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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 1

Session of  
1995

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INTRODUCED BY BRIGHTBILL, PORTERFIELD, SHAFFER, LAVALLE, MUSTO,  
STEWART, BELAN, JUBELIRER, LOEPER, ROBBINS, STAPLETON, STOUT,  
WAGNER, BAKER, AFFLERBACH, BELL, ANDREZESKI, CORMAN, BODACK,  
FISHER, FUMO, GERLACH, JONES, GREENLEAF, KASUNIC, HART,  
MELLOW, O'PAKE, HELFRICK, HOLL, TARTAGLIONE, LEMMOND,  
PETERSON, PUNT, RHOADES, SALVATORE, SHUMAKER, TILGHMAN,  
ULIANA, WENGER AND MADIGAN, JANUARY 17, 1995

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REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, JANUARY 17, 1995

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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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29 Section 908. Effective date.  
30 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 CHAPTER 1

3 GENERAL PROVISIONS

4 Section 101. Short title.

5 This act shall be known and may be cited as the Land  
6 Recycling and Environmental Remediation Standards Act.

7 Section 102. Declaration of policy.

8 The General Assembly finds and declares as follows:

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

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

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

30 (4) It is necessary for the General Assembly to adopt a

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

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

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

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

#### 26 Section 103. Definitions.

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

30 "Agricultural chemical." A substance defined as a

1 fertilizer, soil conditioner or plant growth substance under the  
2 act of May 29, 1956 (P.L.1795, No.598), known as the  
3 Pennsylvania Fertilizer, Soil Conditioner and Plant Growth  
4 Substance Law, or a substance regulated under the act of March  
5 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide  
6 Control Act of 1973.

7 "Agricultural chemical facility." A facility where  
8 agricultural chemicals are held, stored, blended, formulated,  
9 sold or distributed. The term does not include facilities  
10 identified by SIC 2879 where agricultural chemicals are  
11 manufactured.

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

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

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

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

27 "Carcinogen." A chemical, biological or physical agent  
28 defined by the Environmental Protection Agency as a human  
29 carcinogen.

30 "Contaminant." A regulated substance released into the

1 environment.

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

5 "Department." The Department of Environmental Resources of  
6 the Commonwealth or its successor agency.

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

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

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

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

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

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

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

30 "Health advisory levels" or "HALs." The health advisory

1 levels published by the United States Environmental Protection  
2 Agency for particular substances.

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

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

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

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

24 "Municipality." A township, borough, city, incorporated  
25 village or home rule municipality. This term shall not include a  
26 county.

27 "Nonresidential property." Any real property on which  
28 commercial, industrial, manufacturing or any other activity is  
29 done to further either the development, manufacturing or  
30 distribution of goods and services, including, but not limited

1 to, administration of business activities, research and  
2 development, warehousing, shipping, transport, remanufacturing,  
3 stockpiling of raw materials, storage, repair and maintenance of  
4 commercial machinery and equipment or intermediate and final  
5 products and solid waste management. This term shall not include  
6 schools, nursing homes or other residential-style facilities.

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

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

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

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

28 "Regulated substance." The term shall include hazardous  
29 substances regulated under the act of October 18, 1988 (P.L.756,  
30 No.108), known as the Hazardous Sites Cleanup Act, and



1 substances covered by the act of June 22, 1937 (P.L.1987,  
2 No.394), known as The Clean Streams Law, the act of January 8,  
3 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control  
4 Act, the act of July 7, 1980 (P.L.380, No.97), known as the  
5 Solid Waste Management Act, the act of July 13, 1988 (P.L.525,  
6 No.93), referred to as the Infectious and Chemotherapeutic Waste  
7 Law, and the act of July 6, 1989 (P.L.169, No.32), known as the  
8 Storage Tank and Spill Prevention Act.

9 "Release." Spilling, leaking, pumping, pouring, emitting,  
10 emptying, discharging, injecting, escaping, leaching, dumping or  
11 disposing of a regulated substance into the environment in a  
12 manner not authorized by the Department of Environmental  
13 Resources. The term includes the abandonment or discarding of  
14 barrels, containers, vessels and other receptacles containing a  
15 regulated substance.

