

No. 1988-108

AN ACT

HB 1852

Providing for the cleanup of hazardous waste sites; providing further powers and duties of the Department of Environmental Resources and the Environmental Quality Board; providing for response and investigations for liability and cost recovery; establishing the Hazardous Sites Cleanup Fund; providing for certain fees and for enforcement, remedies and penalties; and repealing certain provisions relating to the rate of the capital stock franchise tax.

TABLE OF CONTENTS

Chapter 1. Preliminary Provisions

- Section 101. Short title.
- Section 102. Declaration of policy.
- Section 103. Definitions.
- Section 104. Construction.

Chapter 3. Powers and Duties

- Section 301. Powers and duties of department.
- Section 302. Special science and technology resources.
- Section 303. Powers and duties of Environmental Quality Board.
- Section 304. Host municipality incentives and guarantees.
- Section 305. Host Municipalities Fund.
- Section 306. Host municipality benefit fee.
- Section 307. Form and timing of host municipality benefit fee payment.
- Section 308. Collection and enforcement of fee.
- Section 309. Hazardous Waste Facility Siting Team.
- Section 310. Certificate of public necessity.
- Section 311. Siting assistance.
- Section 312. Hazardous Waste Facility Siting Commission.
- Section 313. Powers and duties of commission.

Chapter 5. Response and Investigation

- Section 501. Response authorities.
- Section 502. Priorities.
- Section 503. Information gathering and access.
- Section 504. Cleanup standards.
- Section 505. Development and implementation of response actions.
- Section 506. Administrative record.
- Section 507. Recovery of response costs.
- Section 508. Administrative and judicial review of response actions.
- Section 509. Lien.
- Section 510. Evaluation grant.

- Section 511. Acquisition of real property.
- Section 512. After closure and conveyance of property.
- Section 513. Contracting.

Chapter 7. Liability and Settlement Procedures

- Section 701. Responsible person.
- Section 702. Scope of liability.
- Section 703. Defenses to liability.
- Section 704. Subrogation and insurance.
- Section 705. Contribution.
- Section 706. Covenants not to sue.
- Section 707. De minimis settlements.
- Section 708. Allocation.
- Section 709. Voluntary acceptance of responsibility.

Chapter 9. Fund

- Section 901. Fund.
- Section 902. Expenditures from fund.
- Section 903. Hazardous waste transportation and management fees.
- Section 904. Loan fund.

Chapter 11. Enforcement and Remedies

- Section 1101. Public nuisances.
- Section 1102. Enforcement orders.
- Section 1103. Restraining violations.
- Section 1104. Civil penalties.
- Section 1105. Criminal penalties.
- Section 1106. Search warrants.
- Section 1107. Existing and cumulative rights and remedies.
- Section 1108. Unlawful conduct.
- Section 1109. Presumption of law for civil and administrative proceedings.
- Section 1110. Collection of fines and penalties.
- Section 1111. Right of citizen to intervene in proceedings.
- Section 1112. Whistleblower provisions.
- Section 1113. Notice of proposed settlement.
- Section 1114. Limitation on action.
- Section 1115. Citizen suits.

Chapter 13. Miscellaneous

- Section 1301. Relation to other laws.
- Section 1302. Studies.
- Section 1303. Balance in fund/deposit of proceeds.
- Section 1304. Repeals.
- Section 1305. Effective date.

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

CHAPTER 1
PRELIMINARY PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Hazardous Sites Cleanup Act.

Section 102. Declaration of policy.

The General Assembly finds and declares as follows:

(1) The citizens of this Commonwealth have a right to clean water and a healthy environment, and the General Assembly has a responsibility to ensure the protection of that right.

(2) Hazardous substances which have been released into the environment through improper disposal or other means pose a real and substantial threat to the public health and welfare of the residents of this Commonwealth and to the natural resources upon which they rely.

(3) The cleanup of sites that are releasing or threatening the release of hazardous substances into the environment and the replacement of contaminated water supplies protects the public health, preserves and restores natural resources and is vital to the economic development of this Commonwealth.

(4) When releases of hazardous substances contaminate public water supplies, the replacement of those water supplies is frequently beyond the resources of the people affected.

(5) Traditional legal remedies have not proved adequate for preventing the release of hazardous substances into the environment or for preventing the contamination of water supplies. It is necessary, therefore, to clarify the responsibility of persons who own, possess, control or dispose of hazardous substances; to provide new remedies to protect the citizens of this Commonwealth against the release of hazardous substances; and to assure the replacement of water supplies.

(6) Traditional methods of administrative and judicial review have interfered with responses to the release of hazardous substances into the environment. It is, therefore, necessary to provide a special procedure which will postpone both administrative and judicial review until after the completion of the response action.

(7) The Federal Superfund Act provides numerous opportunities for states to participate in the cleanup of hazardous sites. It is in the interest of the citizens of this Commonwealth that the Commonwealth be authorized to participate in such cleanups and related activities to the fullest extent.

(8) Many of the hazardous sites in this Commonwealth which do not qualify for cleanup under the Federal Superfund Act pose a substantial threat to the public health and environment. Therefore, an independent site cleanup program is necessary to promptly and comprehensively address the problem of hazardous substance releases in this Commonwealth, whether or not these sites qualify for cleanup under the Federal Superfund Act.

(9) Extraordinary enforcement remedies and procedures are necessary and appropriate to encourage responsible persons to clean up hazardous sites and to deter persons in possession of hazardous substances from careless or haphazard management.

(10) Persons engaged in the transportation and management of hazardous waste should contribute to the fund through a hazardous waste management fee that is designed to encourage and reward sound waste management practices such as source reduction, recycling and on-site treatment.

(11) It is the intent of the General Assembly that the department shall undertake such measures and steps as are necessary to expedite the siting, review, permitting and development of hazardous waste treatment and disposal facilities within this Commonwealth, in order to protect public health and safety, foster economic growth and protect the environment.

(12) The following are the purposes of this act:

(i) Authorize the department to participate in the investigation, assessment and cleanup of sites under the Federal Superfund Act to the full extent provided by that act.

(ii) Establish independent authority for the department to conduct site investigations and assessments; to provide for the cleanup of sites in this Commonwealth that are releasing or threatening the release of hazardous substances or contaminants into the environment; to require the replacement of water supplies contaminated by these substances; to take other appropriate response actions and recover from responsible persons its costs for conducting the responses.

(iii) Establish the fund to provide to the department the financial resources needed to plan and implement a timely and effective response to the release of hazardous substances and contaminants, including emergency response actions, studies and investigations, planning, remedial response, maintenance and monitoring activities, replacement of water supplies and protection of the public from the hazardous site.

(iv) Establish hazardous waste transportation and management fees to encourage preferred hazardous waste management practices and implement the hazardous waste management hierarchy described in the hazardous waste facilities plan and to generate revenues for the fund.

(v) Establish and maintain a cooperative State and Federal program for the investigation and cleanup of sites containing hazardous substances or contaminants and for the replacement of affected water supplies and to take other appropriate response actions.

(vi) Protect the public health, safety and welfare and the natural resources of this Commonwealth from the short-term and long-term effects of the release of hazardous substances and contaminants into the environment.

(vii) Provide a flexible and effective means to implement and enforce the provisions of this act.

(viii) Encourage the siting of new hazardous waste management facilities to properly store, treat and dispose of hazardous materials.

(ix) Encourage responsible persons to voluntarily perform response activities by enabling the department to enter into settlement agreements with responsible persons to perform response activities that protect human health and the environment; by enabling the department to enter into settlement agreements with responsible persons to settle a minor portion of response costs; and by authorizing the department to utilize moneys from the fund established by this act to enter into settlement agreements that allow the department, when necessary to achieve a cleanup, to pay for a portion of the costs associated with response activities.

(x) It is in the public interest to eliminate hazardous waste by encouraging and providing incentives to reduce the volume of hazardous waste materials produced, transported and disposed of in this Commonwealth by providing a special grant from the fund to persons who purchase or lease and install recycling equipment which is used exclusively for the elimination of such materials by reclaiming them on site and converting them into a raw-material product that is reusable and nonhazardous.

Section 103. Definitions.

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

“Act of God.” An unanticipated grave natural disaster or other natural phenomenon of an exceptional, inevitable and irresistible character the effects of which could not have been prevented or avoided by the exercise of due care or foresight.

“Alternative water supplies.” Includes, but is not limited to, drinking water and household water supplies.

“Board.” The Environmental Hearing Board of the Commonwealth.

“Captive facility.” A captive facility as defined and permitted under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

“Claim.” A demand in writing for a sum certain.

“Commercial hazardous waste disposal facility.” A hazardous waste disposal facility permitted under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, which is not a captive facility.

“Commercial hazardous waste storage facility.” A hazardous waste storage facility permitted under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, which is not a captive facility.

“Commercial hazardous waste treatment facility.” A hazardous waste treatment facility permitted under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, which is not a captive facility.

“Contaminant.” An element, substance, compound or mixture which is defined as a pollutant or contaminant pursuant to the Federal Superfund Act. The term shall not include an element, substance, compound or mixture from a coal mining operation under the jurisdiction of the department or from a site eligible for funding under Title IV of the Surface Mining Control

and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.); nor shall the term include natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel or mixtures of natural gas and synthetic gas usable for fuel, except for the purposes of an emergency response. The term shall also not include the following wastes generated primarily from the combustion of coal or other fossil fuels for the production of electricity: slag waste; flue gas emission control waste; and fly ash waste and bottom ash waste which is disposed of or beneficially used in accordance with the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and the regulations promulgated thereto or which has been disposed of under a valid permit issued pursuant to any other environmental statute.

“Department.” The Department of Environmental Resources of the Commonwealth.

“Disposal.” The incineration, combustion, evaporation, air stripping, deposition, injection, dumping, spilling, leaking, mixing or placing of a hazardous substance or contaminant into the air, water or land in a manner which allows it to enter the environment.

“Drinking water supply.” A raw or finished water source that is or may be used by a public water system, as defined in the Safe Drinking Water Act (Public Law 95-323, 21 U.S.C. § 349 and 42 U.S.C. §§ 201 and 300f et seq.), or as drinking water by one or more individuals.

“Environment.” Surface water, groundwater, drinking water supply, land surface or subsurface strata or ambient air within this Commonwealth.

“Federal Superfund Act.” The Comprehensive Environmental Response Compensation and Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767), as amended.

“Federal Superfund Program.” The hazardous waste site cleanup program provided for in the Federal Superfund Act.

“Fund.” The Hazardous Sites Cleanup Fund established by section 901.

“Groundwater.” Water occurring in a saturated zone or stratum or percolating beneath the surface of land.

“Hazardous substance.”

(1) Any element, compound or material which is:

(i) Designated as a hazardous waste under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and the regulations promulgated thereto.

(ii) Defined or designated as a hazardous substance pursuant to the Federal Superfund Act.

(iii) Contaminated with a hazardous substance to the degree that its release or threatened release poses a substantial threat to the public health and safety or the environment as determined by the department.

(iv) Determined to be substantially harmful to public health and safety or the environment based on a standardized and uniformly applied department testing procedure and listed in regulations proposed by the department and promulgated by the Environmental Quality Board.

(2) The term does not include petroleum or petroleum products, including crude oil or any fraction thereof, which are not otherwise specifically listed or designated as a hazardous substance under paragraph (1); natural gas, natural gas liquids, liquified natural gas or synthetic gas usable for fuel or mixtures of natural gas and synthetic gas usable for fuel; or an element, substance, compound or mixture from a coal mining operation under the jurisdiction of the department or from a site eligible for funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.). The term shall also not include the following wastes generated primarily from the combustion of coal or other fossil fuels for the production of electricity: slag waste; flue gas emission control waste; and fly ash waste and bottom ash waste which is disposed of or beneficially used in accordance with the Solid Waste Management Act and the regulations promulgated thereto or which has been disposed of under a valid permit issued pursuant to any other environmental statute.

“Hazardous waste.” Any waste defined as hazardous under the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, and any regulations promulgated under that act.

“Interim response.” Response which does not exceed 12 months in duration or \$2,000,000 in cost. An interim response may exceed these limitations only where one of the following applies:

- (1) Continued response actions are immediately required to prevent, limit or mitigate an emergency.
- (2) There is an immediate risk to public health, safety or welfare or the environment.
- (3) Assistance will not otherwise be provided on a timely basis.
- (4) Continued response action is otherwise appropriate and consistent with future remedial response to be taken.

