

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1728 Session of
1999

INTRODUCED BY BROWNE, SEMMEL, ADOLPH, ARGALL, BARD, BELFANTI,
CORRIGAN, FREEMAN, GRUCELA, HENNESSEY, MANN, ROONEY,
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YUDICHAK, STEELMAN, RAYMOND AND SAMUELSON, JUNE 21, 1999

SENATOR LEMMOND, STATE GOVERNMENT, IN SENATE, AS AMENDED,
OCTOBER 10, 2000

AN ACT

1 Amending the act of December 7, 1990 (P.L.639, No.165), entitled
2 "An act establishing a Statewide hazardous material safety
3 program; creating the Hazardous Material Response Fund;
4 providing for the creation of Hazardous Material Emergency
5 Response Accounts in each county; further providing for the
6 powers and duties of the Pennsylvania Emergency Management
7 Agency, of the Pennsylvania Emergency Management Council and
8 of the counties and local governments; imposing obligations
9 on certain handlers of hazardous materials; and imposing
10 penalties," further providing for additional powers and
11 duties for the Pennsylvania Emergency Management Agency, for
12 definitions, for establishment and functions of local
13 emergency planning committees, for hazardous material safety
14 program, for emergency reporting and notification
15 requirements, for establishment of funds, for emergency
16 management grants, for facility and vehicle inspection and
17 testing, for immunity from civil liability and for
18 enforcement; and making editorial changes.

19 The General Assembly of the Commonwealth of Pennsylvania
20 hereby enacts as follows:

21 Section 1. Sections 102, 103, 201, 203, 204, 205, 206, 207,
22 208, 209, 210, 211, 212, 213, 301 and 303 of the act of December
23 7, 1990 (P.L.639, No.165), known as the Hazardous Material
24 Emergency Planning and Response Act, are amended to read:

1 Section 102. Legislative findings and purpose.

2 (a) Findings.--The General Assembly hereby determines,
3 declares and finds that exposure to hazardous materials has the
4 potential for causing undesirable health and environmental
5 effects and poses a threat to the health, safety and welfare of
6 the citizens of this Commonwealth, and that the citizens of this
7 Commonwealth and emergency service personnel who respond to
8 emergency situations should be protected from [the] health
9 hazards and harmful [exposure] exposures resulting from
10 hazardous material releases at facilities and from
11 transportation-related accidents.

12 (b) Purpose.--It is the purpose of this act to:

13 (1) Create a strong working relationship and partnership
14 between business and industry and the Commonwealth and its
15 municipalities in order to protect and safeguard the citizens
16 of this Commonwealth from the health hazards and other risks
17 of harm resulting from or incident to the use, storage,
18 distribution and transportation of hazardous materials.

19 (2) Designate the Pennsylvania Emergency Management
20 Council as the Commonwealth's emergency response commission
21 and establish an emergency planning district and a local
22 emergency planning committee in each county of this
23 Commonwealth to act in accordance with the provisions of the
24 Emergency Planning and Community Right-To-Know Act of 1986
25 (Title III of Public Law 99-499, 42 U.S.C. § 11001, et seq.),
26 also referred to in this act as SARA, Title III.

27 (3) Establish and maintain a comprehensive hazardous
28 material safety program for the Commonwealth and its
29 counties.

30 (4) Create the Hazardous Material Response Fund to

1 provide financial assistance to Commonwealth agencies and
2 counties to develop an effective and integrated response
3 capability to the health hazards, dangers and risks which
4 hazardous material releases pose to the general public.

5 (5) Establish an emergency notification system whereby
6 the release of hazardous materials occurring at a facility or
7 resulting from a transportation accident will be promptly
8 reported to the [proper Commonwealth] Pennsylvania Emergency
9 Management Agency and county emergency [response officials]
10 management agency.

11 (6) Assign responsibilities to various Commonwealth
12 agencies and local agencies to ensure the development and
13 furtherance of a comprehensive hazardous material safety
14 program.

15 (7) Provide civil liability protection to officials and
16 emergency response personnel of the Commonwealth and
17 municipalities who are properly carrying out their duties and
18 responsibilities under the Commonwealth's hazardous material
19 safety program.

20 (8) Require persons responsible for the release of
21 hazardous materials to pay the costs incurred by certified
22 hazardous material response teams [or] and supporting paid
23 and volunteer emergency service organizations for emergency
24 response activities [necessitated] caused by the hazardous
25 material release.

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 "Certified hazardous material response team." A team of

1 individuals who are certified and organized by a Commonwealth
2 agency, a local agency, a regional hazardous material
3 organization, a transporter, a manufacturer, supplier or user of
4 hazardous materials, or a volunteer service organization, or a
5 private contractor, for the primary purpose of providing
6 emergency response services to mitigate actual or potential
7 immediate threats to public health and the environment in
8 response to the release or threat of a release of a hazardous
9 material, which is certified, trained and equipped in accordance
10 with this act [or regulations promulgated under this act].

11 Hazardous material response teams may also be certified to
12 perform stabilization actions needed to remove threats to public
13 health and the environment from hazardous material releases.

14 "Commonwealth agency." An executive agency or independent
15 agency.

16 "Council." The Pennsylvania Emergency Management Council.

17 "County." Includes, but is not limited to, a city of the
18 first class coterminous with a county of the first class.

19 "County commissioner." Includes, but is not limited to, the
20 mayor of a city of the first class coterminous with a county of
21 the first class, or the designee of such mayor, and the
22 equivalent county official designated under a home rule charter
23 or optional plan adopted under the act of April 13, 1972
24 (P.L.184, No. 62), known as the Home Rule Charter and Optional
25 Plans Law.

26 "County emergency management coordinator." The person
27 designated to perform emergency management functions by the
28 county under 35 Pa.C.S. Part V (relating to emergency management
29 services).

30 "Emergency management." The judicious planning, assignment

1 and coordination of all available resources in an integrated
2 program of prevention, mitigation, preparedness, response and
3 recovery for emergencies of any kind, whether from attack,
4 manmade or natural sources.

5 "Emergency Service Organization." A team of individuals
6 organized by a Commonwealth agency, a local agency or any other
7 entity for the primary purpose of providing emergency services
8 as defined in 35 Pa.C.S. § 7102 (relating to definitions).

9 "Executive agency." [The Governor and the departments,
10 boards, commissions, authorities and other nonlegislative
11 officers and agencies of the Commonwealth, except any court or
12 other officer or agency of the unified judicial system or the
13 General Assembly and its officers and agencies or any
14 independent agency] A department, board, commission, authority,
15 officer or agency of the Executive Department, subject to the
16 policy, supervision and control of the Governor.

17 "Extremely hazardous substance." A substance appearing on
18 the list of extremely hazardous substances published by the
19 administrator of the Federal Environmental Protection Agency
20 under the authority of section 302 of the Federal Emergency
21 Planning and Community Right-To-Know Act of 1986 (Title III,
22 Public Law 99-499, 42 U.S.C. § 11002), as set forth at 40 CFR
23 Part 355 ("Appendix A - The List of Extremely Hazardous
24 Substances and Their Threshold Planning Quantities"), or
25 appearing on any successor list of extremely hazardous
26 substances published by the Administrator of the Federal
27 Environmental Protection Agency under the authority of section
28 302 of SARA, Title III.

29 "Facility." All buildings, structures and other stationary
30 items which are located on a single site or a contiguous or

1 adjacent site which are owned or operated by the same person and
2 which actually manufacture, produce, use, transfer, store,
3 supply or distribute any hazardous material. The term includes
4 railroad yards and truck terminals but does not include
5 individual trucks, rolling stock, water vessels, airplanes or
6 other transportation vehicles.

7 "Family farm enterprise." A natural person, family farm
8 corporation or family farm partnership engaged in farming which
9 processes and markets its agricultural commodities in either
10 intrastate or interstate commerce.

11 "Hazardous chemical." Substances as defined within the
12 meaning of 29 CFR 1910.1200(c), except that the term does not
13 include the following:

14 (1) Any food, food additive, color additive, drug or
15 cosmetic regulated by the Food and Drug Administration.

16 (2) Any substance present as a solid in any manufactured
17 item to the extent that exposure to the substance does not
18 occur under normal conditions of use.

19 (3) Any substance to the extent that it is used for
20 personal, family or household purposes or is present in the
21 same form and concentration as a product packaged for
22 distribution and use by the general public.

23 (4) Any substance to the extent that it is used in a
24 research laboratory or a hospital or other medical facility
25 under the direct supervision of a technically qualified
26 individual.

27 (5) Any substance to the extent that it is used in
28 routine agricultural operations or is a fertilizer held for
29 sale by a retailer to the ultimate consumer.

30 "Hazardous material." Any of the following, as defined in

1 this act:

2 (1) A hazardous substance.

3 (2) An extremely hazardous substance.

4 (3) A hazardous chemical.

5 (4) A toxic chemical.

6 [Except as provided in section 206, the term does not include
7 the transportation, including the storage incident to such
8 transportation, of any substance or chemical subject to the
9 requirements of this act, including the transportation and
10 distribution of natural gas.]

