

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2586 Session of
2008

INTRODUCED BY McGEEHAN, BISHOP, BRENNAN, CALTAGIRONE, CASORIO,
DALEY, DeLUCA, FRANKEL, FREEMAN, GIBBONS, GOODMAN, HORNAMAN,
JAMES, JOSEPHS, MAHONEY, McCALL, M. O'BRIEN, PASHINSKI,
RAMALEY, SIPTROTH, SONNEY, WAGNER, WALKO AND J. WHITE,
JUNE 4, 2008

REFERRED TO COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY
PREPAREDNESS, JUNE 4, 2008

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 facility and vehicle
11 inspection and testing and for enforcement.

12 The General Assembly of the Commonwealth of Pennsylvania
13 hereby enacts as follows:

14 Section 1. Sections 211 and 303(a) of the act of December 7,
15 1990 (P.L.639, No.165), known as the Hazardous Material
16 Emergency Planning and Response Act, amended December 20, 2000
17 (P.L.885, No.121), are amended to read:

18 Section 211. Facility and vehicle inspection and testing.

19 (a) Inspection.--In order to determine compliance with this
20 act and SARA, Title III, [either] the qualified council or local

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

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

1 under this section. Samples of any substance required to be
2 taken under this section by the qualified council or local
3 representative or the Department of Labor and Industry shall be
4 split with the facility for analysis.

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

23 (d) Trade secrets.--A person shall provide the qualified
24 representative of the council or the local committee [or], the
25 certified hazardous material response team or the Department of
26 Labor and Industry with the chemical name, identity or any other
27 information requested concerning any substance, liquid, mixture,
28 compound, material or product present at the facility or
29 vehicle, whether or not the chemical name, identity or other
30 information requested is entitled to protection as a trade

1 secret under section 322 of SARA, Title III, unless the
2 manufacturer of the substance will not provide the information
3 requested to the facility owner because it has received trade
4 secret protection under SARA, Title III. For that information
5 which has received trade secret protection under section 322 of
6 SARA, Title III, prior to the date of the inspection or request,
7 the qualified representative shall give a written assurance to
8 the person that reasonable measures will be taken to protect the
9 confidentiality of any information provided to the qualified
10 representative.

11 (e) Qualified person.--For purposes of this section, the
12 council shall develop qualification standards for members of the
13 council, local committees or their representatives or
14 representatives of the Department of Labor and Industry who
15 exercise the reporting, inspection and testing authority
16 contained in this section. At a minimum, those qualifications
17 shall include:

18 (1) Training in inspection and enforcement activities
19 related to enforcing environmental or fire incident
20 investigations.

21 (2) Training in the handling and recognition of
22 hazardous materials.

23 (3) Conflict of interest standards and procedures
24 designed to prevent a local committee member or
25 representative from using the authority of this section to
26 gather information on a business competitor or other trade
27 secret information.

28 (4) Procedures for decertifying a member or
29 representative who was determined to be a qualified
30 representative of the council or local committee.

1 Section 303. Enforcement.

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

16 * * *

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