16 "Remediation." To clean up, mitigate, correct, abate,  
17 minimize, eliminate, control or prevent a release of a regulated  
18 substance into the environment in order to protect the present  
19 or future public health, safety, welfare or the environment,  
20 including preliminary actions to study or assess the release.

21 "Residential property." Any property or portion of the  
22 property which does not meet the definition of "nonresidential  
23 property."

24 "Responsible person." The term shall have the same meaning  
25 as given to it in the act of October 18, 1988 (P.L.756, No.108),  
26 known as the Hazardous Sites Cleanup Act, and shall include a  
27 person subject to enforcement actions for substances covered by  
28 the act of June 22, 1937 (P.L.1987, No.394), known as The Clean  
29 Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787),  
30 known as the Air Pollution Control Act, the act of July 7, 1980

1 (P.L.380, No.97), known as the Solid Waste Management Act, the  
2 act of July 13, 1988 (P.L.525, No.93), referred to as the  
3 Infectious and Chemotherapeutic Waste Law, and the act of July  
4 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill  
5 Prevention Act.

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

8 "Site." The extent of contamination originating within the  
9 property boundaries and all areas in close proximity to the  
10 contamination necessary for the implementation of remediation  
11 activities to be conducted under this act.

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

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

17 Section 104. Powers and duties.

18 (a) Environmental Quality Board.--The Environmental Quality  
19 Board shall have the power and its duty shall be to adopt by  
20 regulation Statewide health standards, appropriate  
21 mathematically valid statistical tests to define compliance with  
22 this act and other regulations that may be needed to implement  
23 the provisions of this act. Any regulations needed to implement  
24 this act shall be proposed by the department no later than 12  
25 months after the effective date of this act and shall be  
26 finalized no later than 24 months after the effective date of  
27 this act, unless otherwise specified in this act.

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

30 Section 105. Cleanup Standards Scientific Advisory Board.

1       (a) Establishment.--There is hereby created a 13-member  
2 Cleanup Standards Scientific Advisory Board for the purpose of  
3 assisting the department and the Environmental Quality Board in  
4 developing Statewide health standards, determining the  
5 appropriate statistically and scientifically valid procedures to  
6 be used, determining the appropriate risk factors and providing  
7 other technical and scientific advice as needed to implement the  
8 provisions of this act.

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

26       (c) Organization.--The board shall elect a chairperson by  
27 majority vote and may adopt any bylaws or procedures it deems  
28 necessary to accomplish its purpose. Recommendations, positions  
29 or other actions of the board shall be by a majority of its  
30 members.

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

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

13 (f) Interested persons list.--The department shall maintain  
14 a mailing list of persons interested in receiving notice of  
15 meetings and the activities of the board. The department shall  
16 name a contact person to be responsible for board meetings and  
17 to serve as a contact for the public to ask questions and get  
18 information about the board.

19 (g) Access to documents.--The board shall have access to all  
20 policies and procedures, draft proposed or final regulations or  
21 issue papers which the board determines are necessary to  
22 achieving its purpose.

23 Section 106. Scope.

24 The environmental remediation standards established under  
25 this act shall be used whenever site remediation and cleanup is  
26 conducted under the act of June 22, 1937 (P.L.1987, No.394),  
27 known as The Clean Streams Law, the act of January 8, 1960 (1959  
28 P.L.2119, No.787), known as the Air Pollution Control Act, the  
29 act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste  
30 Management Act, the act of July 13, 1988 (P.L.525, No.93),

1 referred to as the Infectious and Chemotherapeutic Waste Law,  
2 the act of October 18, 1988 (P.L.756, No.108), known as the  
3 Hazardous Sites Cleanup Act, and the act of July 6, 1989  
4 (P.L.169, No.32), known as the Storage Tank and Spill Prevention  
5 Act, to be eligible for cleanup liability protection under  
6 Chapter 5.

7 Section 107. Existing standards.

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

20 (b) Agreements and consent orders.--The standards  
21 established under this act are not intended to impose more  
22 stringent cleanup standards than those which are contained in  
23 any prior administrative consent order, consent adjudication,  
24 judicially approved consent order, or other settlement agreement  
25 entered into with the department under the authority of any of  
26 the statutes referred to in section 104 and which were entered  
27 into with the department on or before the effective date of this  
28 act, unless all parties thereto agree to such change.