11 "Hazardous substance." A substance appearing on the list of
12 hazardous substances prepared under section 102 of the
13 Comprehensive Environmental Response, Compensation, and
14 Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767), as set
15 forth at 40 CFR Part 302 ("Table 302.4 - List of Hazardous
16 Substances and Reportable Quantities"), or appearing on any
17 successor list of hazardous substances prepared under section
18 102 of the Comprehensive Environmental Response, Compensation,
19 and Liability Act of 1980.

20 "Independent agency." [Boards, commissions, authorities and
21 other agencies and officers of the Commonwealth which are] A
22 board, commission, authority or officer of the Executive
23 Department which is not subject to the policy, supervision and
24 control of the Governor[, except]. The term does not include any
25 court or other officer or agency of the unified judicial system
26 or the General Assembly and its officers and agencies.

27 "Local agency." A municipality or any officer or agency
28 thereof.

29 "Local emergency planning committee" or "local committee."
30 The local committee within each emergency planning district

1 responsible for preparing hazardous material plans and
2 performing other functions under the Emergency Planning and
3 Community Right-To-Know Act of 1986 (Title III, Public Law 99-
4 499, 42 U.S.C. § 11001 et seq.).

5 "Mentoring council." A voluntary organization of companies
6 which handle, manufacture, use or distribute chemicals and other
7 interested groups, formed in conjunction with a local emergency
8 planning committee with the primary purpose of improving safe
9 work practices.

10 "PEMA." The Pennsylvania Emergency Management Agency.

11 "Person." An individual, corporation, firm, association,
12 public utility, trust, estate, public or private institution,
13 group, Commonwealth or local agency, political subdivision, and
14 any legal successor, representative or agency of the foregoing.

15 "Regional hazardous material organization." A nonprofit
16 corporation, joint venture or authority formed under the laws of
17 this Commonwealth which either contracts with or is organized by
18 one or more Commonwealth agencies, local agencies or volunteer
19 service organizations for the purpose of creating, training,
20 equipping, maintaining and providing one or more hazardous
21 material response teams to serve any specific geographic area as
22 approved by the Pennsylvania Emergency Management Council
23 within, but not limited to, the Commonwealth under this act.

24 "Release." Any spilling, leaking, pumping, pouring,
25 emitting, emptying, discharging, injecting, escaping, leaching,
26 dumping or disposing into the environment of a hazardous
27 material, including, but not limited to, the abandonment or
28 discarding of barrels, containers and other receptacles
29 containing a hazardous material.

30 "Reportable quantity." The quantity of a hazardous material

1 stated on the various lists of hazardous substances and
2 extremely hazardous substances as defined in this section, the
3 release of which shall be reported under this act.

4 "Rolling stock." Any railroad tank car, railroad boxcar or
5 other railroad freight car as defined in 49 CFR 215, or its
6 successor, that contains an extremely hazardous substance in
7 excess of the threshold planning quantity established for such
8 substance and is used as a storage site for such substance.

9 "SARA, Title III." The Emergency Planning and Community
10 Right-to-Know Act of 1986 (Title III, Public Law 99-499, 42
11 U.S.C. § 11001 et seq.).

12 "Service stations." A motor vehicle service station, filling
13 station, garage or similar operation engaged in the retail sale
14 of motor fuels that are regulated by the act of July 6, 1989
15 (P.L.169, No.32), known as the Storage Tank and Spill Prevention
16 Act, or a facility whose primary function is auto body repair.

17 "Toxic chemical." A substance appearing on the list of
18 chemicals described in section 313 of SARA (Title III, Public
19 Law 99-499, 42 U.S.C. § 11023), as set forth at 40 CFR Part 372,
20 or appearing on any successor list of chemicals set forth in the
21 Code of Federal Regulations under the authority of section 313
22 of SARA, Title III.

23 "Unified judicial system." The unified judicial system
24 existing under section 1 of Article V of the Constitution of
25 Pennsylvania.

26 "Vehicle." Any truck, railroad car, water vessel, airplane
27 or other transportation vehicle that ships, carries or
28 transports a hazardous material on any highway, rail line or
29 waterway within the jurisdictional boundaries of this
30 Commonwealth.

1 Section 201. Designation and functions of Pennsylvania
2 Emergency Management Council.

3 (a) Council.--The Pennsylvania Emergency Management Council,
4 established and organized under the act of November 26, 1978
5 (P.L.1332, No.323), known as the Emergency Management Services
6 Code, is designated and shall constitute the Commonwealth's
7 emergency response commission to carry out the responsibilities
8 assigned to the Commonwealth by SARA, Title III, to develop
9 overall policy and direction for a Statewide hazardous material
10 safety program and to supervise and coordinate the
11 responsibilities of the local emergency planning committees.

12 (b) Membership.--The council shall be composed of the
13 current members of the Pennsylvania Emergency Management Council
14 as now provided by law and the Secretary of Labor and Industry.

15 (c) Chairperson.--The Governor shall designate a member of
16 the council to serve as chairperson of the council. In the
17 absence of the chairperson, the director of PEMA shall serve as
18 chairperson. The chairperson shall have the authority to assign,
19 delegate or transfer tasks, duties and responsibilities to
20 members of the council. The chairperson shall approve the
21 appointment of members to the council who are designated by
22 their respective department or office and authorized to fulfill
23 the duties and responsibilities of the appointed member of the
24 council.

25 (d) Compensation and expenses.--Members shall serve without
26 compensation but shall be reimbursed for necessary and
27 reasonable actual expenses, such as travel expenses, incurred in
28 connection with attendance at council meetings.

29 (e) Meetings.--For the conduct of routine or emergency
30 business, the council shall meet at the call of the chairperson.

1 Five members of the council shall constitute a quorum for the
2 purpose of conducting the business of the council and for all
3 other purposes. All actions of the council shall be taken by a
4 majority of the council members present. The council shall be
5 subject to the act of July 3, 1986 (P.L.388, No.212), known as
6 the Sunshine Act.

7 (f) Staff.--The council shall supervise PEMA as its primary
8 agent responsible for performing the functions and duties of the
9 council established under this act. For this purpose, PEMA shall
10 employ such professional, technical, administrative and other
11 staff personnel as may be deemed essential to carry out the
12 purposes of this act and the development and maintenance of a
13 comprehensive Commonwealth hazardous material safety program and
14 report directly to the council.

15 (g) Powers and duties.--The council shall have the duty and
16 power to:

17 (1) Carry out all of the duties and responsibilities of
18 a State emergency response commission as specified in SARA,
19 Title III.

20 (2) Promulgate as provided by law any rules and
21 regulations necessary to carry out and implement this act and
22 SARA, Title III.

23 (3) Develop Commonwealth agency contingency plans
24 relating to the implementation of this act and SARA, Title
25 III.

26 (4) Provide guidance and direction to counties for the
27 implementation of this act and SARA, Title III.

28 (5) Supervise the operation of local committees and
29 ensure that local committees meet all Federal and
30 Commonwealth standards and requirements as provided by law.

1 (6) Develop a Commonwealth comprehensive hazardous
2 material safety program.

3 (7) Delegate authority and assign primary responsibility
4 to the Department of Labor and Industry for receiving,
5 processing and managing hazardous chemical information forms
6 and data, trade secrets and public information requests under
7 this act and in coordination with the act of October 5, 1984
8 (P.L.734, No.159), known as the Worker and Community Right-
9 to-Know Act. Emphasis should be given to electronically
10 processing the information reported under this act to
11 maximize its use in emergency response and to enhance its
12 availability to the public.

13 (8) Delegate authority and assign responsibility to the
14 Department of Environmental [Resources] Protection and the
15 Department of Health for providing technical advice and
16 assistance consistent with established departmental
17 responsibilities in the alleviation of public health and
18 environmental hazards associated with hazardous material
19 releases or threatened releases of hazardous materials,
20 including, but not limited to, dispatching emergency response
21 personnel to accident sites during emergency situations when
22 requested by PEMA. This act shall not affect any existing
23 authority these agencies have to respond to hazardous
24 material releases.

25 (9) Prescribe duties and responsibilities for
26 Commonwealth agencies, counties and local emergency planning
27 committees to conduct comprehensive emergency management
28 activities consistent with this act.

29 (10) Prescribe standards for hazardous material response
30 team training or certification, the equipping of hazardous

1 material response team units and other matters involving
2 hazardous material response activities.

3 (11) Develop a public information, education and
4 participation program for the public and facility owners
5 covering the requirements of this act and the Worker and
6 Community Right-to-Know Act and interpretation of the
7 chemical information collected under this act and the risks
8 those chemicals pose to the public health and environment.

9 (12) Develop a mechanism or guidelines for the use of
10 local emergency planning committees to act as boards of
11 arbitration for resolving cost recovery disputes concerning
12 those costs defined in section 210(c) that arise between a
13 person who causes a release of a hazardous material and the
14 organizers of any certified hazardous material response teams
15 [and/or] or emergency service organizations that responded to
16 the hazardous material release.

17 (13) Do all other acts and things necessary for the
18 exercise of the powers and duties of the council and for the
19 implementation of this act and SARA, Title III.

20 (h) Council expenses.--The council shall develop a specific
21 operating budget to implement the provisions of this act which
22 shall be submitted separately by PEMA with its regular budget
23 each year, subject to the requirements of section 207.