“Natural resources.” Land, fish, wildlife, biota, air, water, groundwater, drinking water supplies and other resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States, the Commonwealth or a political subdivision. The term includes resources protected by section 27 of Article I of the Constitution of Pennsylvania.

“Owner or operator.” A person who owns or operates or has owned or operated a site, or otherwise controlled activities at a site. The term does not include a person who, without participating in the management of a site, holds indicia of ownership primarily to protect a security interest in the site nor a unit of State or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign. The term also shall not include a financial institution, an affiliate of a financial institution, a parent of a financial institution, nor a corporate instrumentality of the Federal Government, which acquired the site by foreclosure or by deed in lieu of foreclosure as a result of the enforcement of a mortgage or security interest held by such financial

institution, parent of such financial institution, affiliate of such financial institution or a corporate instrumentality of the Federal Government before it had knowledge that the site was included on the National Priority List or corresponding State list and did not manage or control activities at the site which contributed to the release or threatened release of a hazardous substance. For the purposes of this subsection, the term "management" shall not include participation in or supervising the finances or fiscal operations of a responsible person or an owner or operator in connection with a loan to, services provided for or fiscal obligation of that responsible person or owner or operator or actions taken to protect or preserve the value of the site or operations conducted on the site. This exclusion does not apply to a political subdivision which has caused or contributed to the release or threatened release of a hazardous substance from the site.

"Person." An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, authority, interstate body or other legal entity which is recognized by law as the subject of rights and duties. The term includes the Federal Government, state governments and political subdivisions.

"Recycling equipment." Machinery used exclusively to process and reclaim hazardous waste materials into a raw material product that is non-hazardous and reusable, thereby reducing the total amount of hazardous material produced at a particular location.

"Release." Spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposal into the environment. The term includes the abandonment or discarding of barrels, containers, vessels and other receptacles containing a hazardous substance or contaminant. The term does not include:

(1) any release which results in exposure to persons solely within a workplace which may be subject to the assertion of a claim against the employer of such persons;

(2) combustion exhaust emissions from the engine of a motor vehicle, rolling stock, aircraft, vessel or pipeline compressor station;

(3) release of source material, by-product material or special nuclear material from a nuclear incident, as those terms are defined in the Atomic Energy Act of 1954 (68 Stat. 921, 28 U.S.C. §§ 2341(3)(A)-(C) and 2342(1)-(4) and 42 U.S.C. § 2014), if such release is subject to requirements with respect to financial protection established by the Nuclear Regulatory Commission under section 170 of the Atomic Energy Act of 1954, or, for the purpose of section 104 of this act or any other response action, any release of source by-products, or special nuclear material from any processing site designated under section 102(a)(1) or 302(a) of the Uranium Mill Tailings Radiation Control Act of 1978 (Public Law 95-604, 42 U.S.C. § 7901 et seq.); and

(4) the normal application of fertilizer or pesticides.

"Remedial response or remedy." Any response which is not an interim response.

“Response.” Action taken in the event of a release or threatened release of a hazardous substance or a contaminant into the environment to study, assess, prevent, minimize or eliminate the release in order to protect the present or future public health, safety or welfare or the environment. The term includes, but is not limited to:

(1) Emergency response to the release of hazardous substances or contaminants.

(2) Actions at or near the location of the release, such as studies; health assessments; storage; confinement; perimeter protection using dikes, trenches or ditches; clay cover; neutralization; cleanup or removal of released hazardous substances, contaminants or contaminated materials; recycling or reuse, diversion, destruction or segregation of reactive wastes; dredging or excavations; repair or replacement of leaking containers; collection of leachate and runoff; onsite treatment or incineration; offsite transport and offsite storage; treatment, destruction, or secure disposition of hazardous substances and contaminants; treatment of groundwater, provision of alternative water supplies, fencing or other security measures; and monitoring and maintenance reasonably required to assure that these actions protect the public health, safety, and welfare and the environment.

(3) Costs of relocation of residents and businesses and community facilities when the department determines that, alone or in combination with other measures, relocation is more cost effective than and environmentally preferable to the transportation, storage, treatment, destruction or secure disposition offsite of hazardous substances or contaminants or may otherwise be necessary to protect the public health or welfare.

(4) Actions taken under section 104(b) of the Federal Superfund Act (42 U.S.C. § 9604(b)) and any emergency assistance which may be provided under the Disaster Relief Act of 1974 (Public Law 93-288, 88 Stat. 43).

(5) Other actions necessary to assess, prevent, minimize or mitigate damage to the public health, safety or welfare or the environment which may otherwise result from a release or threatened release of hazardous substances or contaminants.

(6) Investigation, enforcement, abatement of nuisances, and oversight and administrative activities related to interim or remedial response enforcement, abatement of nuisances, and oversight and administrative activities related to interim or remedial response.

“Responsible person.” A person responsible for the release or threatened release of a hazardous substance as described in section 701. In no case shall a financial institution or its affiliate or a corporate instrumentality of the Federal Government be deemed to be a responsible person or to be jointly or contingently liable for the actions of a responsible person by virtue or supervision of, or other involvement with, the finances and operations of a responsible person in connection with a loan, obligation or other service provided.

“Secretary.” The Secretary of Environmental Resources of the Commonwealth.

“Service station operator.” A person who owns or operates a motor vehicle service station, filling station, garage or similar operation engaged in selling, repairing or servicing motor vehicles who accepts or undertakes the collection, accumulation and delivery to an oil recycling facility of recycled oil that has been removed from the engine of a motor vehicle or appliance and that is presented for collection, accumulation and delivery to an oil recycling facility. The term includes a government agency that establishes a facility solely for the purpose of accepting recycled oil and owners or operators of refuse collection services who are compelled by law to collect, accumulate and deliver recycled oil to an oil recycling facility.

“Site.” Any building; structure; installation; equipment; pipe or pipeline, including any pipe into a sewer or publicly owned treatment works; well; pit; pond; lagoon; impoundment; ditch; landfill; storage container; tank; vehicle; rolling stock; aircraft; vessel; or area where a contaminant or hazardous substance has been deposited, stored, treated, released, disposed of, placed or otherwise come to be located. The term does not include a location where the hazardous substance or contaminant is a consumer product in normal consumer use or where pesticides and fertilizers are in normal agricultural use.

“Solid Waste Management Act.” The act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act.

“Transportation.” The conveyance of a hazardous substance or contaminant by any mode, including pipeline.

“Treatment.” A method, technique or process, including neutralization, designed to change the physical, chemical or biological character or composition of a hazardous substance so as to neutralize the hazardous substance or to render the hazardous substance nonhazardous, safer for transport, suitable for recovery, suitable for storage or reduced in volume. The term includes activity or processing designed to change the physical form or chemical composition of a hazardous substance so as to render it neutral or non-hazardous.

“Vessel.” A watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Section 104. Construction.

Nothing in this act shall be construed to affect, impair or repeal any provision of any other statute. No action by the department under this act shall be understood or construed as precluding the department from taking any action authorized by this act or any other statute administered by the department.

CHAPTER 3 POWERS AND DUTIES

Section 301. Powers and duties of department.

The department has the following powers and duties:

(1) Develop, administer and enforce a program to provide for the investigation, assessment and cleanup of hazardous sites in this Commonwealth pursuant to the provisions of this act and regulations adopted under this act.

(2) Undertake activities necessary or proper to cooperate with and fully participate in the Federal Superfund Program, including serving as the agency of the Commonwealth for the receipt of moneys from the Federal Government or other public or private agencies.

(3) Develop, administer and enforce an independent State response program for the investigation, assessment and cleanup of hazardous sites and replacement of water supplies and the protection of the citizens and natural resources of this Commonwealth from the dangers of hazardous substances and contaminants that have been released or are threatened to be released into the environment.

(4) Cooperate with appropriate Federal, State, interstate and local government agencies in carrying out its duties under this act by, among other things, accepting an appropriate delegation or agency relationship from such an agency to facilitate the cleanup of hazardous sites in this Commonwealth.

(5) Administer the fund and any fund for hazardous waste facilities siting and expend money from the funds in accordance with this act.

(6) Administer and expend funds appropriated to the department or granted to the Commonwealth under the Federal Superfund Act or other authority for the protection of the public and the natural resources of this Commonwealth from releases of hazardous substances or contaminants.

(7) Promulgate the State standards and requirements applicable, relevant or appropriate for the cleanup of hazardous sites under this act and the Federal Superfund Act.

(8) Develop a program for public participation in the assessment of sites and selection of appropriate remedial responses.

(9) Issue orders to enforce provisions of this act and regulations promulgated under it.

(10) Institute, in a court of competent jurisdiction, proceedings to compel compliance with this act, regulations promulgated under it or an order of the department.

(11) Institute prosecutions under this act.

(12) Appoint advisory committees as the secretary deems necessary and proper to assist the department in carrying out this act. The secretary is authorized to pay reasonable and necessary expenses incurred by the members of advisory committees in carrying out their functions.

(13) Acquire special scientific and technical staff resources to provide specialized expertise in areas related to the evaluation of sites and selection of responses to advise the department regarding standards, technologies, risk assessments and other matters related to the cleanup of hazardous sites, the regulation of hazardous substances and contaminants, and the enforcement of this act.

(14) Act as trustee of this Commonwealth's natural resources. The department may assess and collect damages to natural resources for the purposes of this act and the Federal Superfund Act for those natural resources under its trusteeship.

(15) Provide for emergency response capability for spills, accidents and other releases of hazardous substances and contaminants.

(16) Implement section 27 of Article 1 of the Constitution of Pennsylvania.

(17) Do any and all other acts and things not inconsistent with any provision of this act which it may deem necessary or proper for the effective enforcement of this act and the regulations promulgated under it.

Section 302. Special science and technology resources.

(a) Establishment.—The department shall establish an additional complement of individuals with expertise and advanced degrees in specialized fields of science and technology relevant to administration and enforcement of this act.

(b) Expertise.—The special science and technology staff shall have expertise in fields relating to the identification, analysis, assessment, prevention or abatement of hazards to the public health or the environment resulting from the release of hazardous substances or contaminants into the environment. The special science and technology staff may include, without limitation, individuals trained in toxicology, hydrogeology, chemistry, biology, soil science, biochemistry, environmental engineering, epidemiology, value engineering and risk assessment sciences.

(c) Availability.—The special science and technology staff shall be available to review consultants' contracts, reports and feasibility studies; prepare and review environmental assessments; serve as expert witnesses in department litigation; provide scientific analysis or studies to support rule-making activities of the department; and perform other duties as assigned by the secretary in furtherance of this act or other environmental protection laws administered by the department.

(d) Civil service.—In order to obtain the most highly qualified individuals for the special science and technology staff, the secretary may hire the staff without regard to the provisions of the act of August 5, 1941 (P.L. 752, No. 286), known as the Civil Service Act.

Section 303. Powers and duties of Environmental Quality Board.

The board, exercising its powers and duties under section 1920-A of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, has the power and duty to promulgate the regulations of the department to accomplish the purposes and to carry out the provisions of this act, including, but not limited to, regulations relating to the protection, from the release of hazardous substances, of the safety, health, welfare and property of the public and of the air, water, land and other natural resources of this Commonwealth.

Section 304. Host municipality incentives and guarantees.

(a) Information required.—

(1) The department shall provide all of the following information to the governing body of host municipalities for a commercial hazardous waste storage, treatment or disposal facility permitted by the department under the Solid Waste Management Act, and located within that municipality:

(i) Copies of each department inspection report for the facility under the Solid Waste Management Act, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 8, 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control Act, and the act of November 26, 1978 (P.L.1375, No.325), known as the Dam Safety and Encroachments Act, within five working days after the preparation of the reports.

(ii) Prompt notification of all department enforcement or emergency actions for facilities, including, but not limited to, abatement orders, cessation orders, proposed and final civil penalty assessments and notices of violation.

(iii) Copies of all air and water quality monitoring data on samples collected by the department at facilities, within five working days after complete laboratory analysis of the data becomes available to the department.

(2) An operator of a commercial hazardous waste storage, treatment or disposal facility shall provide to the host municipality copies of all air and water quality monitoring data for the facility conducted by or on behalf of the operator under State or Federal statutes or regulations, within five days after the data becomes available to the operator.

(3) All information provided to the host municipality shall be made available by the host municipality to the public for review upon request.

