAYMENT ON OUTSTANDING
2 LOANS SHALL BE PAID INTO THE HAZARDOUS SITES CLEANUP FUND.

3 (4) THE TRANSFER OF FUNDS FROM THE ENVIRONMENTAL
4 RESPONSE LOAN FUND SHALL BE MADE BY WARRANT OF THE STATE
5 TREASURER UPON REQUISITION OF THE GOVERNOR.

6 SECTION 1504. EXPIRATION.

7 THE ENVIRONMENTAL RESPONSE LOAN FUND SHALL TERMINATE TEN
8 YEARS FROM THE EFFECTIVE DATE OF THIS ACT.

9 CHAPTER 17

10 MISCELLANEOUS PROVISIONS

11 SECTION 1701. ENFORCEMENT.

12 (A) ENFORCEMENT OF FEDERAL STANDARDS.--THE PROVISIONS OF
13 THIS ACT SHALL NOT PREVENT THE COMMONWEALTH FROM IMPLEMENTING OR
14 ENFORCING CLEANUP STANDARDS OR OTHER APPLICABLE REQUIREMENTS
15 THAT ARE APPROVED BY THE FEDERAL GOVERNMENT OR REQUIRED BY
16 FEDERAL LAW AS A CONDITION TO THE COMMONWEALTH'S RECEIPT OF
17 PROGRAM AUTHORIZATION, DELEGATION OR PRIMACY TO ADMINISTER
18 ENVIRONMENTAL PROGRAMS IN THIS COMMONWEALTH OR TO RECEIVE
19 FEDERAL FUNDS.

20 (B) AUTHORITY OF DEPARTMENT.--NOTHING IN THIS ACT SHALL
21 EXPAND OR LIMIT THE DEPARTMENT'S AUTHORITY UNDER APPLICABLE
22 STATUTES AND REGULATIONS TO ORDER OR OTHERWISE DIRECT A
23 RESPONSIBLE PERSON TO CONDUCT A RESPONSE ACTION ON A SITE OR TO
24 PURSUE ENFORCEMENT ACTIONS AGAINST RESPONSIBLE PERSONS,
25 INCLUDING INJUNCTIVE ACTIONS, ACTIONS TO RECOVER NATURAL
26 RESOURCE DAMAGES AND CIVIL AND CRIMINAL PENALTIES.

27 SECTION 1702. RELATION TO OTHER LAWS.

28 (A) ENFORCEMENT OF SPECIFIC FEDERAL STANDARDS.--THE
29 PROVISIONS OF THIS ACT SHALL NOT PREVENT THE COMMONWEALTH FROM
30 ENFORCING SPECIFIC CLEANUP STANDARDS OR TECHNICAL PERFORMANCE

1 STANDARDS REQUIRED TO BE ENFORCED BY THE FEDERAL GOVERNMENT AS A
2 CONDITION OF PRIMACY OR TO RECEIVE FEDERAL FUNDS.

3 (B) REQUIREMENTS FOR ACTION TAKEN UNDER OTHER STATUTES.--
4 THIS ACT ESTABLISHES REQUIREMENTS FOR VOLUNTARY RESPONSE ACTIONS
5 UNDERTAKEN PURSUANT TO THE STATUTES IDENTIFIED IN SECTION 104.
6 NOTHING IN THIS ACT SHALL REPEAL, AMEND OR OTHERWISE MODIFY ANY
7 PROVISION IN THESE STATUTES OR IN ANY OTHER STATUTE UNLESS
8 EXPRESSLY INCONSISTENT WITH THE PROVISIONS OF THIS ACT.

9 SECTION 1703. RELATION TO PERMITTING.

10 NOTHING IN THIS ACT SHALL LIMIT OR OTHERWISE AFFECT THE
11 DEPARTMENT'S AUTHORITY UNDER APPLICABLE ENVIRONMENTAL STATUTES
12 AND REGULATIONS TO ESTABLISH NEW, OR MAINTAIN OR REVISE,
13 PERMITTING STANDARDS AND LIMITATIONS INTENDED TO MINIMIZE,
14 PREVENT OR OTHERWISE CONTROL THE RELEASE OF REGULATED SUBSTANCES
15 INTO THE WATERS, AIR, SEDIMENT AND SOIL OF THIS COMMONWEALTH.

16 SECTION 1704. EFFECTIVE DATE.

17 THIS ACT SHALL TAKE EFFECT IN 60 DAYS.