29 CHAPTER 3

30 REMEDIATION STANDARDS AND REVIEW PROCEDURES

1 Section 301. Remediation standards.

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

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

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

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

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

27 Section 302. Background standard.

28 (a) Standard.--Persons selecting the background standard  
29 shall meet a standard that is the greater of either of the  
30 following concentrations for each regulated substance in each

1 environmental medium:

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

4 (2) the achievable practical quantitation limit.

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

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

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

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

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

1           (3) Where remediation measures do not involve removal or  
2       treatment of a contaminant to the background standard, the  
3       final report shall demonstrate that any remaining  
4       contaminants on the site will meet Statewide health standards  
5       and show compliance with any postremediation care  
6       requirements that may be needed to maintain compliance with  
7       the Statewide health standards.

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

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

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

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

30           (1) Notice of intent to initiate remediation activities



1 shall be made in the following manner:

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

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

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

24 (3) The department shall review the final report  
25 demonstrating attainment of the background standard within 60  
26 days of its receipt or notify the person submitting the  
27 report of substantive deficiencies. If the department does  
28 not respond with deficiencies within 60 days, the final  
29 report shall be deemed approved.

30 (4) The notices provided for in paragraphs (1) and (2)

are not required to be made or published if the person conducting the remediation submits the final report demonstrating attainment of the background standard as required by this section within 90 days of the release. If the final report demonstrating attainment is not submitted to the department within 90 days of the release, all notices and procedures required by this section shall apply. This paragraph is only applicable to releases occurring after the effective date of this act.

Section 303. Statewide health standard.

(a) Standard.--The Environmental Quality Board shall promulgate Statewide health standards for regulated substances for each environmental medium. The standards shall include any existing numerical residential and nonresidential health-based standards adopted by the department and by the Federal Government, including health advisory levels, by regulation or statute. For those health-based standards not already established by regulation, the department shall, by regulation, propose residential and nonresidential medium-specific concentrations within 12 months of the effective date of this act. The Environmental Quality Board shall also promulgate, along with the standards, the methods used to calculate the standards. Standards adopted under this section shall be no more stringent than those standards adopted by the Federal Government.

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

(1) Any discharge or release into surface water occurring during or after attainment of the Statewide health

1 standard shall comply with applicable laws and regulations  
2 relating to surface water discharges.

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

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

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

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

1           (ii) A concentration in soil at the site that does  
2           not produce a leachate in excess of the medium-specific  
3           concentrations for groundwater in the aquifer when  
4           subjected to the Synthetic Precipitation Leaching  
5           Procedures, Method 1312 of SW 846, Test Methods for  
6           Evaluating Solid Waste, promulgated by the United States  
7           Environmental Protection Agency.

8           (iii) A generic value determined not to produce a  
9           concentration in groundwater in the aquifer in excess of  
10          the medium-specific concentration for groundwater based  
11          on a valid, peer-reviewed scientific method which  
12          properly accounts for factors affecting the fate,  
13          transport and attenuation of the regulated substance  
14          throughout the soil column.

15          (5) For the nonresidential standard, the concentration  
16          of a regulated substance in soil within a depth of 15 feet  
17          from the existing ground surface shall not exceed either the  
18          direct contact soil medium-specific concentration based on  
19          nonresidential exposure factors using valid scientific  
20          methods reflecting worker exposure or the soil to groundwater  
21          pathway numeric value determined in accordance with paragraph  
22          (4).

23          (6) The concentration of a regulated substance  
24          throughout the soil column shall not exceed the lower of the  
25          soil medium-specific concentration based on residential  
26          exposure factors or the soil-to-groundwater pathway numeric  
27          value determined by the following:

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

30               (ii) A concentration in soil that does not produce a

1 leachate in excess of medium-specific concentrations for  
2 groundwater when subjected to the Synthetic Precipitation  
3 Leaching Procedures, Method 1312 of SW 846, Test Methods  
4 for Evaluating Solid Waste, promulgated by EPA. Other  
5 test methods that accurately simulate conditions at the  
6 site may be used in the demonstration in place of this  
7 method.

8 (7) Exposure scenarios for medium-specific  
9 concentrations for nonresidential conditions shall be  
10 established using valid scientific methods reflecting worker  
11 exposure.