(b) Inspection of facilities.—

(1) The department shall establish and conduct a training program to certify host municipality inspectors for commercial hazardous waste storage, treatment or disposal facilities. No more than two persons from each host municipality shall be eligible for the program. Each host municipality shall inform the department, in writing, of the persons it has designated to participate in the training program. The department shall hold training sessions at least twice a year. The department shall certify host municipality inspectors upon completion of the training program and satisfactory performance in an examination administered by the department.

(2) Certified municipal inspectors shall be authorized to enter property, inspect records, take samples and conduct inspections. Certified municipal inspectors may not issue orders. Upon the completion of an inspection, certified municipal inspectors shall transmit all findings from the inspection to the department. The department shall notify certified municipal inspectors of regular inspections of permitted facilities within their jurisdiction and shall provide opportunity for the inspectors to accompany department inspectors on inspections.

(3) The department shall reimburse the host municipalities for 50% of the approved cost of employing certified host municipality inspectors for a period not to exceed five years.

(4) The department shall promptly inspect a facility when a host municipality presents information to the department which gives the department reason to believe that a commercial hazardous waste storage, treatment or disposal facility is in violation of any requirement of The Clean Streams Law, the Air Pollution Control Act, the Dam Safety and Encroachments Act, the Solid Waste Management Act or this act; a regulation promulgated under these statutes; or the condition of a permit issued under these statutes.

(i) The department shall notify the host municipality of this inspection and shall permit a certified municipal inspector from the host municipality to accompany the department inspector during the inspection.

(ii) When the department determines that there is not sufficient information to give the department reason to believe that a violation is occurring or has occurred, the department shall provide a written explanation to the host municipality of its decision not to conduct an inspection within 30 days of the request for inspection.

(iii) Host municipalities may appeal the department's decision not to conduct a requested inspection to the Environmental Hearing Board. When the Environmental Hearing Board determines that failure to perform a requested inspection may be detrimental to public health and safety, it shall order the department to perform the requested inspection.

(c) Water sampling and analysis.—

(1) Upon written request from persons owning property within 2,500 feet of a commercial hazardous waste storage, treatment or disposal facility, the operator of the facility shall have quarterly sampling and analysis conducted of private water supplies used by those persons for drinking water. Sampling and analysis shall be conducted by a laboratory certified pursuant to the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act. The laboratory shall be chosen by the landowners from a list of regional laboratories supplied by the department. Sampling and analysis shall be at the expense of the facility operator.

(2) The laboratory performing sampling and analysis shall provide written copies of sample results to the landowner, the operator and the department.

(3) When the analysis indicates possible contamination from a facility, the department shall either conduct, or require the operator to have the laboratory conduct, additional sampling and analysis to determine more precisely the nature, extent and source of contamination.

(4) Within 60 days from the effective date of this section, the operator of a commercial hazardous waste storage, treatment or disposal facility shall provide written notice to landowners within 2,500 feet of the facility of their rights under this section on a form prepared by the department. Landowners who rent or lease property within 2,500 feet of the facility shall provide written notice to tenants of the availability of this water

testing program. Upon the request of a tenant to a landowner, the landowner shall be required to request quarterly water sampling and analysis under paragraph (1).

(d) Financial assistance.—

(1) The department shall reimburse host municipalities for costs incurred by host municipalities for professional technical review of a permit application under the Solid Waste Management Act for a commercial hazardous waste disposal facility or for a permit modification that would result in additional capacity for the facility. The reimbursement shall not exceed \$50,000 per complete application.

(2) The department may reimburse a county for costs incurred by a county's planning board or commission for professional technical planning and review for the potential siting of new commercial hazardous waste disposal facilities in the county. The reimbursement shall not exceed \$50,000 per county.

Section 305. Host Municipalities Fund.

(a) Establishment.—There is established within the State Treasury a separate account which shall be known as the Host Municipalities Fund. Two million dollars annually of all proceeds or as much thereof as may be necessary from hazardous waste transportation and management fees imposed under section 903, including any interest generated thereon, shall be deposited in the fund.

(b) Purpose.—The purpose of the fund is to provide host municipality assistance programs under section 304 and direct financial assistance to host municipalities with certain categories of commercial hazardous waste facilities within their jurisdiction.

(c) Appropriation.—All money placed in the fund is appropriated to the department for the purposes set forth in this section.

(d) Allocation.—The department shall annually allocate moneys in the fund for the following purposes:

(1) Conducting the host municipality inspector training program, employing a certified host municipality inspector, reimbursing municipalities and counties for independent evaluations and providing similar assistance related to the implementation of section 304.

(2) Providing a one-time payment, as provided in subsection (e)(2), to municipalities for each new or expanded commercial facility which is permitted after the effective date of this act which fulfills the commercial hazardous waste treatment or disposal capacity needs identified in the Pennsylvania Hazardous Waste Facilities Plan.

(e) Reimbursement amount.—

(1) At a minimum, each payment shall be in an amount sufficient to reimburse the host municipality for the host municipality's eligible share of any activities carried out under section 304.

(2) After a new or expanded commercial hazardous waste treatment or disposal facility is permitted and operating, the department shall distribute the balance contained in the fund after payments have been made under paragraph (1). The balance shall be distributed according to an allocation

formula established by regulation. The allocation formula shall do all of the following:

(i) Consider the degree to which the facility meets the hazardous waste capacity needs of the Commonwealth as identified in the Pennsylvania Hazardous Waste Facilities Plan under the Solid Waste Management Act.

(ii) Distribute funds to each host municipality based on all of the following:

(A) The toxicity, mobility and other characteristics of the hazardous waste.

(B) The proximity of the facility to persons or natural resources which would be endangered by the escape of the hazardous waste from the facility.

(C) The weight or volume of waste treated or disposed annually at the facility in proportion to the weight or volume of waste treated or disposed annually in this Commonwealth.

(D) The amount of waste disposed or treated at the facility generated inside this Commonwealth.

(3) A host municipality may expend money received under this subsection for any purpose for which the municipality is otherwise authorized by law to expend public funds, including, but not limited to, economic development activities and the payment on behalf of its residents of any county or school district taxes that would otherwise be imposed on its residents.

(f) Construction of section.—Nothing in this section shall be construed to prevent the host municipality and the owner or operator of a commercial hazardous waste treatment or disposal facility from entering contractual or other agreements by which the owner or operator provides additional benefits or fees to the host municipality.

Section 306. Host municipality benefit fee.

(a) Imposition.—There shall be imposed a host municipality benefit fee upon the operator of each commercial hazardous waste treatment or disposal facility that has a valid permit on the effective date of this act or receives a new permit or permit that results in additional capacity from the department under the Solid Waste Management Act after the effective date of this act. The fee shall be paid to the host municipality. If the facility is located within more than one host municipality, the fee shall be apportioned among them according to the percentage of the permitted area located in each municipality.

(b) Amount.—The fee shall be \$1 per ton of weighed hazardous waste or \$1 per three cubic yards of volume-measured hazardous waste for all hazardous waste received at a facility. Any amounts paid by an operator to a host municipality pursuant to a preexisting agreement shall serve as a credit against the fee amount imposed by this section.

(c) Municipal options.—Nothing in this section or section 307 shall prevent a host municipality from receiving a higher fee or receiving the fee in a different form or at different times than provided in this section and section 307, if the host municipality and the operator of the commercial hazardous waste treatment or disposal facility agree in writing.

Section 307. Form and timing of host municipality benefit fee payment.

(a) **Quarterly payment.**—Each operator subject to section 306 shall make the host municipality benefit fee payment quarterly. The fee shall be paid on or before the twentieth day of April, July, October and January for the three months ending the last day of March, June, September and December.

(b) **Quarterly reports.**—Each host municipality benefit fee payment shall be accompanied by a form prepared and furnished by the department and completed by the operator. The form shall state the weight or volume of hazardous waste received by the facility during the payment period and provide any other information deemed necessary by the department to carry out the purposes of the act. The form shall be signed by the operator. A copy of the form shall be sent to the department at the same time that the fee and form are sent to the host municipality.

(c) **Timeliness of payment.**—An operator shall be deemed to have made a timely payment of the host municipality benefit fee if all of the following are met:

(1) The enclosed payment is for the full amount owed pursuant to this section, and no further host municipality action is required for collection.

(2) The payment is accompanied by the required form, and such form is complete and accurate.

(3) The letter transmitting the payment that is received by the host municipality is postmarked by the United States Postal Service on or prior to the final day on which the payment is to be received.

(d) **Discount.**—Any operator who makes a timely payment of the host municipality benefit fee as provided in this section shall be entitled to a credit and shall apply against the fee payable by him a discount of 1% of the amount of the fee collected by him.

(e) **Alternative proof.**—For purposes of this section, presentation of a receipt indicating that the payment was mailed by registered or certified mail on or before the due date shall be evidence of timely payment.

Section 308. Collection and enforcement of fee.

(a) **Interest.**—If an operator fails to make a timely payment of the host municipality benefit fee, the operator shall pay interest on the unpaid amount due at the rate established pursuant to section 806 of the act of April 9, 1929 (P.L. 343, No. 176), known as The Fiscal Code, from the last day for timely payment to the date paid.

(b) **Additional penalty.**—In addition to the interest provided in subsection (a), if an operator fails to make timely payment of the host municipality benefit fee, there shall be added to the amount of fee actually due 5% of the amount of such fee, if the failure to file a timely payment is for not more than one month, with an additional 5% for each additional month, or fraction thereof, during which such failure continues, not exceeding 25% in the aggregate.

(c) **Assessment notices.**—If the host municipality determines that any operator of a commercial hazardous waste treatment or disposal facility has not made a timely payment of the host municipality benefit fee, it shall send

a written notice for the amount of the deficiency to such operator within 30 days from the date of determining such deficiency. When the operator has not provided a complete and accurate statement of the weight or volume of hazardous waste received at the facility for the payment period, the host municipality may estimate the weight or volume in its deficiency notice.

(d) **Constructive trust.**—All host municipality benefit fees collected by an operator and held by such operator prior to payment to the host municipality shall constitute a trust fund for the host municipality, and such trust shall be enforceable against such operator, its representatives and any person receiving any part of such fund without consideration or with knowledge that the operator is committing a breach of the trust. However, any person receiving a payment of lawful obligation of the operator from such trust fund shall be presumed to have received the same in good faith and without any knowledge of the breach of trust.

(e) **Manner of collection.**—All fees, interest and penalties and any other assessments shall be collectible in any manner provided by law for the collection of debts. If the person liable to pay any such amount neglects or refuses to pay the same after demand, the amount, together with interest and any costs that may accrue, shall be a judgment in favor of the Commonwealth or the host municipality, as the case may be, upon the property of such person, but only after same has been entered and docketed of record by the prothonotary of the county where such property is situated. The Commonwealth or host municipality, as the case may be, may at any time transmit to the prothonotaries of the respective counties certified copies of all such judgments, and it shall be the duty of each prothonotary to enter and docket the same of record in his office, and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof.

(f) **Remedies cumulative.**—The remedies provided to host municipalities in this section are in addition to any other remedies provided at law or in equity.

Section 309. Hazardous Waste Facility Siting Team.

(a) **Establishment.**—Within 30 days after the effective date of this act, the secretary shall establish a Hazardous Waste Facility Siting Team consisting of department personnel with the particular expertise necessary for the complete review of permit applications for commercial hazardous waste treatment or disposal facilities. The secretary shall select siting team representatives from each section of review required to determine conformity of applications with siting criteria contained in Phase I of 25 Pa. Code Ch. 75 Subch. F (relating to siting hazardous waste treatment and disposal facilities) and other applicable law and regulations relating to the review and approval of permit applications. Members of the siting team shall include attorneys, engineers and such other administrative and program personnel considered essential by the secretary for expedited review of permit applications. The performance of the siting team's duties pursuant to this section shall be deemed a priority with regard to any other work assignments and responsibilities.

(b) **Application procedures.**—Within three months after the effective date of this act, the secretary shall set forth guidelines by which any person interested in establishing a commercial hazardous waste treatment or disposal facility may submit the siting modules and the remainder of a permit application directly to the siting team. The guidelines shall instruct applicants on siting criteria and permit requirements, application timetables and the review process.