24 [(i) Advisory committee.--The council shall appoint a
25 Hazardous Material Emergency Planning and Response Advisory
26 Committee from the members of the council and other persons
27 representative of those groups affected by this act as the
28 council chairman may determine. Meetings of the committee shall
29 be convened by PEMA for the purpose of reviewing guidelines,
30 standards or regulations developed to implement this act. PEMA

1 shall participate in all meetings of the advisory committee and
2 provide administrative support. For the purpose of convening
3 meetings, a majority of the advisory committee members shall
4 constitute a quorum.]

5 Section 203. Establishment and functions of local emergency
6 planning committees.

7 (a) Local emergency planning committees.--In order to carry
8 out the provisions of Federal and Commonwealth law, a minimum of
9 one local emergency planning committee shall be established in
10 each county. The local committee shall elect a chairman from
11 among its members. The local committee shall be subject to the
12 supervision of the council and shall cooperate with the county
13 emergency management agency and SARA facilities to prepare the
14 emergency response plans required by section 303 of SARA, Title
15 III, for facilities where extremely hazardous chemicals are
16 present.

17 (b) Membership.--A local committee shall be composed of the
18 county emergency management coordinator, one county commissioner
19 and at least one person selected from each of the following
20 groups:

21 (1) Elected officials representing local governments
22 within the county.

23 (2) Law enforcement, first aid, health, local
24 environmental, hospital and transportation personnel.

25 (3) Firefighting personnel.

26 (4) Civil defense and emergency management personnel.

27 (5) Broadcast and print media.

28 (6) Community groups not affiliated with emergency
29 service groups.

30 (7) Owners and operators of facilities subject to the

requirements of SARA, Title III.

(c) Coordinator.--The county emergency management coordinator, as supervised by the county commissioners, shall have the lead responsibility for ensuring that the plans and activities of the local committee comply with SARA, Title III, this act, and other applicable statutes and laws.

(d) Appointment.--The members of a local committee shall be appointed by the council from a list of nominees submitted by the governing body of the county. The list of nominees shall contain the names of at least one person from each of the groups enumerated in subsection (b). Upon the failure of the governing body of a county to submit a list of nominees to the council within a time fixed by the council, the council may appoint members at its pleasure.

(e) Vacancies.--[Within 60 days of] As soon as practicable after the occurrence of a vacancy, the council shall appoint, in the manner provided in subsection (d), a successor member to a local committee for the remainder of the unexpired term of the member for which the vacancy exists. A vacancy shall occur upon the death, resignation, disqualification or removal of a member of a local committee.

(f) Meetings.--For the conduct of routine or emergency business, the local committee shall meet at the call of the chairperson. A majority of the members of the local committee, or such other number of members of the local committee as set by the local committee, shall constitute a quorum for the purpose of conducting the business of the local committee and for all other purposes. All actions of the local committee shall be taken by a majority of the local committee members present. The local committee shall be subject to the act of July 3, 1986

(P.L.388, No.84), known as the Sunshine Act.

(g) Duties.--A local committee shall have the duty and authority to:

(1) Make, amend and repeal bylaws and other procedures in order to carry out the duties, requirements and responsibilities of a local committee as set forth in SARA, Title III, and as required by the council.

(2) Take appropriate actions to ensure the implementation and updating of the local emergency response [plan] plans required by this act.

(3) Report to the council on alleged violations of this act.

(4) Prepare reports, recommendations or other information related to the implementation of this act, as requested by the council.

(5) Meet, when appropriate, with any Commonwealth agency or local or regional agency which is empowered to exercise the governmental functions of planning and zoning, to regulate land use and land use development, or to authorize the siting of a facility within the county to discuss and review with the Commonwealth agency and local agency all mitigation factors necessary to protect the health, safety and welfare of the general public from a potential release of hazardous materials from a proposed facility. Mitigation factors include, but are not limited to, environmental impacts, shelter and evacuation feasibility, emergency warning and communications, availability of response equipment and future population and economic growth in the area of the proposed facility.

(6) Accept and deposit into its county Hazardous

1 Material Emergency Response Account any grants, gifts or
2 other funds received which are intended for the purpose of
3 carrying out this act.

4 (h) Expenses.--The administrative and operational expenses
5 of a local committee may be paid through a combination of
6 sources by the county from the fees collected by the county,
7 from grants received from the council in accordance with the
8 provisions of sections 207 and 208, respectively, or by
9 accepting private donations.

10 (i) Agency and compensation for injury.--A member of a local
11 committee shall be an agent of the council and shall be deemed a
12 duly enrolled emergency management volunteer for the purposes of
13 35 Pa.C.S. § 7706 (relating to compensation for accidental
14 injury).

15 (j) Advisory capacity.--The local committee may perform
16 other emergency management advisory duties as requested by
17 county elected officials.

18 (k) Plan provisions.--Each emergency plan shall include, but
19 not be limited to, each of the following:

20 (1) Identification of the facility subject to the
21 requirements of section 303 of SARA, Title III, within the
22 county, identification of routes likely to be used for the
23 transportation of substances on the list of extremely
24 hazardous substances and identification of additional
25 facilities contributing or subjected to additional risk due
26 to their proximity to the facility subject to the
27 requirements of this section, such as hospitals or natural
28 gas facilities.

29 (2) Methods and procedures to be followed by facility
30 owners and operators and local emergency and medical

1 personnel to respond to any release of such substances.

2 (3) Designation of a county emergency management
3 coordinator and facility emergency coordinators, who shall
4 make determinations necessary to implement the plan.

5 (4) Procedures providing reliable, effective and timely
6 notification by the facility emergency coordinators and the
7 county emergency management coordinator to persons designated
8 in the emergency plan, and to the public, that a release has
9 occurred, consistent with the notification requirements of
10 section 304 of SARA, Title III.

11 (5) Methods for determining the occurrence of a release,
12 and the area or population likely to be affected by such
13 release.

14 (6) A description of emergency equipment [and facilities
15 in the county and] at each facility in the county subject to
16 the requirements of this section, and an identification of
17 the persons responsible for such equipment and facilities.
18 The facility's equipment list shall be included in the plan.
19 Community equipment lists may be maintained in the
20 county/municipal emergency operations centers.

21 (7) Evacuation plans, including provisions for a
22 precautionary evacuation and alternative traffic routes.

23 (8) [Training] Refer to the location of training
24 programs, including schedules for training of local emergency
25 response and medical personnel.

26 (9) [Methods and] Refer to the location of schedules for
27 exercising the emergency plan.

28 (10) The latitude and longitude of the facility.

29 (11) The vulnerability radius for each extremely
30 hazardous substance that meets threshold planning quantity

1 requirements.

2 (12) All appropriate response organizations that would
3 likely be called to the facility in the event of an
4 emergency.

5 (13) The location, quantity and type of any extremely
6 hazardous substance that meets the threshold planning
7 quantity at the facility.

8 (14) A standard list of information to be collected for
9 each emergency in the initial notification system.

10 (15) A statement the local emergency planning committee
11 will review the results of emergency response activities and
12 hazardous material exercises to incorporate relevant
13 adjustments to the plan.

14 (1) Mentoring council.--Nothing in this act shall prohibit
15 the creation of an additional voluntary council formed for the
16 purpose of furthering education and outreach to facilities to
17 ensure awareness of and have access to safety tools and
18 resources necessary to effectively implement and comply with the
19 requirements of this act.

20 Section 204. Hazardous material safety program.

21 (a) Program components.--In conjunction with the Departments
22 of Environmental [Resources] Protection, Health, Transportation,
23 Agriculture, Labor and Industry and [Commerce] Community and
24 Economic Development, Pennsylvania Public Utility Commission,
25 Fish and Boat Commission, Pennsylvania Turnpike Commission and
26 the Pennsylvania State Police, or any other Commonwealth
27 agencies as determined by the council, PEMA shall develop a
28 hazardous material safety program for incorporation into the
29 [Pennsylvania] Commonwealth Emergency [Management] Operations
30 Plan developed by PEMA under 35 Pa.C.S. Pt. V (relating to

1 emergency management services). The hazardous material safety
2 program shall include an assessment of the potential dangers and
3 risks that hazardous material releases occurring at facilities
4 and from transportation-related accidents pose to the general
5 public and the environment. The Pennsylvania State Fire Academy
6 shall be utilized as [a primary training facility] the
7 Commonwealth's center for hazardous materials training pursuant
8 to its duties under [35 Pa.C.S. § 7316(c) (relating to
9 Pennsylvania State Fire Academy)]. The council may also utilize
10 other institutions that have in place appropriate training
11 resources, such as the Center for Hazardous Materials Research
12 at the University of Pittsburgh's Applied Research Center, to
13 fulfill its training responsibilities] the act of November 13,
14 1995 (P.L.604, No.61), known as the State Fire Commissioner Act.
15 The program shall also consider the impacts, consequences and
16 necessary protective measures required to respond to and
17 mitigate the effects of such releases and accidents. The program
18 shall include, but not be limited to:

19 (1) Development of comprehensive emergency management
20 guidance for hazardous materials for the Commonwealth and
21 Commonwealth agencies which sets forth the specific duties,
22 responsibilities, roles and missions of Commonwealth
23 agencies.

24 (2) Development of comprehensive emergency management
25 guidance consistent with the Emergency Management Services
26 Code for hazardous materials that can be used by the local
27 committees to meet the requirements of Federal and
28 Commonwealth statutes and laws.