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

23 (1) For a regulated substance which is a carcinogen, the  
24 medium-specific concentration is the concentration which  
25 represents an excess upper bound lifetime cancer target risk  
26 of between 1 in 10,000 and 1 in 1,000,000 due to continuous  
27 lifetime exposure for residential scenarios and a  
28 noncontinuous exposure for nonresidential exposure scenarios.

29 (2) For a regulated substance which is a systemic  
30 toxicant, the medium-specific concentration is the

1 concentration to which human populations could be exposed by  
2 direct ingestion or inhalation on a daily basis without  
3 appreciable risk of deleterious effects for the exposed  
4 population.

5 (d) Relationship to background.--The concentration of a  
6 regulated substance in an environmental media of concern on a  
7 site where the Statewide health standard has been selected shall  
8 not be required to meet the Statewide health standard if the  
9 Statewide health standard is numerically less than the  
10 achievable practical quantitative limit. In such cases, the  
11 achievable practical quantitative limit shall apply.

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

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

25 (2) A final report that documents attainment of the  
26 Statewide health standard shall be submitted to the  
27 department which includes the descriptions of procedures and  
28 conclusions of the site investigation to characterize the  
29 nature, extent, direction, rate of movement off the site and  
30 cumulative effects, if any, volume, composition,

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

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

16 (f) Authority reserved.--If a person fails to demonstrate  
17 attainment of the Statewide health standard, the department may  
18 require that additional remediation measures be taken in order  
19 to meet the health standard or the person may select to meet the  
20 requirements of section 302 or 304.

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

shall apply where nonresidential exposure factors were used to comply with the Statewide health standard.

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

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

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

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

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



1 Bulletin.

2 (3) The department shall review the final report  
3 demonstrating attainment of the Statewide health standard  
4 within 60 days of its receipt or notify the person submitting  
5 the report of substantive deficiencies. If the department  
6 does not respond with deficiencies within 60 days, the final  
7 report shall be deemed approved.

8 (4) The notices provided for in paragraphs (1) and (2)  
9 are not required to be made or published if the person  
10 conducting the remediation submits the final report  
11 demonstrating attainment of the Statewide health standard as  
12 required by this section within 90 days of the release. If  
13 the final report demonstrating attainment is not submitted to  
14 the department within 90 days of the release, all notices and  
15 procedures required by this section shall apply. This  
16 paragraph is only applicable to releases occurring after the  
17 effective date of this act.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18           (vi) Time to achieve cleanup standards.

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

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

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

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

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

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

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

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

1 The Department of Environmental Resources shall also  
2 recognize those methods of attainment demonstration generally  
3 recognized as appropriate for that particular remediation.

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

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

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

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

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

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

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

30 (2) If required, a risk assessment report shall describe

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

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

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

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

29 (m) Deed notice.--Persons attaining and demonstrating  
30 compliance with site-specific standards for a regulated



1 substance on a site shall be subject to the deed acknowledgment  
2 requirements of the act of July 7, 1980 (P.L.380, No.97), known  
3 as the Solid Waste Management Act, or the act of October 18,  
4 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup  
5 Act. The notice shall include whether residential or  
6 nonresidential exposure factors were used to comply with the  
7 site-specific standard.

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

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

25 (ii) The notices required by this paragraph shall  
26 include a 30-day public and municipal comment period  
27 during which the municipality can request to be involved  
28 in the development of the remediation and reuse plans for  
29 the site. If requested by the municipality, the person  
30 undertaking the remediation shall develop and implement a

1 public involvement program plan which meets the  
2 requirements of subsection (o). Persons undertaking the  
3 remediation are encouraged to develop a proactive  
4 approach to working with the municipality in developing  
5 and implementing remediation and reuse plans.

6 (2) The following notice and review provisions apply  
7 each time a remedial investigation report, risk assessment  
8 report, cleanup plan and final report demonstrating  
9 compliance with the site-specific standard is submitted to  
10 the department:

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

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

28 (3) If the remedial investigation report, risk  
29 assessment report and cleanup plan are submitted at the same  
30 time to the department, the department shall notify persons

1 of any deficiencies in 90 days. If the department does not  
2 respond with deficiencies within 90 days, the reports are  
3 deemed approved.