(c) **Expedited site review.**—Within five months of the receipt of an administratively complete siting module portion of a permit application for a commercial hazardous waste treatment or disposal facility, the siting team shall complete its review of the siting modules to determine the conformity of the proposed site to the siting criteria established pursuant to Phase I of 25 Pa. Code Ch. 75 Subch. F. Upon filing the siting modules with the siting team, an applicant shall provide written notification of such filing to the governing bodies of the proposed host county and host municipality. To facilitate review by the host county and host municipality, grants may be made available pursuant to section 304(d). In addition, members of the department's siting team shall be available to the applicant and the governing bodies of the proposed host county and host municipality for the purpose of discussing the siting modules and their conformity with the siting criteria. The siting team shall conduct one public hearing and at least one public information meeting on the application at locations near the proposed site during the five-month review period. The siting team shall notify the applicant, the host county and host municipality of its determination regarding the conformity of the siting modules with the siting criteria in writing.

(d) **Expedited permit review.**—Within 90 days of receipt of the remainder of a permit application to operate a commercial hazardous waste treatment or disposal facility, the siting team shall review the permit application to determine whether it is administratively complete. Should the siting team find that the permit application is not administratively complete, it shall return the permit application to the applicant, along with a written statement indicating the deficiencies of the permit application.

(e) **Review period.**—Within ten months of the date of the determination by the siting team that a permit application is administratively complete, the siting team shall complete its review of the permit application and shall recommend to the secretary either the approval or the disapproval of the permit application. The secretary shall publish notice of the intent to either approve or disapprove the permit application within 30 days after receipt of the recommendation of the siting team. Appeal of any decision of the secretary on the permit application shall be as provided by applicable law.

(f) **Public education.**—The department shall develop a comprehensive, innovative and effective public education program to inform the public with regard to the nature and extent of hazardous waste generation and the need for environmentally sound management, treatment and disposal of hazardous waste.

Section 310. Certificate of public necessity.

Within 30 days of the effective date of this act, the department shall publish for proposed rulemaking the certificate of public necessity regulations as provided under the Solid Waste Management Act.

Section 311. Siting assistance.

(a) General rule.—The Department of Commerce shall be responsible for identifying and encouraging potential commercial hazardous waste treatment or disposal facility developers to establish within this Commonwealth the commercial hazardous waste treatment or disposal facilities needed to properly manage Pennsylvania's hazardous waste. The Department of Commerce shall coordinate business outreach efforts with the needs and priorities established by the Pennsylvania Hazardous Waste Facilities Plan and siting criteria adopted under the Solid Waste Management Act.

(b) Siting coordinator.—The Secretary of Commerce shall designate a commercial hazardous waste facility siting coordinator to serve as the department's liaison with potential commercial treatment or disposal facility developers, other State agencies and local governments. The siting coordinator shall develop and be responsible for State efforts aimed at business outreach, preliminary site evaluation assistance and the packaging of available financial assistance programs. For the effective performance of these duties, the siting coordinator shall have the ability to directly utilize members of the department's siting team, as well as employees of other State agencies, to coordinate necessary activities pursuant to this act.

(c) Technical assistance.—The siting coordinator shall assist interested developers in the identification of potential locations for proposed commercial hazardous waste treatment or disposal facilities. The assistance shall be limited to the examination of nonenvironmental site selection factors, including access to transportation networks and markets.

(d) Assistance programs.—The Department of Commerce shall ensure that interested developers are advised of and assisted in the use of available State financial assistance programs in order to encourage the siting of new commercial hazardous waste treatment or disposal facilities in this Commonwealth. Programs that may be considered shall include, but are not limited to, the Pennsylvania Industrial Development Authority, business infrastructure development, site development, the Ben Franklin Partnership and the Pennsylvania Infrastructure Investment Authority. The Department of Commerce shall also ensure, as allocations permit, the availability of tax-exempt industrial development bonds for commercial hazardous waste treatment or disposal facilities.

Section 312. Hazardous Waste Facility Siting Commission.

(a) Establishment.—In the event that no commercial hazardous waste disposal facility has been permitted within this Commonwealth pursuant to the Solid Waste Management Act by July 1, 1992, an independent agency, known as the Hazardous Waste Facility Siting Commission, is hereby established. The commission shall consist of seven members, three of whom shall be appointed by the Governor, one of whom shall be designated as chairman, one of whom shall be appointed by the President pro tempore of the

Senate, one of whom shall be appointed by the Speaker of the House of Representatives, one of whom shall be appointed by the Minority Leader of the Senate and one of whom shall be appointed by the Minority Leader of the House of Representatives. Those persons appointed shall be knowledgeable in the fields of hazardous waste management, environmental protection, municipal government or other pertinent fields and shall be appointed in such a manner as to fairly represent local government, industry and public interest groups. No member of the General Assembly or any officer or employee of the State government shall serve as a member of the commission.

(b) **Terms of members.**—Each appointment shall be for a term of three years. All vacancies shall be filled, for the remainder of the unexpired term, by the respective appointing authority. Any member, upon the expiration of his term, shall continue to hold office until his successor shall be appointed. No member may be removed from office during his term, except for cause, by the respective appointing authority.

(c) **Compensation.**—Members shall receive such compensation for their services as shall be set by the Executive Board. The members shall be entitled to reimbursement for travel and other necessary expenses incurred as a result of their duties as members of the commission.

(d) **Meetings.**—The commission shall meet as necessary to carry out its business, but not less than four times per year, at such times and places as shall be set by the chairman. For purposes of conducting official business, a quorum shall consist of four members.

(e) **Organizational meeting.**—Within two weeks following the appointment of the members of the commission, the chairman shall convene an organizational meeting. Within 60 days of the organizational meeting, the commission shall appoint and fix the compensation of an executive director, who shall devote his full time to the general supervision of all the affairs of the commission. In addition, the commission may appoint and fix the compensation of such other employees as the commission may, from time to time, find necessary for the proper performance of its functions.

(f) **Federal deadline.**—Notwithstanding the provisions of subsection (a), in the event the Environmental Protection Agency, or its successor, notifies the department that Federal funds for response actions shall not be provided to the Commonwealth for failure to comply with the provisions of section 104(b)(9) of the Federal Superfund Act, the commission shall be established within one year from receipt of the notice by the department, unless the department and the Environmental Protection Agency reach an agreement prior to the establishment of the commission that provides for the continued usage of Federal funds for response actions.

Section 313. Powers and duties of commission.

(a) **General rule.**—The commission shall have the power and its duties shall be to:

- (1) Cooperate with interested persons to identify areas suitable for siting hazardous waste disposal facilities.

(2) Review and approve or disapprove the siting module portion of applications for hazardous waste disposal facility sites brought before the commission to determine conformity with Phase I of departmental siting criteria as found in 25 Pa. Code Ch. 75 Subch. F (relating to siting hazardous waste treatment and disposal facilities).

(3) Assist local governments in planning for the siting of hazardous waste disposal facilities or in reviewing the siting module portion of applications for such facilities.

(b) Schedule for facilities.—Within 90 days following the commission's organizational meeting, the commission shall establish a schedule that outlines the process for siting new hazardous waste disposal facilities identified as necessary in the Pennsylvania Hazardous Waste Facilities Plan. The commission may amend such schedule from time to time.

(c) Criteria.—The commission shall use existing departmental regulations for the siting of hazardous waste disposal facilities as set forth in Phase I of departmental siting criteria found in 25 Pa. Code Ch. 75 Subch. F.

(d) Selection of site by commission.—The commission shall apply the siting criteria to the entire Commonwealth and shall identify potentially suitable sites for hazardous waste disposal facilities throughout this Commonwealth. The commission may, at any time, solicit proposals from interested persons to develop hazardous waste disposal facilities at such sites as may be identified by the commission. If no such proposals are received by January 1, 1994, the commission may make application to the department, in the name of the Commonwealth, for the necessary permits to establish a State-owned hazardous waste disposal facility. In carrying out its duties under this subsection, the commission shall be authorized to lease such real estate owned by the Commonwealth which is not being used in connection with the work of any department, board or commission thereof for a period of not more than 50 years to individuals, firms, corporations or the Federal Government pursuant to section 2402(i) of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929, and shall also have the power of eminent domain to acquire a site or sites as may be deemed necessary, for the purpose of establishing a hazardous waste disposal facility.

(e) Transition.—The department shall complete its review of any permit application for a commercial hazardous waste disposal facility, which is deemed administratively complete and has been filed with the department prior to or on July 1, 1992. The siting module portion of a permit application for a commercial hazardous waste disposal facility that is subject to review subsequent to July 1, 1992, shall be filed with the commission in accordance with this section. For the purpose of implementing this section, the authority of the department with regard to the review and approval of the siting module portion of a permit application for a commercial hazardous waste disposal facility as set forth in section 309(c) and applicable provisions of the Solid Waste Management Act is hereby transferred to the commission only to the extent that it relates to the siting of a commercial hazardous waste disposal facility within this Commonwealth.

(f) **Applicability.**—Nothing in this section shall be construed to affect, impair or supersede the authority of the department to issue a permit for a hazardous waste disposal facility pursuant to the Solid Waste Management Act.

CHAPTER 5 RESPONSE AND INVESTIGATION

Section 501. Response authorities.

(a) **General rule.**—Where there is a release or substantial threat of release of a contaminant which presents a substantial danger to the public health or safety or the environment or where there is a release or threat of a release of a hazardous substance, the department shall investigate and, if further response action is deemed appropriate, the department shall notify the owner, operator or any other responsible person of such release or threat of a release if such persons are known and may allow such person or persons to investigate and undertake an appropriate response, or may undertake any further investigation, interim response or remedial response relating to the contaminant or hazardous substance which the department deems necessary or appropriate to protect the public health, safety or welfare or the environment.

(b) **Effect on liability.**—No response action taken by any person shall be construed as an admission of liability for a release or threatened release.

(c) **Exclusion.**—

(1) The department shall not provide for an interim response or remedial response under this section in response to a release or threat of release:

(i) of a naturally occurring substance in its unaltered form, or altered solely through naturally occurring processes or phenomena, from a location where it is naturally found;

(ii) from products which are part of the structure of, and result in exposure within, residential buildings or business or community structures;

(iii) into public or private drinking water supplies due to deterioration of the system through ordinary use; or

(iv) from a coal mining operation under the jurisdiction of the department or from a site eligible for funding under Title IV of the Surface Mining Control and Reclamation Act of 1977 (Public Law 95-87, 30 U.S.C. § 1201 et seq.).

(2) Notwithstanding paragraph (1), to the extent authorized by this section, the department may respond to a release or threat of release when, in the department's discretion, it determines that the release or threat of release constitutes a public health, safety or environmental emergency and that no other person with the authority and capability to respond to the emergency will do so in a timely manner.

(d) **Investigations.**—The department shall undertake or cause to be undertaken by the owner, operator or any other responsible person as permitted under subsection (a), investigations, monitoring, surveys, testing and other similar activities necessary or appropriate to identify the existence and

extent of the release or threat of release, the source and nature of the hazardous substances or contaminants and the extent of danger to the public health or welfare or the environment. The department may also undertake planning, legal, fiscal, economic, engineering, architectural and other studies or investigations necessary or appropriate to plan and direct a response action, to recover the costs of the response action and to enforce the provisions of this act. The department shall undertake the activities described in this subsection in one or more of the following circumstances:

(1) When the department is authorized to act under subsection (a).

(2) When the department has reason to believe that a release of a hazardous substance or a contaminant has occurred or is about to occur.

(3) When the department determines that illness or disease or complaints of illness or disease may be attributable to exposure to a hazardous substance or contaminant.

(e) Notice of investigations.—The department, upon undertaking any investigation, interim response or remedial response under this section, shall give prompt written notice thereof to the owner and operator of the site and to the first mortgagee holding a mortgage on the premises on which the site is located.

(f) Bidding for remedial or removal actions.—

(1) The department may prequalify bidders for remedial or removal actions taken under subsection (d). The department may reject the bid of a prospective bidder who has not been prequalified.

(2) To prequalify bidders, the department shall, as contained in regulations to be proposed by the department and promulgated by the Environmental Quality Board, apply a uniform system of rating bidders. In order to obtain information for rating, the department may require from prospective bidders answers to questions, including, but not limited to, questions about the bidder's financial ability; the bidder's experience in removal and remedial action involving hazardous substances; the bidder's past safety record; and the bidder's past performance on Federal, State or local government projects. The department may also require prospective bidders to submit financial statements.

(3) The department shall utilize the business financial data and information submitted by a bidder under this section only for the purposes of prequalifying bidders and shall not otherwise disclose this data or information.