29 (3) Development of specific procedures for counties to
30 complete [the Hazardous Material Emergency Response

1 Preparedness Assessment within 30 days of the effective date
2 of this act] periodic reports conforming to the requirements
3 of subsection (b.1) as required by PEMA on the status and
4 capabilities of each county's hazardous materials safety
5 program.

6 (4) Development of a notification system whereby the
7 owners and operators of a facility will report the occurrence
8 of any hazardous substance or extremely hazardous substance
9 release to the appropriate Commonwealth agencies, local
10 agencies and Commonwealth and local officials designated in
11 the Commonwealth and local emergency plans. The reporting
12 requirements for this notification system are set forth in
13 section 206.

14 (5) Development of a notification system whereby the
15 transporters of any hazardous substance or extremely
16 hazardous substance will report the occurrence of any
17 hazardous material release to the Commonwealth agencies,
18 local agencies and Commonwealth and local officials
19 designated in the Commonwealth and local plans. The reporting
20 requirements for this notification system are set forth in
21 section 206.

22 (6) Training and equipping local agency public safety
23 and emergency response personnel.

24 (7) Establishing training standards and a certification
25 program for the formation of Commonwealth agency, local
26 agency or regional hazardous material response teams. All
27 Commonwealth agency, supporting paid and volunteer emergency
28 service organizations, local agency or other agencies and
29 committees that establish training standards for emergency
30 service, law enforcement, firefighting or other personnel

1 shall cooperate with the council in the implementation of
2 these training standards and certification program.

3 (8) [Periodical] Periodic exercise of hazardous material
4 release scenarios at facilities and transportation sites that
5 are designed to test the response capabilities of
6 Commonwealth agency, local agency and regional public safety
7 and emergency response personnel and certified hazardous
8 materials response teams.

9 (9) Assistance in procuring of specialized hazardous
10 material response supplies and equipment to be used by local
11 and regional public safety and emergency response personnel.

12 (10) PEEMA's staffing and operation of a 24-hour State
13 emergency operations center to provide effective emergency
14 response coordination for all types of natural and manmade
15 disaster emergencies, including the ability to receive and
16 monitor the emergency notification reports required under
17 sections 205 and 206 from all facilities and transporters
18 involved with hazardous material incidents.

19 (11) Provisions for financial assistance to counties as
20 provided in sections 207 and 208 and for the payment of
21 compensation benefits awarded to duly enrolled emergency
22 management volunteers under 35 Pa.C.S. § 7706 (relating to
23 compensation for accidental injury).

24 [(b) County preparedness assessment.--

25 (1) Within one year of the completion of procedures
26 called for in subsection (a)(3), counties shall develop and
27 submit to the council a Hazardous Material Emergency Response
28 Preparedness Assessment. The assessment shall be updated
29 annually.

30 (2) The county shall assess the potential dangers and

1 risks that hazardous material releases from facilities and
2 transportation accidents pose to public health and the
3 environment, identify the county's needs and resources for
4 hazardous material response teams to deal with those dangers
5 and risks and outline its plan for implementing county and
6 local emergency planning functions under this act.

7 (3) The assessment shall include the following:

8 (i) Potential threats posed by facilities requiring
9 emergency response plans under section 303 of SARA, Title
10 III, and other concentrations of hazardous materials in
11 the county or in areas immediately adjacent to the county
12 that may pose a threat.

13 (ii) Potential threats posed by hazardous material
14 transported by highway and railroad in the county.

15 (iii) Identification of existing capabilities to
16 respond to hazardous material releases, including
17 personnel, equipment, training, planning and
18 identification of existing hazardous material response
19 zones.

20 (iv) Selection of an option to comply with this act
21 under section 209(e) and identification of the need for
22 personnel, equipment, training and planning needed to
23 respond to the potential threats, including the
24 designation of proposed levels of preparedness for local
25 or regional response teams and proposed local or regional
26 response zones.

27 (v) Identification of other resources needed to
28 implement the provisions of this act and to support the
29 local emergency planning committee.

30 (vi) An audit of the Hazardous Material Emergency

1 Response Account.

2 (4) The local emergency planning committee shall assist
3 the county in the preparation of the Hazardous Material
4 Emergency Response Preparedness Assessment.

5 (5) The council shall review and approve the assessment
6 if it determines the assessment is complete and fulfills the
7 county's obligations under this act to respond to releases of
8 hazardous materials.

9 (6) If an assessment is not approved by the council, it
10 shall be returned to the county with an explanation of its
11 deficiencies. The county shall have 90 days to return the
12 assessment to the council with either changes or further
13 explanation or justification. The council shall then review
14 the assessment.]

15 (b.1) Requirements for periodic reports.--The periodic
16 reports required by subsection (a)(3) shall include the
17 following:

18 (1) Potential threats posed by facilities requiring
19 emergency response plans under section 303 of SARA, Title
20 III, and other concentrations of hazardous materials in the
21 county or in areas immediately adjacent to the county that
22 may pose a threat.

23 (2) Potential threats posed by hazardous material
24 transported by highway and railroad in the county.

25 (3) Identification of existing capabilities to respond
26 to hazardous material releases, including personnel,
27 equipment, training, planning and identification of existing
28 hazardous material response zones.

29 (4) Selection of an option to comply with this act under
30 section 209(e) and identification of the need for personnel,

1 equipment, training and planning needed to respond to the
2 potential threats, including the designation of proposed
3 levels of preparedness for local or regional response teams
4 and proposed local or regional response zones.

5 (5) Identification of other resources needed to
6 implement the provisions of this act and to support the local
7 emergency planning committee.

8 (6) An audit of the Hazardous Material Emergency
9 Response Account.

10 (7) Such other information as PEMA may deem necessary.

11 Section 205. Emergency reporting requirements.

12 (a) Requirements.--The owner or operator of a facility in
13 this Commonwealth shall comply with the following requirements:

14 (1) The owner or operator of a facility in this
15 Commonwealth covered under section 302 of SARA, Title III,
16 shall comply with the emergency planning and notification
17 requirements under sections 302 and 303 of SARA, Title III.

18 (2) The owner or operator of a facility in this
19 Commonwealth covered under section 311 of SARA, Title III,
20 shall comply with the reporting requirements under sections
21 311 and 312 of SARA, Title III. ~~The reporting threshold for~~ <—
22 ~~all hazardous chemicals as defined by the Occupational Safety~~
23 ~~and Health Administration shall be 10,000 pounds and shall~~
24 ~~report information concerning any employee who required~~
25 ~~medical treatment as a result of such emergency.~~

26 (3) The owner or operator of a facility in this
27 Commonwealth subject to section 313 of SARA, Title III, shall
28 comply with the toxic chemical release form requirements
29 under section 313 of SARA, Title III.

30 (4) The owner of a facility in this Commonwealth subject

1 to the requirements of paragraphs (2) and (3) shall comply
2 with the procedures for providing information under section
3 323 of SARA, Title III.

4 (5) The owner or operator of a facility in this
5 Commonwealth covered under section 304 of SARA, Title III,
6 shall comply with the notification requirements of section
7 304 of SARA, Title III, and section 206 of this act.

8 ~~(a.1) Report to health care provider. The owner or operator~~ <—
9 ~~of a facility in this Commonwealth shall report to the health~~
10 ~~care provider, in the same manner as required by this section,~~
11 ~~the appropriate safety data sheet on the material necessary for~~
12 ~~medical treatment given to any employee of the facility who came~~
13 ~~into contact with a hazardous or extremely hazardous substance~~
14 ~~even though the amount of such substance may be less than the~~
15 ~~reporting threshold.~~

16 (A.1) REPORT TO HEALTH CARE PROVIDER.--WHEN AN EMPLOYEE OF A <—
17 FACILITY IS EXPOSED TO A SUBSTANCE COVERED BY SARA, TITLE III
18 AND THE SUBSTANCE IS OVER THE REPORTING THRESHOLD, THE OWNER OR
19 OPERATOR OF THE FACILITY SHALL PROVIDE TO THE HEALTH CARE
20 PROVIDER THE APPROPRIATE MATERIAL SAFETY DATA SHEET NECESSARY
21 FOR APPROPRIATE MEDICAL TREATMENT.

22 (b) Document repository.--For the purposes of complying with
23 the reporting requirements set forth in sections 311, 312 and
24 313 of SARA, Title III, the owner or operator of any facility
25 shall submit its material safety data sheets or chemical lists,
26 emergency and hazardous chemical inventory forms and toxic
27 chemical release forms to the Department of Labor and Industry,
28 which is the council's repository for those documents at the
29 State level.

30 (c) Rolling stock.--The owner or operator of a property that

1 has one or more rolling stock, whether owned or leased, located
2 within its property boundaries for any period of time in excess
3 of [30] five days continuous days and containing an extremely
4 hazardous substance in excess of the threshold planning quantity
5 shall notify the council and the appropriate local committee of
6 that fact and shall [prepare] assist the local committee in
7 preparing an emergency response plan, which contains those
8 provisions that either the council or the appropriate local
9 committee directs, in order to deal with any potential release
10 of an extremely hazardous substance from that rolling stock.