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

23 Section 305. Special industrial areas.

24 (a) Special sites.--For property used for industrial  
25 activities where there is now no financially viable responsible  
26 person to clean up contamination or for land located within  
27 enterprise zones designated pursuant to the requirements of the  
28 Department of Community Affairs, the review procedures of this  
29 section shall apply for persons conducting remediation  
30 activities who are not responsible for contamination on the

1 property. Any environmental remediation undertaken pursuant to  
2 this section shall comply with one or more of the standards  
3 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 municipality can request to be involved in the

1 development of the remediation and reuse plans for the site.

2 If requested by the municipality, the person undertaking the  
3 remediation shall develop and implement a public involvement  
4 program plan which meets the requirements of section 304(o).

5 Persons undertaking the remediation are encouraged to develop  
6 a proactive approach to working with the municipality in  
7 developing and implementing remediation 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 public involvement  
13 plan developed under section 304(o) shall also be considered by  
14 the department. The department shall notify the person  
15 submitting the report of deficiencies within 90 days. If the  
16 department does not respond within 90 days, the study is  
17 considered 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 under 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 (a) Emergency response.--The provisions of this chapter  
2 shall not prevent or impede the immediate response of the  
3 department or responsible person to an emergency which involves  
4 an imminent or actual release of a regulated substance which  
5 threatens public health or the environment. The final  
6 remediation of the site shall comply with the provisions of this  
7 chapter which shall not be prejudiced by the mitigation measures  
8 undertaken to that point.

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

21 Section 309. Appealable actions.

22 Decisions by the department involving the reports and  
23 evaluations required under this chapter shall be considered  
24 appealable actions under the act of July 13, 1988 (P.L.530,  
25 No.94), known as the Environmental Hearing Board Act.

26 CHAPTER 5

27 CLEANUP LIABILITY PROTECTION

28 Section 501. Cleanup liability protection.

29 (a) General.--Any person demonstrating compliance with the  
30 environmental remediation standards established in Chapter 3

1 shall be relieved of further liability for the remediation of  
2 the site under the statutes outlined in section 106 for any  
3 contamination identified in reports submitted to and approved by  
4 the department to demonstrate compliance with these standards  
5 and shall not be subject to citizen suits or other contribution  
6 actions brought by responsible persons. The cleanup liability  
7 protection provided by this chapter applies to the following  
8 persons:

9           (1) The current or future owner of the identified  
10 property, who participated in the remediation of the site.

11           (2) A person who develops or otherwise occupies the  
12 identified site.

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

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

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

24       (c) Illegal activities.--The provisions of this chapter do  
25 not create a defense against the imposition of criminal and  
26 civil fines and penalties or administrative penalties otherwise  
27 authorized by law and imposed as the result of the illegal  
28 disposal of waste or for the pollution of the land, air or  
29 waters of this Commonwealth on the identified site.

30 Section 502. Special industrial sites.



1 (a) Agreement.--The department and the person undertaking  
2 the reuse of an abandoned industrial site under section 305  
3 shall enter into an agreement based on the environmental report  
4 which outlines cleanup liability for the site. Any person  
5 included in such an agreement shall not be subject to a citizen  
6 suit, other contribution actions brought by responsible persons  
7 not participating in the remediation of the site or other  
8 actions brought by the department with respect to the site  
9 except those which may be necessary to enforce the terms of the  
10 agreement.

11 (b) Liability.--The cleanup liabilities for the person  
12 undertaking the reuse of the site shall include the following:

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

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

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

25 (c) Developer or occupier.--A person who develops or  
26 occupies the site shall not be considered a responsible person  
27 for purposes of assigning cleanup liability.

28 (d) Successor or assign.--A successor or assign of any  
29 person to whom cleanup liability protection applies for a site  
30 shall not be considered a responsible person for purposes of

1 assigning cleanup liability, provided the successor or assign is  
2 not a person responsible for contamination on the site who did  
3 not participate in the environmental remediation action.

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

9 Section 503. Existing exclusions.

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

13 Section 504. New liability.

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

20 Section 505. Reopeners.

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

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

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

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

(4) the level of risk is increased beyond the acceptable risk range at a site due to substantial changes in exposure conditions, such as in a change in land use from nonresidential to a residential use, or new information is obtained about a regulated substance associated with the site which revises exposure assumptions beyond the acceptable range. Any person who changes the use of the property causing the level of risk to increase beyond the acceptable risk range shall be required by the department to undertake additional remediation measures under the provisions of this act.