(g) Emergency response authority.—In addition to the powers and duties set forth in this act, when the Governor determines that there is an imminent and substantial endangerment to the public health and welfare or the environment because of an actual or threatened release of a nonhazardous substance and that the person who owns or operates has failed to take appropriate emergency response, the Governor may order or undertake the necessary and appropriate emergency interim response. No more than \$2,500,000 from the fund may be expended annually by the Governor for this purpose, except when the General Assembly, by concurrent resolution, deems appropriate.

Section 502. Priorities.**(a) List.—**

(1) The department shall publish in the Pennsylvania Bulletin a priority list of sites with releases or threatened releases for the purpose of taking remedial response. The department shall allow a 30-day public comment period subsequent to publication. In compiling the priority list, the department shall utilize the Uncontrolled Hazardous Waste Site Ranking System (40 CFR Part. 300, App. A) established under the Federal Superfund Act which provides that sites shall be ranked according to the relative risk or danger to public health and welfare or the environment, taking into account, to the extent possible, the population at risk, the hazardous potential of the hazardous substances or contaminants at the sites, the potential for contamination of drinking water supplies, the potential for direct human contact, and the potential for destruction of sensitive ecosystems. The department shall also consider the maximum usage of available Federal funds for sites which qualify for the National Priority List and the administrative, enforcement and financial capabilities of the department. Remedial responses may be on-going at more than one site at any given time, regardless of the site's ranked position on the list.

(2) Any modification by the department in the Uncontrolled Hazardous Waste Site Ranking System shall be made only by regulation and shall be based upon the relative risk or danger to the public health and welfare or the environment, taking into account, to the extent possible, the population at risk, the hazardous potential of the hazardous substances or contaminants at the sites, the potential for contamination of drinking water supplies, the potential for direct human contact, the potential for destruction of sensitive ecosystems, the maximum usage of available Federal funds for sites which qualify for the National Priority List and the administrative, enforcement and financial capabilities of the department.

(b) Status.—The placement or removal of a site with a release or threatened release upon the priority list shall not be deemed to be a final action subject to review under Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure) or the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act, nor shall it confer a right or duty upon the department or any person, nor shall the placement of the site upon the priority list preclude any responsible person from undertaking a voluntary cleanup pursuant to this act.

(c) Listing.—One hundred twenty days prior to the placement of a site upon the priority list, the department shall notify the known responsible persons of the proposed listing. The site shall not be placed upon the list if a responsible person enters into a settlement with the department which provides for the abatement of the release or threatened release.

(d) Removal from list.—Once a site has been placed upon the list, it shall be removed upon the determination by the department that the responsible person has complied with the terms of the settlement and has initiated a cleanup.

(e) National Priority List.—

(1) No site which has been placed upon the National Priority List established pursuant to the Federal Superfund Act shall be included on the priority list of sites published by the department.

(2) The department may take a remedial response action on a site listed upon the National Priority List provided that:

(i) the department has an agreement with the Federal Government which assures that the site qualifies for response action funding under section 104(c) of the Federal Superfund Act; or

(ii) the department has attempted, but failed to secure an agreement with the Federal Government pursuant to section 104(c) of the Federal Superfund Act, the Federal Government has failed to act within a reasonable period of time to perform a remedial response action and the Federal Government does not have an agreement with a responsible person to initiate such action. The total State funding contribution in excess of the federally mandated State minimum under section 104(c) of the Federal Superfund Act for remedial response actions undertaken pursuant to this subparagraph shall not exceed \$6,000,000 annually.

(3) Except as provided in paragraph (2), nothing in this section shall abrogate, limit or alter the powers and duties accorded to the Commonwealth under the Federal Superfund Act.

(f) Rights preserved.—Nothing in this act shall be interpreted to deprive any interested or aggrieved person of his inherent right to bring an action in mandamus to correct department actions under the standards currently recognized in Pennsylvania equity practice.

Section 503. Information gathering and access.

(a) Authority.—The authority of this section shall be exercised when there is a reasonable basis to believe there may be a release or threat of release of a hazardous substance or contaminant. The authority of this section shall be exercised for the purposes of determining the need for response, choosing or taking a response action under this act or otherwise enforcing the provisions of this act.

(b) Information.—

(1) The department shall have access to information relevant to any of the following:

(i) The identification, nature and quantity of materials which have been or are generated, treated, stored or disposed of at a site or other place or property or transported to a site or other place or property.

(ii) The nature or extent of a release or threatened release of a hazardous substance or contaminant at or from a site or other place or property.

(iii) Information relating to the ability of a person to pay for or to perform a response action.

(2) A person who has or may have information under paragraph (1) shall, upon reasonable notice, either:

(i) grant the department access at all reasonable times to a site or other place or property to inspect and copy all documents or records relating to the matter; or

(ii) copy and furnish to the department all the documents or records.

(c) Right of entry.—The department may enter at reasonable times a site or other place or property in one or more of the following circumstances:

(1) A hazardous substance or contaminant may be or has been generated at, stored at, treated at, disposed of at or transported from the place.

(2) A hazardous substance or contaminant has been or is being or threatens to be released.

(3) Entry is needed to determine the need for response to a hazardous substance or contaminant or the appropriate response or to effectuate a response action under this act.

(4) A release of a hazardous substance or contaminant has occurred on a nearby property, and entry is required to determine the extent of the release.

(5) There is a container or impoundment which is typical of those used to contain or impound hazardous substances and entry is needed to determine the existence of a hazardous substance.

(d) Inspection.—

(1) The department may inspect and obtain samples from a site or other place or property referred to in subsection (c) or from a location of a suspected hazardous substance or contaminant. The department's right of inspection shall include the sampling of solids, liquids and gases; excavations for soil sampling; drilling and maintenance of wells to monitor groundwater; and the installation and maintenance of other equipment to monitor the nature or extent of a release of a suspected hazardous substance or contaminant. The department may inspect and obtain samples of containers or labeling for suspected hazardous substances or contaminants. Each inspection shall be completed with reasonable promptness.

(2) When the department obtains samples, before leaving the premises, it shall give to the owner, operator, tenant or other person in charge of the place from which the samples were obtained a receipt describing the sample obtained and, when requested, a portion of the sample. A copy of the results of an analysis made of the samples shall be furnished promptly to the owner, operator, tenant or other person in charge when the person can be located.

(e) Duty to cooperate with response action.—

(1) The following persons shall allow the department access or right of entry and inspection as may be reasonably necessary to determine the nature and extent of a release of a hazardous substance or contaminant:

(i) A person who owns or occupies land on which there is a release or threat of a release of a hazardous substance or contaminant.

(ii) A person who owns or occupies land which is near the site of a release or threatened release.

(iii) A person who owns or occupies land on which there is a container or impoundment typical of those used to contain or impound hazardous substances.

(iv) A person who is a responsible person under section 701.

(2) The following persons shall allow the department access or right of entry and inspection as may be reasonably necessary to perform a response under section 501:

(i) A person who owns or occupies land on which there is a release or a threat of release of a hazardous substance or contaminant.

(ii) A person who owns or occupies land which may be affected by the release of a hazardous substance or contaminant.

(iii) A person who is a responsible person under section 701.

(f) Remedies.—

(1) In addition to any other remedy provided by this act, the department may enforce the provisions of this section by issuing orders requiring access to information, requiring entry onto property and restraining interference with any response action. An order issued under this section may be appealed to the board under the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act.

(2) The department may immediately apply to a court of competent jurisdiction to enforce its order, unless the board has issued a supersedeas. The court shall immediately enforce the department's order upon finding all of the following:

(i) The order is authorized by this act.

(ii) There has not been full compliance with the order.

(3) In lieu of issuing an order under paragraph (1), the department may apply immediately to a court of competent jurisdiction for the same relief.

(4) When the board reviews an order issued under paragraph (1), or when a court reviews the department's request for immediate relief under paragraph (3), the board shall uphold the department's order and the court shall grant the requested relief where all of the following are established:

(i) The department has a reasonable basis to believe that there may be a release or a threat of a release of a hazardous substance or contaminant.

(ii) The order or relief requested is reasonably related to determining the need for a response, to choosing or taking any response or to otherwise enforcing the provisions of this act.

(5) Except as provided in this subsection, there shall be no administrative or judicial review of action by the department or its agents to obtain access to information, to obtain entry onto property or to perform work on the property in connection with a response action. Neither the board nor any court may restrain action of the department under this section unless all of the following apply:

(i) The person seeking to restrain the department has given the department a 30-day written notice of his intent to do so.

(ii) The department has failed to issue an order within the 30-day period.

(6) The minimum civil penalty assessed under section 1104 for a violation of an order issued under this section shall be \$5,000 for each day the order is violated.

(g) Other remedies.—Nothing in this subsection shall preclude the department from securing access or obtaining information in any other lawful manner.

(h) Public records.—

(1) Except as provided in this subsection, records, reports or other information obtained under this act shall be available to the public for inspection or copying during regular business hours. The department may, upon request, designate records, reports or information as confidential when the person providing the information demonstrates all of the following:

(i) The information contains the trade secrets, processes, operations, style of work or apparatus of a person or is otherwise confidential business information, including information obtained under subsection (b)(1)(iii).

(ii) The information does not relate to health or safety effects of a hazardous substance or contaminant.

(2) When submitting information to the department under this act, a person shall designate the information which the person believes is confidential or shall submit that information separately from other information being submitted.

(i) Use of force.—When a person refuses to allow the department to have access to information or entry onto property under this section, the department shall not use force to obtain the information or entry unless one of the following applies:

(1) The department has obtained a search warrant or initiated an action under subsection (f).

(2) Immediate action is needed to protect the public health or safety or the environment.

Section 504. Cleanup standards.

(a) General rule.—Final remedial responses under this act shall meet all standards, requirements, criteria or limitations which are legally applicable or relevant and appropriate under the circumstances presented by the release or threatened release of the hazardous substance or contaminant and shall be cost effective. Cleanup standards promulgated under this act shall be consistent with State standards permitted under section 121(d) of the Federal Superfund Act.

(b) Interim cleanup standards.—Until final cleanup standards have been promulgated, State cleanup standards shall be those cleanup standards applicable under section 121 of the Federal Superfund Act.

(c) Rulemaking.—The department shall propose and the Environmental Quality Board shall promulgate the standards, requirements, criteria or limitations that are generally applicable to remedial responses to releases of hazardous substances or contaminants by regulation.

(d) **Special standards.**—The department may add, without rulemaking under subsection (c), special standards, more stringent than the general cleanup standards, on a case-by-case basis if the department can show that any of the following apply based on the administrative record:

(1) The circumstances at the site are such that the applicable general standards, as applied, would not provide the degree of protection to public health or the environment intended by the general standards.

(2) The degree of additional environmental protection provided by the special standard is significant in relation to the cost of implementing it.

(e) **Modification.**—The department may waive or modify otherwise applicable requirements if any of the following apply:

(1) Compliance with a requirement at a site will result in greater risk to the public health and safety of the environment than alternative options.

(2) Compliance with a requirement at a site is technically infeasible from an engineering perspective.

(3) The remedial actions selected will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement through use of another method or approach.

(4) The remedial action selected will not provide for cost-effective response.

(f) **Fund money.**—In addition to the provisions of subsection (e), if the response action is to be done using only fund money, the department may waive or modify requirements that might otherwise be applicable to a response at the site undertaken by a responsible person if the department determines the waiver or modification to be in the public interest.

(g) **Permits.**—No State or local permits shall be required for a response action conducted entirely on the site if prior written approval is obtained from the department.

(h) **Review.**—Any action taken by the department under subsection (d) or (e) shall be subject to judicial or administrative review only as provided in section 508.

Section 505. Development and implementation of response actions.

(a) **Basis.**—The selection of a remedial response shall be based upon the administrative record developed under section 506.

(b) **Interim response.**—An interim response may be taken before the development of an administrative record when, upon the basis of the information available to the department at the time of the interim response, there is a reasonable basis to believe that prompt action is required to protect the public health or safety or the environment. When the department takes an interim response before the development of an administrative record, it shall provide the notice required by section 506(b) within 30 days of initiating the response action. In addition to the information required by section 506(b), the notice shall describe the actions which have already been taken and any additional actions to be taken prior to the close of the public comment period under section 506(c).