11 (d) Facility duties.--The owner or operator of any facility
12 that manufactures, produces, uses, transfers, stores, supplies
13 or distributes any hazardous material after the effective date
14 of this subsection shall:

15 (1) Provide the emergency planning notification and
16 information required by section 302(c) and 303(d) of SARA,
17 Title III, to the council and the appropriate local emergency
18 planning committee within five business days after an
19 extremely hazardous substance is first present at such
20 facility.

21 (2) Submit its material safety data sheets or chemical
22 lists and emergency hazardous chemical inventory forms to the
23 Department of Labor and Industry, the appropriate local
24 emergency planning committee, and the fire department with
25 jurisdiction over the facility within five business days
26 after the hazardous chemical is first present at the
27 facility. The owner or operator shall also comply with the
28 requirements of section 311(d)(2) of SARA, Title III within
29 five business days.

30 Section 206. Emergency notification requirements.

1 (a) Facility or transportation accident or incident.--Except
2 as provided in subsection (e), the owner or operator of a
3 facility that manufactures, produces, uses, imports, exports,
4 stores, supplies or distributes any hazardous substance or
5 extremely hazardous substance and the owner or operator of a
6 vehicle that ships, transports or carries any hazardous
7 substance or extremely hazardous substance to, within, through
8 or across this Commonwealth shall immediately report the release
9 of the substance which exceeds the reportable quantity and which
10 extends beyond the property boundaries of the facility or which
11 results from a transportation accident or incident to the
12 appropriate Commonwealth and county emergency response office as
13 follows:

14 (1) Two notifications shall be made by the owner or
15 operator of a facility. The first call shall be to the 24-
16 hour response telephone number of the county office
17 designated and acting as the emergency response coordinator
18 for the local committee, which may be known as the county
19 emergency management office 24-hour response number. The
20 second call shall be made to the PEMA 24-hour response
21 number.

22 (2) Notification shall be made by the owner or operator
23 of a vehicle by dialing 911 or, in the absence of a 911
24 emergency telephone number, calling the operator in order to
25 notify the county emergency management office 24-hour
26 response number within whose jurisdiction the transportation
27 accident or incident has occurred, and reporting that a
28 hazardous substance or an extremely hazardous substance
29 release has occurred. The county emergency management office
30 shall report any notification made under this subsection to

1 the PEMA 24-hour response number within one hour of its
2 receipt.

3 (a.1) Additional notice.--A county emergency management
4 agency which receives notification under subsection (a) must
5 immediately provide information to the fire chief in the
6 appropriate jurisdiction relating to the details of the release,
7 including, but not limited to, the substance involved.

8 (b) Contents.--The notification required by this section
9 shall include each of the following to the extent known at the
10 time of the notice and so long as no delay in responding to the
11 emergency results:

12 (1) The name and telephone number of the person making
13 the notification.

14 (2) The name of the person employed by the owner or
15 operator of the facility or vehicle who has the authority or
16 responsibility to supervise, conduct or perform any cleanup
17 activities required at the facility or transportation
18 accident site or to contract for the performance of any
19 cleanup activities at the facility or transportation accident
20 site.

21 (3) The chemical name or identity of any substance
22 involved in the release.

23 (4) An indication of whether the substance is an
24 extremely hazardous substance or other hazardous material or
25 appears on a Federal or Commonwealth list of hazardous
26 materials as periodically amended.

27 (5) An estimate of the quantity of the substance that
28 was released into the environment.

29 (6) The time, location and duration of the release.

30 (7) The medium or media into which the release occurred.

1 (8) Any known or anticipated acute or chronic health
2 risks associated with the emergency and, where appropriate,
3 advice regarding medical attention necessary for exposed
4 individuals.

5 (9) Proper precautions to take as a result of the
6 release, including evacuation, unless the information is
7 readily available to the community emergency coordinator
8 under an emergency plan, and any other relevant information
9 which may be requested.

10 (10) The name and telephone number of the person or
11 persons to be contacted for further information.

12 (11) Additional information required by Federal or
13 Commonwealth law or regulation.

14 (c) PEMA notice.--The notification to PEMA shall be made to
15 the PEMA 24-hour response number. This notification shall
16 contain the information required by subsection (b). The notice
17 to PEMA shall fulfill the requirements in SARA, Title III, to
18 notify the council[. Notice under this section shall not] and
19 shall fulfill any requirements in other State laws to notify the
20 Department of Environmental [Resources or any other State agency
21 of a spill or release of a hazardous chemical.] Protection about
22 the same hazardous chemical spill or release. PEMA shall provide
23 notice of the spill or release to the Department of
24 Environmental Protection.

25 (d) Written report.--Within 14 calendar days after a release
26 which required notice under this section, the owner or operator
27 of a facility and the owner or operator of a vehicle shall
28 provide a written follow-up [emergency notice, or notices]
29 report or reports if more information becomes available, to PEMA
30 and the county emergency management office setting forth and

1 updating the information required under subsection (b), and
2 including additional information with respect to:

3 (1) Actions taken to respond to and contain the release.

4 (2) Any known or anticipated acute or chronic health
5 risks associated with the release.

6 (3) Advice regarding medical attention necessary for
7 exposed individuals, where appropriate.

8 (4) Actions to be taken to mitigate potential future
9 incidents.

10 (e) Exception.--The provisions of this section shall not
11 apply to a release of a hazardous substance or an extremely
12 hazardous substance if the release of such substance is
13 exempted, excluded or permitted by Federal or Commonwealth
14 statute, law, rule or regulation.

15 (f) Coordinated notification system.--

16 (1) The council shall, within one year of the effective
17 date of this act, complete a study of current notification
18 procedures to determine the feasibility of establishing a
19 single notification center and simplified alternative
20 notification processes for State agencies to receive
21 notification of all emergencies involving hazardous or
22 potentially hazardous substances or releases into the air or
23 water or on the land. The council shall study the feasibility
24 of replacing notification of individual State agencies with a
25 single point of contact and simplified alternative
26 notification procedures covering substances regulated by this
27 act, by the act of June 22, 1937 (P.L.1987, No.394), known as
28 The Clean Streams Law, the act of January 8, 1960 (1959
29 P.L.2119, No.787), known as the Air Pollution Control Act,
30 the act of July 7, 1980 (P.L.380, No.97), known as the Solid

1 Waste Management Act, the act of October 18, 1988 (P.L.756,
2 No.108), known as the Hazardous Sites Cleanup Act, the act of
3 July 6, 1989 (P.L.169, No.32), known as the Storage Tank and
4 Spill Prevention Act, or by any other State statute requiring
5 notification of any State agency of spills and releases into
6 the environment. The study shall consider any impact a single
7 point of contact and alternative notification procedures may
8 have on the regulated community, any enforcement programs
9 within the Department of Environmental [Resources] Protection
10 or other agencies and notification requirements established
11 in Federal law and make specific recommendations for
12 implementing its findings, including recommended changes to
13 State law. The Hazardous Material Emergency Planning and
14 Response Advisory Committee shall be involved in the
15 development of the study.

16 (2) The council shall forward a copy of the final study,
17 including a recommended timetable for implementing any
18 recommendations, to the House Conservation Committee and the
19 Senate Environmental Resources and Energy Committee.

20 Section 207. Establishment of funds.

21 (a) Hazardous Material Response Fund.--

22 (1) There is hereby created in the State Treasury a
23 nonlapsing restricted account to be known as the Hazardous
24 Material Response Fund. The fund shall consist of the fees
25 collected under subsections (c), (d) and (e), civil penalties
26 and fines and funds appropriated by the General Assembly.
27 Moneys in the fund and the interest [it] which accrues shall
28 be appropriated annually to PEMA [to be disbursed by the
29 council through PEMA] for disbursement and shall be used to
30 carry out the purposes, goals and objectives of SARA, Title

1 III, and the Commonwealth's hazardous material safety
2 program.

3 (2) [The council, through] PEMA, shall administer and
4 allocate moneys in the fund, including all interest generated
5 therein, in the following manner:

6 (i) Up to 10% [shall] may be expended on training
7 programs [for hazardous material response teams].

8 (ii) Up to 10% [shall] may be expended for public
9 and facility owner education, information and
10 participation programs.

11 (iii) [No more than 10% shall] Up to 10% may be used
12 for the general administrative and operational expenses
13 of this act[, excluding the expenses of the Hazardous
14 Material Emergency Planning and Response Advisory
15 Committee].

16 (iv) The remaining revenue in the fund shall be used
17 as grants to support the activities of counties under
18 this act, as described in section 208.

19 (b) County emergency response financing.--

20 (1) The treasurer of each county shall establish a
21 nonlapsing restricted account to be known as the Hazardous
22 Material Emergency Response Account. The account shall
23 consist of revenue from fees authorized by this section,
24 county, Federal or State funds, grants, loans or penalties
25 and any private donations provided to finance the hazardous
26 material safety program. Expenditures from the account shall
27 be authorized by the county consistent with the needs
28 identified in the [county Hazardous Material Emergency
29 Response Preparedness Assessment approved by the council]
30 periodic report prepared in accordance with guidelines

1 established by PEMA. The Hazardous Material Emergency
2 Response Account shall also be utilized by the local
3 emergency planning committee to resolve cost recovery
4 disputes that arise between a person who causes a release of
5 a hazardous material and a volunteer emergency services
6 organization when acting [as part] in support of a certified
7 hazardous material response team in accordance with this act.
8 Each volunteer services organization [shall be] is eligible
9 to receive [no more than \$300] from the Hazardous Material
10 Emergency Response Account up to \$1,000 per response to cover
11 expenses related to a response [from the Hazardous Material
12 Emergency Response Account], if the person who causes a
13 release of a hazardous material cannot be identified or is
14 financially unable to pay costs as defined in section 210(b).