Section 506. Authority reserved.

Except for the performance of further remediation of the site, nothing in this act shall affect the ability or authority of any person to seek any relief available against any party who may have liability with respect to this site. This act shall not affect the ability or authority to seek a contribution from any person who may have liability with respect to the site and did not receive cleanup liability protection under this chapter.

## CHAPTER 7

### INDUSTRIAL LAND RECYCLING FUND

Section 701. Industrial Land Recycling Fund.

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

(b) Purpose.--The moneys deposited in this fund shall be used by the department for the purpose of implementing the provisions of this act.

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

1 General Assembly, Federal funds and private contributions and  
2 any fines and penalties assessed under this act shall be  
3 deposited into the fund.

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

7 Section 702. Voluntary Cleanup Loan Program.

8 (a) Establishment.--There is hereby established a separate  
9 account in the State Treasury, to be known as the Voluntary  
10 Cleanup Loan Fund, which shall be a special fund administered by  
11 the Department of Commerce. Within 60 days of the effective date  
12 of this act, the Department of Commerce shall finalize  
13 guidelines and issue application forms to administer this fund.  
14 The Department of Commerce, in conjunction with the Department  
15 of Environmental Resources may establish funding priorities  
16 under this program.

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

23 (1) Local economic development agencies, public agencies  
24 and local governments and persons not responsible for  
25 contamination on a site shall be eligible for grants for the  
26 purpose of completing environmental studies and implementing  
27 cleanup plans.

28 (2) Low-interest loans shall be available at a rate of  
29 not more than 2% for the purpose of completing environmental  
30 studies and implementing cleanup plans to local governments,

public agencies and persons undertaking site remediation under this act.

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

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

Section 703. Fees.

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

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

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

standards.

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

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

(b) Deposit.--Fees imposed under this section shall be deposited in the Industrial Land Recycling Fund established under section 701.

## CHAPTER 9

### MISCELLANEOUS PROVISIONS

Section 901. Plain language.

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

Section 902. Permits.

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

Section 903. Future actions.

At any time, a request may be made to the department to change the land use of the site from nonresidential to residential. The department shall only approve the request upon a demonstration that the site meets all the applicable cleanup

1 standards for residential use of the property. Any existing deed  
2 acknowledgment contained in the deed prior to the demonstrating  
3 compliance with the residential use standard may be removed.

4 Section 904. Relationship to Federal and State programs.

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

10 (b) State priority list.--Any remediation undertaken on a  
11 site included on the State priority list established under the  
12 act of October 18, 1988 (P.L.756, No.108), known as the  
13 Hazardous Sites Cleanup Act, shall attain the site-specific  
14 standard established in section 304 and shall be performed in  
15 compliance with the administrative record and other procedural  
16 and public review requirements of Chapter 5 of the Hazardous  
17 Sites Cleanup Act.

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

25 (d) Agricultural chemical facilities.--The environmental  
26 remediation standards and procedures established under this act  
27 shall be used in any remediation undertaken at an agricultural  
28 chemical facility. The Department of Agriculture shall have the  
29 power and its duty shall be to promulgate regulations providing  
30 for the option of safely reusing soil and groundwater

1 contaminated with agricultural chemicals generated as a result  
2 of remediation activities at agricultural chemical facilities  
3 through the land application of these materials on agricultural  
4 lands. Such regulations shall provide for the appropriate  
5 application rates of such materials, either alone or in the  
6 combination with other agricultural chemicals, prescribe  
7 appropriate operations controls and practices to protect the  
8 public health, safety and welfare and the environment at the  
9 site of land application.

10 (e) Oil spill response.--This act shall not apply to the  
11 removal of a discharge under section 4201 of the Oil Pollution  
12 Act of 1990 (Public Law 101-380, 104 Stat. 484) or the act of  
13 June 11, 1992 (P.L.303, No.52), known as the Oil Spill Responder  
14 Liability Act.

15 Section 905. 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 906. 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 907. 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 908. Effective date.

19 This act shall take effect in 60 days.