(c) **Implementation of action.**—After the selection of an interim response or a remedial response, the department may implement all or any part of the selected action by doing any of the following:

(1) In the case of a release or threatened release of a hazardous substance, the department may:

(i) Issue an order to a responsible person. This subparagraph does not prohibit action under subparagraph (ii).

(ii) Take the action itself. This subparagraph does not prohibit action under subparagraph (i).

(2) In the case of a release or substantial threat of a release of a contaminant, which presents a substantial danger to the public health or safety or the environment, the department may:

(i) Issue an order to a responsible person. This subparagraph does not prohibit action under subparagraph (ii).

(ii) Take the action itself. This subparagraph does not prohibit action under subparagraph (i).

(d) Orders.—Orders issued under this section include, but are not limited to:

(1) Orders requiring a responsible person to take a response action.

(2) Orders restraining a person from interfering with a response action.

(3) Orders modifying a response action, including response actions which had been previously approved by the department.

(e) Judicial action.—The department may file an action to enforce an order issued under this section in Commonwealth Court or in any other court of competent jurisdiction. The department may include in the same action a civil penalty assessment under section 1104. When the department files such an action, its order shall be enforced and its civil penalty assessment shall be upheld unless the person subject to the order or the civil penalty can demonstrate that the department acted arbitrarily and capriciously on the basis of the administrative record developed under section 506 as permitted to be supplemented under section 508.

(f) Costs.—

(1) When the department issues an order under this section, a person subject to the order may seek to recover from the fund the cost of complying with the order by filing an action with the board after completion of the response action. The action must be filed within 60 days after the completion of the required action. To recover costs, the person must demonstrate, by a preponderance of the evidence, all of the following:

(i) The person was not a responsible person under this act.

(ii) The costs sought to be recovered are reasonable in light of the action required by the order.

(2) A person subject to an order under this act may also recover reasonable costs for that portion of the response action ordered which the person can demonstrate to be arbitrary and capricious on the basis of the administrative record developed under section 506.

(g) Voluntary settlements.—The department, in its discretion, may enter into an agreement with any person, including a person who may be liable under section 701, to perform any response action when the department determines that such action will be properly done in accordance with the

department's standards and after such person has submitted a plan and obtained the department's approval of such plan. Whenever practicable and in the public interest, the department may enter into agreements under this section in order to expedite efficient remedial action and minimize litigation. The decision of the department to use or not to use the procedures of this subsection is not subject to judicial review.

(h) **Mixed funding.**—An agreement under this section may provide that the department will pay from the fund a certain portion of the total response costs or the cost of certain response actions. The department may enter into mixed funding settlements for that portion of the response costs or damages allocable to persons against whom recovery cannot be obtained by reason of insolvency, dissolution, lack of jurisdiction by Commonwealth courts or other similar reasons. The department may also enter into mixed funding settlements when the financial resources of the known responsible persons are too small to cover the anticipated response costs, or the known and financially viable responsible persons have collectively contributed only a small fraction of the known hazardous substances at the site.

Section 506. Administrative record.

(a) **Contents.**—The administrative record upon which a response action is based shall consist of all of the following:

(1) The notice issued under subsection (b).

(2) Information, including, but not limited to, studies, inspection reports, sample results and permit files, which is known and reasonably available to the department and which relates to the release or threatened release and to the selection, design and adequacy of the response action.

(3) Written comments submitted during the public comment period under subsection (c).

(4) Transcripts of comments made at the public hearing held under subsection (d).

(5) The department's statement of the basis and purpose for its decision, including findings of fact, an analysis of the alternatives considered and the reasons for selecting the proposed response action, and its response to significant comments made during the public comment period.

(6) The docket maintained under subsection (f), listing the contents of the administrative record.

(b) **Notice.**—

(1) The department shall issue a notice setting forth all of the following:

(i) A brief analysis of the response action and alternative actions that were considered.

(ii) The time and place during which the information listed on the docket maintained under subsection (f) may be inspected and copied.

(iii) A specified time and place for providing written comments on the response action.

(iv) The time and place at which a public hearing will be held to receive oral comments on the response action.

(2) The notice shall be mailed to responsible persons whose identities and addresses are known to the department. In addition, notice shall be mailed to all holders of liens of record filed against all properties subject to section 509(b). The notice shall also be published in a newspaper of general circulation in the area in which the release has occurred and in the Pennsylvania Bulletin. The failure to provide this notice does not affect a responsible person's liability under this act.

(c) Public comment.—

(1) The public comment period shall extend for at least 90 days from the date that notice is published in the Pennsylvania Bulletin. During the public comment period the department shall make available for inspection during normal business hours all of the following:

(i) The department's description of the response action.

(ii) Information, including, but not limited to, studies, inspection reports, sample results and permit files, which is known and reasonably available to the department and which relates to the release or threatened release and to the selection, design and adequacy of the response action.

(iii) Written comments submitted during the public comment period.

(iv) The docket maintained under subsection (f).

(2) The public comment period shall extend at least 30 days after the public hearing to provide an opportunity for the submission of rebuttal and supplementary information.

(d) Public hearing.—At least one public hearing shall be conducted near the site of the response action to allow interested persons to give oral or written comments. A transcript shall be kept of oral presentations. The hearing shall be scheduled at least 30 days after the publication of the notice in the Pennsylvania Bulletin.

(e) Decision.—At the close of the public comment period, the department shall file a statement of the basis and purpose for its decision. The statement shall include findings of fact, an analysis of the alternatives considered and the reasons for selecting the proposed response action. It shall include an explanation of any major changes in the response action from that described in the notice. The department shall also file a response to each of the significant comments, criticisms and new data submitted in oral or written presentations during the public comment period.

(f) Docket.—The department shall maintain a docket listing of all the items which form the administrative record, and it shall notify a person submitting a comment that it has been entered on the docket. It shall be the responsibility of the person submitting written comments to either verify that the comments have been noted on the docket or to notify the department, before the end of the public comment period, that the docket does not note the submitted written comment.

(g) Closing.—The administrative record shall be closed, once the department has filed its statement and response under subsection (e). The department's decision may not be based, in whole or in part, upon information

which has not been noted on the docket as of the date the administrative record is closed. The administrative record may be reopened only for any of the following reasons:

(1) Additional information which the department determines to be of central relevance to the selected action is obtained during the implementation of the response action.

(2) A person raising an objection to the response action can demonstrate that it was impracticable to raise the objection during the public comment period or that the grounds for the objection arose after the public comment period.

(3) The department wishes to document its response costs.

(4) A case is remanded to the department under section 508.

(h) Reopening.—To reopen the administrative record, the department shall provide a notice setting forth the purpose of the reopening and the time and place for submitting written comments during a 60-day public comment period. The department may hold a public hearing if a written request is received within 30 days of publication of the notice of reopening. The docket shall note additional information submitted by the department, written comments, oral comments made at the public hearing and the department's responses to the significant comments. The department's decision not to reopen the administrative record may only be reviewed as provided in section 508.

Section 507. Recovery of response costs.

(a) General rule.—A responsible person under section 701 or a person who causes a release or threat of a release of a hazardous substance or causes a public nuisance under this act or causes a release or a substantial threat of release of a contaminant which presents a substantial danger to the public health or safety or the environment, or causes a release of a nonhazardous substance pursuant to section 501(g) shall be liable for the response costs and for damages to natural resources. The department, a Commonwealth agency, or a municipality which undertakes to abate a public nuisance under this act or take a response action may recover those response costs and natural resource damages in an action in equity brought before a court of competent jurisdiction. In addition, the board is given jurisdiction over actions by the department to recover response costs and damages to natural resources.

(b) Amount.—In an action to recover response costs and natural resource damages, the department shall include administrative and legal costs incurred from its initial investigation up to the time that it recovers its costs. The amount attributable to administrative and legal costs shall be 10% of the amount paid for the response action or the actual costs, whichever is greater.

(c) Punitive damages.—Notwithstanding the provisions of section 709, a person who willfully fails to comply with an order of the department requiring a response action under section 505(c)(1) shall be liable for punitive damages in an amount which is at least equal to but not more than three times the costs recoverable under this section. A party shall not be liable for

punitive damages when a court reviewing the order under section 508 finds that the department's order was invalid as to that party.

(d) **Effect of damages assessment.**—A determination or assessment of damages to natural resources for the purposes of this act, the Federal Superfund Act, or section 311 of the Federal Water Pollution Control Act (62 Stat. 1155, 33 U.S.C. § 1321) made by the department or other trustee shall have the force and effect of a rebuttable presumption on behalf of the department or other trustee in an administrative or judicial proceeding under this act, the Federal Superfund Act or section 311 of the Federal Water Pollution Control Act.

(e) **Civil penalty.**—When the department files an action to recover its response costs and natural resources damage assessment, it may also seek civil penalties under section 1104. Its right to recover response costs, natural resource damages and civil penalties shall be upheld unless the liable person can demonstrate that the department acted arbitrarily and capriciously on the basis of the administrative record developed under section 506 as permitted to be supplemented under section 508.

(f) **Recycled oil.**—

(1) When recycled oil is not mixed with any other hazardous substance and is stored, treated, transported and otherwise managed in compliance with regulations or standards promulgated under applicable State and Federal law relating to recycled oil, then all of the following apply:

(i) No person may recover from a service station operator, under section 702(a)(2) or (3), response costs or damages resulting from a release or threatened release of recycled oil.

(ii) Section 1102 does not apply against a service station operator other than a service station operator described in section 702(a)(1).

(2) For purposes of this subsection, a service station operator may presume that a small quantity of used oil is not mixed with other hazardous substances when it has been removed from the engine of a motor vehicle or appliance by the owner of the vehicle or appliance and is presented to the operator for collection, accumulation and delivery to an oil recycling facility.

Section 508. Administrative and judicial review of response actions.

(a) **General rule.**—Notwithstanding any other provision of law, the provisions of this section shall provide the exclusive method of challenging either the administrative record developed under section 506 or a decision of the department based upon the administrative record.

(b) **Timing of review.**—Neither the board nor a court shall have jurisdiction to review a response action taken by the department or ordered by the department under section 505 until the department files an action to enforce the order or to collect a penalty for violation of such order or to recover its response costs or in an action for contribution under section 705. In the case of an action to enforce an order of the department, the person receiving such order shall be entitled to challenge said order within 30 days from the date the department moves to enforce its order.

(c) **Grounds.**—A challenge to the selection and adequacy of a remedial action shall be limited to the administrative record developed under section 506. In a challenge to liability for natural resource damages, civil penalties or the recovery of response costs, or where the assessment of civil penalties is challenged, the record shall be limited to the administrative record developed under section 506, except that it may be supplemented with additional evidence supporting or refuting the department's determination that a person is a responsible person under section 701 or the department's assessment of civil penalties. The party challenging the department's determination or assessment shall retain the burden of proving the department's determination or assessment was arbitrary and capricious.

(d) **Procedural errors.**—Procedural errors in the development of the administrative record shall not be a basis for challenging a response action unless the errors were so serious and related to matters of such central relevance to the response action that the action would have been significantly changed had the errors not been made. The person asserting the significance of the procedural errors shall have the burden of proving that the action would have been significantly changed.

(e) **Remand.**—When a response action is demonstrated to be arbitrary and capricious on the basis of the administrative record developed under section 506, or when a procedural error occurred in the development of the administrative record which (error) would have significantly changed the response action, the following apply:

(1) When additional information could affect the outcome of the case, the matter shall be remanded to the department for reopening the administrative record.

(2) When additional information could not affect the outcome of the case, the department's enforcement of its order or its recovery of response costs shall be limited only as to that portion of the response action found to be arbitrary and capricious or the result of a procedural error which would have significantly changed the action.

Section 509. Lien.

(a) **Establishment.**—An award of response costs, assessment of damages to natural resources or assessment of civil penalties shall constitute a judgment against the responsible person. The judgment may be collected in any manner provided by law. The department shall send a notice of lien to the prothonotary or equivalent official of the county in which the responsible person has real or personal property, setting forth the amount of the award of costs, of the assessment of damages and of the assessment of penalties. The prothonotary or equivalent official shall promptly enter upon the civil judgment or order docket the name and address of the responsible person and the amount of the lien as set forth in the notice of lien. Upon entry by the prothonotary, the lien shall attach to the revenue and all real and personal property of the responsible person, whether or not the responsible person is insolvent.