15 (2) By March 1 of each year, each owner or operator of a
16 facility shall pay to the county treasurer where the facility
17 is located a local hazardous chemical fee of from \$35 to \$75,
18 as established by the county by ordinance, for each hazardous
19 chemical within the meaning of 29 CFR 1910.1200(c) or its
20 successor which is required by section 312 of SARA, Title
21 III, to be listed on the hazardous chemical inventory form
22 (Tier II) which the owner or operator of the facility submits
23 to the local emergency planning committee. Counties shall
24 grant facility owners up to 100% credit toward their chemical
25 fee obligation under this section for training, equipment or
26 other in-kind services donated to the county to support the
27 hazardous material safety program if such training, equipment
28 or in-kind services are accepted by the county. The credit
29 shall be based on the fair market value of equipment donated
30 and the agreed-upon value of training or in-kind services

1 donated.

2 (3) Counties may establish a program to provide funding
3 through the Hazardous Material Emergency Response Account for
4 certified hazardous material response teams [within] serving
5 the county [consistent with the Hazardous Material Emergency
6 Response Preparedness Assessment]. This grant program shall
7 not be bound by any dollar limits on assistance to local fire
8 protection services imposed by other statutes.

9 (c) Hazardous chemical fee.--Each owner or operator of a
10 facility shall pay a fee, to be known as a hazardous chemical
11 fee, of \$10 by March 1 of each year to the council for each
12 hazardous chemical within the meaning of 29 CFR 1910.1200(c) or
13 its successor which is required by section 312 of SARA, Title
14 III, to be listed on the hazardous chemical inventory form (Tier
15 II) which the owner or operator of the facility submits to the
16 council. The fees collected under this subsection shall be
17 deposited by the council into the Hazardous Material Response
18 Fund.

19 (d) Toxic chemical registration fee.--Each owner or operator
20 of a facility that submits a toxic chemical release form to the
21 Department of Labor and Industry on or before July 1, 1990, as
22 required by section 313 of SARA, Title III, shall pay a \$1,000
23 registration fee to the Department of Labor and Industry. The
24 registration fees collected under this subsection shall be
25 deposited by the Department of Labor and Industry into the
26 Hazardous Material Response Fund. The Department of Labor and
27 Industry may retain up to 10% of the fees collected for
28 administration of the program and management of the data
29 collected.

30 (e) Toxic chemical release form fee.--Each owner or operator

1 of a facility shall pay a fee of \$250 on or before July 1, 1991,
2 and the first day of July of every year thereafter, to the
3 Department of Labor and Industry for each toxic chemical which
4 is required by section 313 of SARA, Title III, to be listed on
5 the toxic chemical release form which the owner or operator of
6 the facility submits to the Department of Labor and Industry.
7 The cumulative amount of this fee shall not exceed \$5,000 per
8 facility. The fees collected under this subsection shall be
9 deposited by the Department of Labor and Industry into the
10 Hazardous Material Response Fund. The Department of Labor and
11 Industry may retain up to 10% of the fees collected for
12 administration of the program and management of the data
13 collected.

14 (f) Emergency planning fee.--By March 1 of each year, each
15 owner or operator of a facility that manufactures, produces,
16 uses, stores, supplies or distributes any extremely hazardous
17 substance in quantities larger than the threshold planning
18 quantities shall be required to pay to the county treasurer
19 where the facility is located an emergency planning fee of up to
20 \$100 as established by the county by ordinance. Counties shall
21 grant facility owners up to 100% credit toward any emergency
22 planning fee obligation under this section for training,
23 equipment or other in-kind services donated to the county to
24 support the hazardous material safety program if such training,
25 equipment or in-kind services are accepted by the county, in
26 addition to those for which a credit is claimed under subsection
27 (b)(2). The credit shall be based on the fair market value of
28 equipment donated and the agreed-upon value of training or in-
29 kind services donated.

30 (g) Exemptions.--The owners or operators of family farm

1 enterprises, service stations and facilities owned by State and
2 local governments shall be exempt from payment of the fees
3 required under subsections (b), (c), (d), (e) and (f).

4 (h) Federal funds, grants or other gifts.--The council is
5 authorized to accept and may deposit into the Hazardous Material
6 Response Fund grants, gifts and Federal funds for the purpose of
7 carrying out the provisions of this act.

8 [(i) Changes in threshold quantities and chemicals.--For
9 purposes of the fees established in this section, the term
10 "hazardous chemical" shall mean chemicals on lists established
11 by the United States Environmental Protection Agency effective
12 on July 1, 1989. No fee may be applied to additional facilities
13 or hazardous materials because of changes made by the United
14 States Environmental Protection Agency in lists of hazardous
15 materials, threshold planning quantities or other requirements
16 under SARA, Title III, without complying with the provisions of
17 section 213.

18 (j) Termination.--The fees established in this section or
19 pursuant to section 213 shall terminate ten years after the
20 effective date of this act unless reestablished by the General
21 Assembly by statute.]

22 (k) Transportation fee study.--Within one year of the
23 effective date of this act, the council shall report to the
24 General Assembly on the feasibility of establishing a fee on the
25 transporters of hazardous materials regulated under this act.
26 The purpose of this fee would be to supplement the funds
27 provided by fixed facility owners or operators to the Hazardous
28 Material Response Fund.

29 (l) Status of fund.--The Hazardous Material Response Fund
30 shall not be subject to 42 Pa.C.S. Ch. 37 Subch. C (relating to

1 judicial computer system).

2 Section 208. Emergency management grants.

3 (a) General.--Each county shall participate in the hazardous
4 material safety program and may be eligible to receive an
5 emergency management grant from the Hazardous Material Response
6 Fund in order to comply with the requirements of SARA, Title
7 III, and the Commonwealth's hazardous material safety program.

8 (b) Applications.--A county [or group of counties] may apply
9 annually to [the council] PEMA for an emergency management
10 grant. Applications shall be made in [the manner specified by
11 the council in regulations promulgated under section 201(g)
12 consistent with the county preparedness assessment] accordance
13 with the guidelines established by PEMA.

14 (c) Eligible costs.--Eligible costs for emergency management
15 grants are limited to the cost of:

16 (1) Developing [a county Hazardous Material Emergency
17 Response Preparedness Assessment required in section 204(b).]
18 periodic reports conforming to the requirements of section
19 204(b.1).

20 (2) Developing, updating and exercising emergency
21 response plans required under section 303 of SARA, Title III.

22 (3) Performing public information functions as required
23 by section 324 of SARA, Title III.

24 (4) Collecting, documenting and processing chemical
25 inventory forms and other documents required by SARA, Title
26 III.

27 (5) Developing an emergency planning and response
28 capability for responding to hazardous material releases and
29 meeting the requirements of the Commonwealth's hazardous
30 material safety program, including training, equipment,

1 material and other supplies needed to respond to a release.

2 (6) Supporting the operation and administration of local
3 committees.

4 (7) Reimbursing certain response costs of supporting
5 volunteer emergency service organizations in accordance with
6 section 207(b)(1).

7 (d) Grant amount.--The amount of the annual grant from the
8 Hazardous Material Response Fund shall not exceed the sum of:

9 (1) the funds of local revenues made available by the
10 county for the purpose of complying with the requirements and
11 provisions of SARA, Title III, and the Emergency Management
12 Services Code with respect to hazardous material releases,
13 retroactive to November 1986 [and]; and

14 (2) the revenues collected under section 207(b)(2) and
15 (f)[,];

16 except that any county emergency management coordinator whose
17 Hazardous Material Emergency Response Account receives less than
18 \$10,000 annually in fees established in this section or meets
19 the requirements of subsection (e)(3) shall be eligible for
20 additional grants equal to county funds specifically
21 appropriated for compliance with this act, not to exceed \$5,000.

22 (e) Payment of grants.--[The council] PEMA shall review
23 annually all applications received under this section and may
24 make grants to the counties from the Hazardous Material Response
25 Fund. [The council] PEMA shall prioritize the available funds
26 among the eligible applicants based upon the following criteria:

27 [(1) Completion of initial county Hazardous Material
28 Emergency Response Preparedness Assessment.]

29 (2) Compliance with the requirements of SARA, Title III,
30 and the Commonwealth's hazardous material safety program and

Emergency Management Services Code with respect to hazardous material releases.

(3) The number of facilities located within the county, or the existence of unique or special circumstances that pose a threat to the health and safety of the general public or the environment, or both. The existence of unique or special circumstances under this section as determined by PEMA shall include an interstate highway, the Pennsylvania Turnpike or any secondary route used by a transporter because of load restrictions on primary routes.

(4) Availability of financial, technical or other assistance to the applicant from other governmental, business or private sources.

(5) No more than 10% of the grant funds shall be [expended in] allocated to any one county in any year. [unless more than one county applies for funds in a joint application.