(b) **Registry.**—There shall be established a central registry of all liens filed under this act in the Department of State. The Commonwealth shall file

a notice of lien with the Secretary of the Commonwealth in addition to filings with a prothonotary or equivalent official.

(c) **Priority.**—The notice of lien filed under this section affecting property of a responsible person, including property subject to response action, shall create a lien which shall have priority from the day of the filing of the notice of the lien over all subsequent claims and liens against the property, but it shall not affect any valid lien, right or interest in the property filed in accordance with established procedure prior to the filing of a notice of lien under this subsection.

Section 510. Evaluation grant.

The department may make available a reasonable sum as a grant to the governing body of the host municipality of a site where the department is considering a remedial response. The host municipality shall use this sum solely to conduct an independent technical evaluation of the proposed remedial response. The grant shall not exceed \$50,000 unless the department proposes and the Environmental Quality Board promulgates regulations establishing a schedule for grants.

Section 511. Acquisition of real property.

(a) **General rule.**—The department may acquire, by purchase, lease, condemnation, donation or otherwise, real property or an interest in real property that the department, in its discretion, determines is needed to conduct a response action under this act. The department has no duty to acquire any interest in real property under this act.

(b) **Sovereign immunity.**—The Commonwealth shall not be liable under this act as a result of acquiring an interest in real estate under this section, nor shall anything in this act be construed as a waiver of sovereign immunity or a waiver under 42 Pa.C.S. § 8522 (relating to exceptions to sovereign immunity).

Section 512. After closure and conveyance of property.

(a) **General rule.**—A site at which hazardous substances remain after completion of a response action shall not be put to a use which would disturb or be inconsistent with the response action implemented. The department shall have the authority to issue an order precluding or requiring cessation of activity at a facility which the department finds would disturb or be inconsistent with the response action implemented. A person adversely affected by the order may file an appeal with the board. The department shall require the recorder of deeds to record an order under this subsection in a manner which will assure its disclosure in the ordinary course of a title search of the subject property. An order under this subsection, when recorded, shall be binding upon subsequent purchasers.

(b) **Acknowledgment.**—The grantor, in every deed for the conveyance of property on which a hazardous substance is either presently being disposed or has ever been disposed by the grantor or to the grantor's actual knowledge, shall include in the property description section of the deed an acknowledgment of the hazardous substance disposal. To the extent the information is available, the acknowledgment shall include, but not be limited to, the surface area size and exact location of the disposed substances

and a description of the types of hazardous substances contained therein. This property description shall be made a part of the deed for all future conveyances or transfers of the subject property. A description of any response undertaken with respect to the disposal of the hazardous substance as well as notice of any decision by the department to remove the site from the priority list provided for in section 502 shall also be made part of the deed.

Section 513. Contracting.

(a) **Authority.**—The department shall have the authority to enter into a contract with any person or firm to have them provide assistance to the department for the implementation of this act.

(b) **Indemnification.**—Any person who enters into a contract with the department to assist the department in implementing this chapter shall not be required to indemnify the Commonwealth or Commonwealth employees against claims arising out of performance of the contract.

**CHAPTER 7
LIABILITY AND SETTLEMENT PROCEDURES**

Section 701. Responsible person.

(a) **General rule.**—Except for releases of hazardous substances expressly and specifically approved under a valid Federal or State permit, a person shall be responsible for a release or threatened release of a hazardous substance from a site when any of the following apply:

(1) The person owns or operates the site:

(i) when a hazardous substance is placed or comes to be located in or on a site;

(ii) when a hazardous substance is located in or on the site, but before it is released; or

(iii) during the time of the release or threatened release.

(2) The person generates, owns or possesses a hazardous substance and arranges by contract, agreement or otherwise for the disposal, treatment or transport for disposal or treatment of the hazardous substance.

(3) The person accepts hazardous substances for transport to disposal or treatment facilities, incineration vessels or sites selected by such person from which there is a release or a threatened release of a hazardous substance which causes the incurrence of response costs.

(b) **Exceptions.**—

(1) An owner of real property is not responsible for the release or threatened release of a hazardous substance from a site in or on the property when the owner demonstrates to the department that all of the following are true:

(i) The real property on which the site concerned is located was acquired by the owner after the disposal or placement of a hazardous substance on, in or at the site.

(ii) The owner has exercised due care with respect to the hazardous substances concerned, taking into consideration the characteristics of such hazardous substances, in light of all relevant facts and circumstances.

(iii) The owner took precautions against foreseeable acts or omissions of any third party and the consequences that could foreseeably result from such acts or omissions.

(iv) The owner obtained actual knowledge of the release or threatened release of a hazardous substance at the site when the owner owned the real property, and the owner did not subsequently transfer ownership of the property to another person without disclosing such knowledge.

(v) The owner has not, by act or omission, caused or contributed to the release or threatened release of a hazardous substance which is the subject of the response action relating to the site.

(vi) The owner meets one of these requirements:

(A) At the time the owner acquired the site, the owner did not know, and had no reason to know, that a hazardous substance which is the subject of the release or threatened release was disposed of on, in or at the site. For purposes of this subparagraph, the owner must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. The department shall take into account specialized knowledge or experience on the part of the owner, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate inspection.

(B) The owner is a government entity which acquired the site by escheat, through any other involuntary transfer or acquisition or through the exercise of eminent domain authority by purchase or condemnation.

(C) The owner acquired the site by inheritance or bequest.

(D) The owner is a financial institution or an affiliate of a financial institution or a corporate instrumentality of the Federal Government which acquired the site by foreclosure or by acceptance of a deed in lieu of foreclosure.

(vii) The only basis of liability for the landowner is ownership of the land.

(2) Liability under subsection (a) shall not apply to an owner of real property if the real property is exclusively used as single- or multi-family housing of four units or less or for private noncommercial recreational purposes, and the owner did not place the hazardous substance on the property, or the owner did not know and had no reason to know that a hazardous substance which is the subject of the release or threatened release was disposed on, in or at the site.

(3) Liability under subsection (a) shall not apply to persons who generate household hazardous waste as defined in section 1512 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act.

(4) Except for activities of the owner or operator unrelated to the recovery or processing of methane, subsection (a) does not apply to a person who owns or operates equipment for the recovery or processing, including recirculation of condensate, of methane unless the release or threatened release is caused by the negligent activities of the person. If the release or threatened release is caused by the negligent activities of a person who owns or operates equipment for the recovery or processing, including recirculation of condensate, of methane, the person's responsibility shall be limited to costs and damages caused by the person's negligent activities.

(5) A person who generates scrap materials that are transferred to a facility owned or operated by another person for the purpose of reclamation or reuse of the metallic content thereof through melting, smelting or refining shall not be considered to have arranged for the disposal, treatment or transport for disposal or treatment at that facility of a hazardous substance present in the scrap materials, provided that the generator demonstrates that all of the following are true:

(i) The scrap materials consisted of:

(A) obsolete metallic items, such as automobiles or appliances;

(B) new solid metallic by-products, such as trimmings, turnings, cuttings or punchings;

(C) prepared grades of scrap metal produced in accordance with recognized industry specifications by processing obsolete items or metallic by-products through shredding, cutting, compressing or other mechanical means; or

(D) intact, nonleaking spent lead-acid storage batteries.

(ii) The generator did not introduce the hazardous substance into the scrap materials.

(iii) The generator handled and transported the scrap materials in accordance with all applicable laws and regulations.

(iv) The generator transferred the scrap materials for valuable consideration.

(v) If the generator selected the facility, the generator reasonably believed that the facility was then in substantial compliance with all applicable laws and regulations pertaining to receipt, management and reclamation or reuse of the scrap materials.

(c) Employees.—When a person who is responsible for a release or threatened release under subsection (a) is an employee who is acting in the scope of employment:

(1) The employee is subject to liability under this section only when the employee's conduct with respect to the hazardous substance was negligent under circumstances in which the employee knew that the substance was hazardous and that the employee's conduct could result in serious harm.

(2) The employer shall be considered a person responsible for the release or threatened release and is subject to liability under this section regardless of the degree of care exercised by the employee.

Section 702. Scope of liability.

(a) **General rule.**—A person who is responsible for a release or threatened release of a hazardous substance from a site as specified in section 701 is strictly liable for the following response costs and damages which result from the release or threatened release or to which the release or threatened release significantly contributes:

(1) Costs of interim response which are reasonable in light of the information available to the department at the time the interim response action was taken.

(2) Reasonable and necessary or appropriate costs of remedial response incurred by the United States, the Commonwealth or a political subdivision.

(3) Other reasonable and necessary or appropriate costs of response incurred by any other person.

(4) Damages for injury to, destruction of or loss of natural resources within this Commonwealth or belonging to, managed by, controlled by or appertaining to the United States, the Commonwealth or a political subdivision. This paragraph includes the reasonable costs of assessing injury, destruction or loss resulting from such a release.

(5) The cost of a health assessment or health effects study.

(b) **Interest.**—

(1) The amounts recoverable in an action under sections 507 and 1101 include interest on the amounts recoverable under subsection (a). Interest shall accrue from the later of:

(i) the date payment of a specified amount is demanded in writing;
or

(ii) the date of the expenditure concerned.

(2) The rate of interest on the outstanding unpaid balance of the amounts recoverable under sections 507 and 1101 shall be 6% annually.

(c) **Contractors.**—A person or company who has entered into a contract with the department to assist the department in implementing this act, or a response action contractor under section 119 of the Federal Superfund Act, shall not be held liable under this act for a release of a hazardous substance arising out of performance of a response action when the release is not caused by the contractor's negligence.

(d) **Commonwealth employees.**—Persons employed by the Commonwealth shall not be held liable for a release of a hazardous substance or contaminant, or any other damages incurred, as a result of actions or omissions occurring when acting in their official capacity.

Section 703. Defenses to liability.

(a) **Grounds.**—There shall be no liability under section 701 of this act for a person otherwise liable who can establish that the release or threat of release of a hazardous substance and the damages resulting therefrom were caused solely by any of the following:

(1) An act of God.

(2) An act of war.

(3) An act or omission of a third party other than an employee, agent or contractor of the responsible person or one whose act or omission occurs in connection with an agreement or contractual relationship (except where the sole contractual arrangements arise either from a published tariff and acceptance for carriage by a common carrier by rail, or an exempt circular or transportation contract in lieu of a published tariff for carriage by a common carrier by rail), if the responsible person:

(i) exercised due care with respect to the hazardous substance concerned, taking into consideration the characteristics of such hazardous substance, in light of all relevant facts and circumstances; and

(ii) took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from those acts or omissions.

(b) Assistance.—Except as provided in subsection (c), no person shall be liable under this act for costs or damages as a result of actions taken or omitted in the course of rendering care, assistance or advice in accordance with this act or at the direction of the department with respect to an incident creating a danger to public health, safety or welfare or the environment as a result of a release of a hazardous substance or contaminant or the threat thereof. This subsection does not preclude liability for costs or damages as the result of negligence on the part of the person.

(c) Government action.—No State agency or political subdivision shall be liable under this act for costs or damages as a result of actions taken by the State agency or political subdivision in response to a release or threatened release of a hazardous substance generated by or from a site.

(d) Residential housing.—There shall be no liability under section 701 for the owner of real property which is exclusively used or under construction as residential housing who can establish that the release or threatened release of a hazardous substance and the damages resulting therefrom were caused solely by an act or omission of a third party, other than an employee, agent or contractor of the owner or one whose act or omission occurs in connection with an agreement or contractual relationship, if the owner:

(1) at the time of acquisition, did not know and had no reason to know, that a hazardous substance which is the subject of the release or threatened release was disposed on, in or at the site. For purposes of this paragraph, the owner must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. The department shall take into account specialized knowledge or experience on the part of the owner, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property and the ability to detect the contamination by appropriate inspection; and

(2) after obtaining actual knowledge of the presence of a hazardous substance on, in or at the site, exercised due care with respect to the haz-

ardous substance concerned, taking into consideration the characteristics of the hazardous substance, in light of all relevant facts and circumstances and took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from those acts or omissions.

(e) **Limited liability.**—Liability under the provisions of section 701 shall not apply to municipal waste transporters for that portion of municipal waste which is defined as household hazardous waste under section 1512 of the act of July 28, 1988 (P.L.556, No.101), known as the Municipal Waste Planning, Recycling and Waste Reduction Act, and which is collected from generators and transported to permitted municipal waste disposal facilities.

(f) **Burden of proof.**—A person claiming a defense provided in this section has the burden to prove all elements of the defense by a preponderance of the evidence.