(f) Initial grant.--In addition to any other grants provided for in this section, each county of the third through eighth class shall, within 18 months of the effective date of this act, receive an initial grant of \$1,500 for the purpose of complying with the provisions of this act. The initial grant shall be made from the Hazardous Material Response Fund.]

Section 209. Certified hazardous material response teams.

(a) General rule.--The council shall establish a program for certifying hazardous material response teams, setting standards for training, equipment, safety, operations and administration of the teams. The certification program shall include, but not be limited to:

(1) Standards for certifying response teams with several

1 preparedness levels patterned after levels established by the
2 United States Occupational Safety and Health Administration
3 at 29 CFR Part 1910.120.

4 (2) Reviewing existing hazardous material training and
5 certification programs to establish specific procedures for
6 crediting that training and certification under the program
7 established by this section.

8 (b) Hazardous material response zones.--The council may
9 establish hazardous material response zones, consisting of
10 portions of counties or multiple counties, that may be served by
11 certified hazardous material response teams that are certified
12 by the council where counties have not identified zones in their
13 Hazardous Material Emergency Response Preparedness Assessment.

14 (c) Grants.--Each certified hazardous material response team
15 may be eligible to receive, through an application submitted by
16 a county, an emergency management grant from the Hazardous
17 Material Response Fund. Counties are required to submit copies
18 of all applications and requests they receive from certified
19 hazardous material response teams as part of their application.

20 (d) Compliance with guidelines and regulations.--Hazardous
21 material response teams shall comply with any guidelines,
22 regulations, directives or other documents developed by PEMA and
23 the council for incorporation into the Commonwealth's hazardous
24 material safety program [and shall be consistent with the county
25 Hazardous Material Emergency Response Preparedness Assessment
26 approved by the Council].

27 (e) Compliance with act.--Each county shall comply with the
28 hazardous material safety program and 35 Pa.C.S. Pt. V (relating
29 to emergency management services) by doing any of the
30 following[, consistent with the county Hazardous Material

1 Emergency Response Preparedness Assessment]:

2 (1) Individually organizing and operating a certified
3 hazardous material response team.

4 (2) Contracting or having formal agreements with a
5 certified hazardous material response team, including those
6 formed by a regional hazardous material organization or
7 private companies.

8 (3) Participating as a member of a regional hazardous
9 material organization for the purpose of creating and
10 organizing a certified hazardous material response team.

11 (f) Grants to counties.--A county may be eligible for a
12 grant from the Hazardous Material Response Fund for a cost that
13 would otherwise be eligible under section 208(c) but was
14 actually incurred prior to the effective date of this act and
15 after the effective date of SARA, Title III, provided that no
16 such grant shall take priority over grants for eligible costs
17 incurred after the effective date of this act.

18 (g) Regional hazardous material organizations.--Regional
19 hazardous material organizations formed solely by a county or
20 counties may be funded fully or in part by proportional
21 contributions from the political subdivisions included within
22 the hazardous material response zone serviced by the regional
23 hazardous material organization or as otherwise agreed to by
24 contract between the regional hazardous material organization
25 and those political subdivisions and approved in the county
26 preparedness assessment.

27 (h) Insurance.--Each Commonwealth agency, local agency,
28 regional hazardous material organization, volunteer service
29 organization, hazardous material transporter, manufacturer,
30 supplier or user, or other entity that organizes a certified

1 hazardous material response team as identified on the team
2 certification, shall be responsible for providing, directly or
3 by agreement with a third party, workers' compensation and
4 ordinary public liability insurance for its certified hazardous
5 material response team. The Commonwealth, a county or
6 municipality may self-insure to meet this obligation to the
7 extent it is now authorized by State law. A certified hazardous
8 material response team that meets the training standards or
9 certification requirements established under the Commonwealth's
10 hazardous material safety program shall receive a discount from
11 the applicable insurance company as that insurance company's
12 loss experience justifies based on guidelines developed by the
13 Insurance Commissioner.

14 (i) [Emergency] Incident response.--A certified hazardous
15 material response team may, when authorized by the county
16 emergency management coordinator, enter onto any private or
17 public property on which a release of a hazardous material has
18 occurred or the occurrence or the threat of a hazardous material
19 release is imminent. A certified hazardous material response
20 team may enter any adjacent or surrounding property to which the
21 hazardous material release has entered or threatens to enter. A
22 certified hazardous material response team may enter any private
23 or public property in order to respond to the release or
24 threatened release of a hazardous material, to monitor and
25 contain the hazardous material release, to perform cleanup and
26 stabilization actions and to perform any other [emergency]
27 response activities deemed necessary by the certified hazardous
28 material response team or by the representatives of PEMA, the
29 county emergency management office as established under 35
30 Pa.C.S. Pt. V or the local committee.

(j) State agency.--Notwithstanding any Federal law to the contrary, the Department of Environmental [Resources] Protection, consistent with the State emergency operations plan, is designated as the State agency assigned the responsibility to direct cleanup efforts at a release site upon the occurrence of a release.

Section 210. Recovery of response costs.

(a) General rule.--A person who causes a release of a hazardous material shall be liable for the response costs incurred by a certified hazardous material response team or a supporting paid or volunteer emergency service organization, or both. The Commonwealth agency, local agency, regional hazardous material organization, volunteer emergency service organization, or hazardous material transporter, manufacturer, supplier or user that organized the certified hazardous material response team, as identified on the team certification, or supporting paid or volunteer emergency service organizations, that undertakes a response action may recover those response costs in law or an action in equity brought before a court of competent jurisdiction or may proceed under the provisions of subsection (d). Should more than one certified hazardous material response team incur response costs for the same hazardous material release or incident, the organizing entities of those certified hazardous material response teams may file a joint action in law or equity and may designate one entity to represent the others in the law suit.

(b) Amount.--In an action to recover response costs, a Commonwealth agency, local agency, regional hazardous material organization, supporting paid or volunteer emergency service organization, or a hazardous material transporter, manufacturer,

1 supplier or user may include operational, administrative
2 personnel and legal costs incurred from its initial response
3 action up to the time that it recovers its costs. Only those
4 certified hazardous material response teams [or] and supporting
5 paid or volunteer emergency service organizations that are
6 properly trained in accordance with the standards developed
7 under this act and that are properly requested and dispatched by
8 a legally constituted authority shall be eligible to recover
9 their response costs under this act.

10 (c) Definitions.--When used in this section, the term
11 "response cost" includes, but is not limited to, the following:

12 (1) Disposable materials and supplies acquired, consumed
13 and expended specifically for the purpose of the response to
14 the hazardous material release.

15 (2) Rental or leasing of equipment used specifically for
16 the response, for example, protective equipment or clothing
17 and scientific and technical equipment.

18 (3) Replacement costs for equipment that is contaminated
19 beyond reuse or repair during the response, for example,
20 self-contained breathing apparatus irretrievably contaminated
21 during the response.

22 (4) Decontamination of equipment contaminated during the
23 response.

24 (5) Compensation of paid employees or members of the
25 hazardous material response team [or] and supporting paid or
26 volunteer emergency service organization, to include regular
27 and overtime pay for permanent full-time and other than full-
28 time compensated employees or members.

29 (6) Special technical services specifically required for
30 the response, for example, costs associated with the time and

1 efforts of technical experts or specialists.

2 (7) Laboratory and testing costs for purposes of
3 analyzing samples or specimens taken during the response.

4 (8) Other special services specifically required for the
5 response, for example, utility costs.

6 (9) Costs associated with the services, supplies and
7 equipment used to conduct an evacuation during the response.

8 (10) Costs associated with the removal and disposal of
9 hazardous materials.

10 (d) Arbitration.--

11 (1) In lieu of bringing an action at law or in equity in
12 a court of competent jurisdiction in the matter of a response
13 cost dispute under subsection (a), the party who is the
14 person who caused a release of a hazardous material and the
15 party who is the certified hazardous material response team,
16 including any volunteer emergency service organizations
17 requested and dispatched by a legally constituted authority,
18 may agree to submit the response cost dispute to binding
19 arbitration as provided in this subsection. By submitting the
20 response cost dispute to arbitration, the parties shall have
21 waived all rights to remedies available under subsection (a)
22 or to any other remedies available at law.

23 (2) Once the parties agree to submit the response cost
24 dispute to binding arbitration, the local committee shall
25 notify the council and the parties of the request for a board
26 of arbitration and shall request the recommendation of the
27 parties for persons to be appointed to the board. The board
28 of arbitration shall consist of three persons, one to be
29 selected by each of the parties and a third person to be
30 agreed upon by the arbitrators as specified in paragraph (3).

1 Within five days of the request for arbitration, the parties
2 shall submit the names of the arbitrators that they have
3 chosen and the local committee shall appoint those persons to
4 the board of arbitration.

5 (3) Within five days after their appointment, the two
6 arbitrators shall meet and select a third arbitrator who
7 shall be appointed to the board by the local committee, and
8 who will be chairman of the board of arbitration.

9 (4) If the two arbitrators fail to select a third
10 arbitrator as provided in paragraph (3), the council shall,
11 within five days, select a third arbitrator who shall be
12 appointed to the board. The person so selected shall not be a
13 member of the council, a member of any local committee or a
14 person or a relative of a person employed by the party or a
15 subsidiary of the party who caused the hazardous material
16 release or who has an ownership or equity interest in the
17 party or subsidiary of the party who caused the hazardous
18 material release.

19 (5) Upon appointment of the third member, the board
20 shall commence its proceedings and within 30 days shall make
21 its determination, which shall be binding on all parties.

22 (6) Unless otherwise prescribed in the agreement to
23 arbitrate, the expenses and fees of the arbitrators and other
24 expenses, but not including counsel fees, incurred in the
25 conduct of the arbitration shall be paid as prescribed in the
26 award.

27 Section 211. Facility and vehicle inspection and testing.

28 (a) Inspection.--In order to determine compliance with this
29 act and SARA, Title III, either the qualified council or local
30 committee member or [representative] representatives, as defined

1 in subsection (e), may enter a facility or vehicle site, during
2 normal business hours, to inspect the facility or vehicle and to
3 request information or reports from the facility or vehicle
4 owner or operator concerning the chemical name, identity, amount
5 or any other information necessary for emergency planning and
6 response purposes for any substance, liquid, mixture, compound,
7 material or product manufactured, produced, used, stored,
8 supplied, imported, exported or distributed at, to or from the
9 facility or vehicle.

10 (b) Testing.--Should the qualified council or local
11 committee member or representative determine during the course
12 of a facility or vehicle inspection that the chemical name,
13 identity, amount or any other requested information for any
14 substance, liquid, mixture, compound, material or product
15 present at the facility or vehicle cannot be identified or
16 determined to his satisfaction, due to the lack of proper
17 labeling, placarding, recordkeeping or for any other reason, the
18 representative shall have the authority to analyze or arrange
19 for the analysis of the substance to identify the chemical
20 properties of the sample or specimen, the amount of the
21 substance, liquid, mixture, compound, material or product
22 manufactured, produced, used, stored, supplied, imported,
23 exported or distributed at, to or from the facility or vehicle
24 to determine if it is regulated by this act. The owner or
25 operator of a facility or vehicle shall pay any testing and
26 laboratory analysis costs incurred by the council or a local
27 committee as performed under this section. Samples of any
28 substance required to be taken under this section by the
29 qualified council or local representative shall be split with
30 the facility for analysis.

1 (c) Emergency situations.--Should a release or threatened
2 release of a known or unknown substance, liquid, mixture,
3 compound, material or product occur or appear to be imminent at
4 a facility or vehicle site[,] which endangers or has the
5 potential to endanger the health, safety and welfare of the
6 public, employees of the facility or the vehicle's owner or
7 operator, or the employees of the owner or operator of the
8 vehicle, the council or the local committee may send qualified
9 representatives or the certified hazardous material response
10 team, or both, to the facility or vehicle site at any time in
11 order to inspect the facility or vehicle and to assess the
12 danger posed by the release or threatened release and to obtain
13 samples or specimens of the substance, liquid, mixture,
14 compound, material or product involved in the release or
15 threatened release and to perform any other [emergency] incident
16 response activities deemed necessary by the representatives of
17 the council or the local committee or the certified hazardous
18 material response team.

19 (d) Trade secrets.--A person shall provide the qualified
20 representative of the council or the local committee or the
21 certified hazardous material response team with the chemical
22 name, identity or any other information requested concerning any
23 substance, liquid, mixture, compound, material or product
24 present at the facility or vehicle, whether or not the chemical
25 name, identity or other information requested is entitled to
26 protection as a trade secret under section 322 of SARA, Title
27 III, unless the manufacturer of the substance will not provide
28 the information requested to the facility owner because it has
29 received trade secret protection under SARA, Title III. For that
30 information which has received trade secret protection under

1 section 322 of SARA, Title III, prior to the date of the
2 inspection or request, the qualified representative shall give a
3 written assurance to the person that reasonable measures will be
4 taken to protect the confidentiality of any information provided
5 to the qualified representative.

6 (e) Qualified person.--For purposes of this section, the
7 council shall develop qualification standards for members of the
8 council, local committees or their representatives who exercise
9 the reporting, inspection and testing authority contained in
10 this section. At a minimum, those qualifications shall include:

11 (1) Training in inspection and enforcement activities
12 related to enforcing environmental or fire incident
13 investigations.

14 (2) Training in the handling and recognition of
15 hazardous materials.

16 (3) Conflict of interest standards and procedures
17 designed to prevent a local committee member or
18 representative from using the authority of this section to
19 gather information on a business competitor or other trade
20 secret information.

21 (4) Procedures for decertifying a member or
22 representative who was determined to be a qualified
23 representative of the council or local committee.

24 Section 212. Annual report.

25 [The council] PEMA shall submit an annual report to the
26 General Assembly by October 1 of each year on the activities it
27 has undertaken to implement this act. The report shall include,
28 but not be limited to:

29 (1) An accounting of revenues and expenditures from the
30 Hazardous Material Response Fund and the county Hazardous

1 Material Emergency Response Accounts along with a description
2 of the projects undertaken with these funds and a projection
3 of future activities.

4 (2) The status of local emergency planning committee
5 activities.

6 (3) The status of facilities required to comply with
7 this act, including their number, location[, number of
8 employees] and the number and amount of chemicals reported.

9 (4) The number and nature of emergency notifications
10 handled by PEMA.

11 [Section 213. Changes in fees.

12 (a) Additional facilities.--If changes made by the United
13 States Environmental Protection Agency under SARA, Title III,
14 result in the fees established in section 207 being applied to
15 additional facilities, no fees may be collected from the owners
16 or operators of these facilities until the council subjects
17 these facilities to the fees by regulation.

18 (b) Change in requirements.--The council, by regulation, may
19 also revise the fees established in section 207, as they apply
20 to all facilities when the Environmental Protection Agency,
21 under SARA, Title III changes the threshold planning quantities,
22 the hazardous material lists or other requirements.]

23 Section 301. Immunity from civil liability.

24 (a) General.--No Commonwealth agency, local agency, regional
25 hazardous material organization, volunteer emergency service
26 organization or hazardous material transporter, manufacturer,
27 supplier or user that organized the certified hazardous material
28 response team nor their elected officers, officials, directors
29 and employees, and no certified hazardous material response team
30 member, member of an industrial hazardous material response

1 team, law enforcement officer, ambulance service or rescue squad
2 member, firefighter or other emergency response or public works
3 personnel engaged in any emergency service or response
4 activities involving a hazardous material release at a facility
5 or transportation accident site shall be liable for the death of
6 or any injury to persons or loss or damage to property or the
7 environment resulting from a response to a hazardous material
8 release, except for any acts or omissions which constitute gross
9 negligence or willful misconduct. Nothing in this section shall
10 exempt any hazardous material transporter, manufacturer,
11 supplier or user from liability for the death of or any injury
12 to persons or loss or damage to property or the environment
13 resulting from the release of any hazardous material.

14 (b) Council [and], local committees and mentoring council.--
15 No member of the council [or], a local committee or a mentoring
16 council shall be liable for the death of or any injury to
17 persons or loss or damage to property or the environment or any
18 civil damages resulting from any act or omission arising out of
19 the performance of the functions, duties and responsibilities of
20 the council [or], local committee or mentoring council, except
21 for acts or omissions which constitute willful misconduct.

22 (c) Other.--No employee, representative or agent of a
23 Commonwealth agency or local agency engaged in any emergency
24 service or response activities involving a hazardous material
25 release at a facility or transportation accident site shall be
26 liable for the death of or any injury to persons or loss or
27 damage to property resulting from that hazardous material
28 release, except for any acts or omissions which constitute
29 willful misconduct.

30 Section 303. Enforcement.

1 (a) Civil actions.--

2 ~~(1)~~ The Office of Attorney General [or]; the Office of <—
3 General Counsel or a county or municipality may commence a
4 civil action against any person for failure to comply with
5 this act or its regulations. No action may be commenced under
6 this subsection prior to 60 days after the Office of Attorney
7 General or Office of General Counsel or the appropriate
8 county or municipality has given written notice of the
9 alleged violation to the alleged violator. [The council, a] A
10 county or a municipality may commence a civil action against
11 any person for failure to comply with this act or its
12 regulations if the Office of Attorney General or the Office
13 of General Counsel has not commenced such action and more
14 than 120 days have elapsed since [the council,] a county or a
15 municipality gave notice of the alleged violation to the
16 alleged violator.

17 ~~(2) An individual may commence a civil action against <—~~
18 ~~any person for failure to comply with this act or its~~
19 ~~regulations if an action is not brought by the Office of~~
20 ~~Attorney General, the Office of General Counsel, a county or~~
21 ~~a municipality and 180 days have elapsed since a county or a~~
22 ~~municipality gave notice of the alleged violation to the~~
23 ~~alleged violator.~~

24 (b) Criminal actions.--The Office of Attorney General under
25 the act of October 15, 1980 (P.L.950, No.164), known as the
26 Commonwealth Attorneys Act, or the district attorney for the
27 county in which the violation is alleged to have occurred may
28 commence criminal proceedings for the enforcement of this act
29 and its regulations.

30 (c) Venue.--A proceeding under subsection (a) or (b) may be

1 brought in the court of common pleas for the county in which the
2 defendant is located or for the county in which the violation is
3 alleged to have occurred.

4 Section 2. This act shall take effect in 60 days.