Section 704. Subrogation and insurance.

(a) **General rule.**—An owner or operator of a facility or any other person who may be liable under section 701 may not avoid that liability by means of a conveyance of a right, title or interest in real property, or by an indemnification, a hold harmless agreement or a similar agreement.

(b) **Construction.**—Nothing in this section shall be construed to do any of the following:

(1) Prohibit a party who may be liable under section 701 from entering into an agreement by which that party is insured, held harmless or indemnified for part or all of that liability.

(2) Prohibit the enforcement of an insurance, a hold harmless or an indemnification agreement.

(3) Bar a cause of action brought by a party who may be liable under section 701 or by an insurer or guarantor, whether by right of subrogation or otherwise.

Section 705. Contribution.

(a) **General rule.**—A person may seek contribution from a responsible person under section 701, during or following a civil action under section 507 or 1101. Claims for contribution shall be brought in accordance with this section and the Pennsylvania Rules of Civil Procedure. Nothing in this section shall diminish the right of a person to bring an action for contribution in the absence of a civil action under section 507 or 1101.

(b) **Allocation.**—In a civil action in which a liable party seeks a contribution claim, the court, or the board in an action brought under section 507 or 1101, shall enter judgment allocating liability among the liable parties. Allocation shall not affect the parties' liability to the department. The burden is on each party to show how liability should be allocated. In determining allocation under this section, the court or the board may use such equitable factors as it deems appropriate. The trier of fact shall consider the following factors:

(1) The extent to which each party's contribution to the release of a hazardous substance can be distinguished.

- (2) The amount of hazardous substance involved.
- (3) The degree of toxicity of the hazardous substance involved.
- (4) The degree of involvement of and care exercised by each party in manufacturing, treating, transporting and disposing of the hazardous substance.
- (5) The degree of cooperation by each party with Federal, State or local officials to prevent harm to the public health or the environment.
- (6) Knowledge by each party of the hazardous nature of the substance.

(c) Settlements.—

(1) When the department enters into an administrative or judicially approved settlement of a civil action brought under section 507 or 1101, the amount of the department's claim under that civil action shall be reduced by the amount of the consideration paid to the department or the allocated amount of the settling party's liability, whichever is less. A settlement shall not otherwise affect the department's claim under section 507 or 1101.

(2) A person who has resolved its liability to the department in an administrative or judicially approved settlement shall not be liable for claims for contribution regarding matters addressed in the settlement unless the terms of the settlement provide otherwise. The settling party may seek contribution from a nonsettling party to recover the consideration paid in excess of its allocated share of liability as determined by the court or the board.

(3) When the department has obtained less than complete relief from a person who has resolved its liability to the department in an administrative or judicially approved settlement, the department may bring an action against a person who has not so resolved its liability. A nonsettling party may seek contribution from any other nonsettling party or any settling party as allowed under this section.

(d) Federal funds; cooperative agreements.—The Commonwealth shall actively seek to obtain Federal funds to which it is entitled under the Federal Superfund Act and may take actions necessary to enter into contractual or cooperative agreements under section 104(c)(3) and (d)(1) of the Federal Superfund Act (42 U.S.C. § 9604(c)(3) and (d)(a)).

Section 706. Covenants not to sue.

(a) General rule.—To encourage the voluntary and timely cooperation of responsible parties in the cleanup of certain hazardous waste sites, the department may provide a responsible person with a covenant not to sue concerning liability to the Commonwealth under this act, including future liability, resulting from a release or threatened release of a hazardous substance addressed by a remedial action where:

- (1) The covenant not to sue is in the public interest.
- (2) The covenant not to sue would expedite response action.
- (3) The responsible person is in full compliance with any consent decree under the Solid Waste Management Act or this act for response to the release or threatened release concerned.

(4) The response action has been approved by the department.

(b) Special covenants.—The department may provide a person with a covenant not to sue with respect to future liability to the Commonwealth under this act for a future release or threatened release of hazardous substances from such site for the portion of remedial action which involves the treatment of hazardous substances so as to destroy, eliminate or permanently immobilize the hazardous constituents of such substances, so that, in the judgment of the department, the substances no longer present a current or currently foreseeable future significant risk to public health and welfare or the environment, no by-product of the treatment or destruction process presents any significant hazard to public health and welfare or the environment; and a person provided such covenant not to sue shall not be liable to the Commonwealth under this act with respect to such a release or threatened release at a future time.

(c) Effective date of covenants not to sue.—A covenant not to sue concerning future liability to the Commonwealth shall not take effect until the department certifies that remedial action has been completed in accordance with the requirements of this act and any consent decree entered into between the department and the responsible person at the site that is the subject of such covenant.

(d) Factors.—In assessing the appropriateness of a covenant not to sue under subsection (a) and any condition to be included in a covenant not to sue under subsection (a) or (b), the department shall consider whether the covenant or condition is in the public interest on the basis of such factors as the following:

(1) The effectiveness and reliability of the remedy, in light of the other alternative remedies considered for the site concerned.

(2) The nature of the risks remaining at the site.

(3) The extent to which performance standards are included in the order or decree.

(4) The extent to which the technology used in the response action is demonstrated to be effective.

(5) Whether the fund or other sources of funding would be available for any additional remedial actions that might eventually be necessary at the site.

(6) Whether the remedial action will be carried out, in whole or in significant part, by the responsible parties themselves.

(e) Satisfactory performance.—Any covenant not to sue under this section shall be subject to the satisfactory performance by such party of its obligations under the agreement concerned.

(f) Additional condition for future liability.—

(1) A covenant not to sue concerning future liability to the Commonwealth may include an exception to the covenant that allows the department to sue such person concerning future liability resulting from the release or threatened release that is the subject of the covenant where such liability arises out of conditions which are unknown at the time the department certifies under subsection (c) that remedial action has been completed at the site concerned.

(2) The department may include any provisions allowing future enforcement action under section 501 that the department determines to be necessary and appropriate to assure compliance with the terms and conditions of the agreement containing the covenant.

Section 707. De minimis settlements.

(a) Expedited final settlement.—Whenever practicable and in the public interest, the department may as promptly as possible reach a final settlement with a responsible person in an administrative or civil action if such settlement involves only a minor portion of the response costs at the site concerned and if either of the following conditions are met:

(1) Both of the following are minimal in comparison to other hazardous substances contributed at the site by all known and financially viable responsible persons:

(i) The amount of the hazardous substances contributed by that person to the site.

(ii) The toxic or other hazardous effects of the substances contributed by that person to the site.

(2) The responsible person:

(i) is the owner of the real property on or in which the site is located;

(ii) did not conduct or permit the generation, transportation, storage, treatment or disposal of any hazardous substance at the site; and

(iii) did not contribute to the release or threatened release of a hazardous substance at the site through any act or omission.

(3) Paragraph (2) shall not apply if the responsible person acquired the real property with actual or constructive knowledge that the property was used for the generation, transportation, storage, treatment or disposal of any hazardous substance.

(b) Covenant not to sue.—The department may provide a covenant not to sue pursuant to the provisions of section 706 with respect to future liability at the site concerned to any person who has entered into a de minimis settlement under this section.

(c) Responsibility.—Any person who reaches an agreement pursuant to this section shall be responsible only for that person's proportional share of response costs and damages assessed under section 702.

Section 708. Allocation.

(a) Mediation.—Whenever the department believes that more than one person may be responsible under section 701 for a release or threatened release, the department shall prepare a nonbinding preliminary allocation of proportionate responsibility among all known responsible persons. The department shall give written notice of such preliminary allocation to all known responsible persons and shall invite such persons to participate in a dispute resolution procedure selected by the department which may include mediation, arbitration, or similar procedures to determine each person's proportionate share of the response costs and the appropriate response action to be taken. Within 120 days of the notice, the department and participating

persons shall reach an agreement, which may include less than all issues and shall include a schedule of payment for the proportionate share contained in the agreement. If no agreement has been reached within 120 days, the dispute resolution process shall terminate unless extended by mutual agreement of the department and the participating persons. The department's nonbinding allocation shall not be deemed to be a final action subject to review under 2 Pa.C.S. (relating to administrative law and procedure) or the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act, nor shall it confer a right or duty upon the department or any person.

(b) **Moratorium.**—During the mediation process as provided for in this section, the department shall not commence an action to recover response costs from any participating person, nor issue an enforcement order requiring a participating person to undertake response actions, nor commence any response actions at the site, other than an interim or emergency response. Nothing in this section shall be construed to limit the department's authority to conduct investigations or to undertake any actions authorized by this act against parties not participating in the mediation process. For the purpose of this subsection, "investigations" shall include those activities necessary to gather information and data to characterize the site, define the types and extent of contamination and evaluate alternatives for cleanup prior to the selection of a remediation option.

(c) **Effect of dispute resolution.**—Any agreement reached under the dispute resolution procedures provided in subsection (a) shall become a legally binding agreement upon all parties thereto. If some or all participating parties fail to reach agreement with the department, neither the department's nonbinding preliminary allocation nor any proposed agreement, nor the fact of any person's participating in dispute resolution shall be construed as an admission of fact or law nor be admissible in any administrative or judicial proceeding. The failure to agree shall not affect the rights of any person to pursue other administrative or judicial actions, including an action to recover contribution from any other person.

(d) **Limit on contribution.**—A person who has reached a settlement with the department pursuant to this section shall not be subject to claims for contribution regarding matters addressed in the settlement.

Section 709. Voluntary acceptance of responsibility.

Any person who voluntarily accepts responsibility under section 701 and agrees to pay his or her proportionate share, as determined under section 708, of the response costs and damages listed in section 702, as ultimately determined, plus an appropriate premium in an amount up to 50% of that person's proportionate share, but not to exceed 15% of the total costs of response and damages, shall not be subject to claims by the department, or by any other responsible person, in excess of that amount.

CHAPTER 9 FUND

Section 901. Fund.

(a) Establishment.—The Hazardous Sites Cleanup Fund, as established in section 602.3 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, shall be a special fund administered by the department and shall not be subject to the act of July 13, 1987 (P.L.340, No.64), entitled “An act providing for the establishment, funding and operation of a special restricted receipt account within the General Fund to support the establishment and operation of a Statewide judicial computer system; providing for annual appropriations from the restricted funds; and providing for the payment of a portion of all fines, fees and costs collected by the judiciary into the restricted receipt account.”

(b) Appropriation.—Money placed in the fund is appropriated to the department for the purposes set forth in this section. The department shall annually submit to the Governor for approval estimates of amounts to be expended under this act.

(c) Funds.—Money from the following sources shall be deposited in the fund:

(1) Proceeds from hazardous waste transportation and management fees imposed by section 903, including interest and penalties.

(2) Money recovered by the Commonwealth under sections 507 and 1101.

(3) Interest attributable to investment of money deposited in the fund.

(4) Money appropriated by the General Assembly for implementation of this act.

(5) Money recovered by the Commonwealth pursuant to a cost recovery action under the Federal Superfund Act.

(6) Money received from the Federal Government under the Federal Superfund Act.

(7) All revenues collected pursuant to section 602.3 of the Tax Reform Code of 1971.

(8) All fees collected under section 903.

(9) Funds available from appropriations for the same and similar purposes.

Section 902. Expenditures from fund.

(a) Purposes.—The department shall expend money in the fund for purposes including, but not limited to:

(1) Preparation by the department or its agents for taking response actions, which include emergency responses, investigations, testing activities, contracting, excavation, administrative costs and enforcement efforts relating to the release or threatened release of hazardous substances or contaminants.

(2) Response actions taken or authorized by the department, including related enforcement and compliance efforts and the payment of the State share of the cost of remedial responses which may be carried out under an

agreement or contract with the Federal Government pursuant to the Federal Superfund Act.

(3) Participation in response activities to the extent the department, in its discretion, finds necessary or appropriate to carry out the purposes of this act. The department may also use the fund to promote voluntary cleanups by participating in mixed funding settlements with potentially responsible persons.

(4) Emergency responses, including response to spills and other uncontrolled releases and their cleanup.

(5) Reimbursement to a private party for expenditures made from the effective date of this act to provide alternative water supplies deemed necessary by the department to protect the public health from contamination resulting from the release of a hazardous substance or contaminant.

(6) Replacement of public or private water supplies deemed necessary by the department to protect the public health from contamination resulting from the release of a hazardous substance or contaminant.

(7) Rehabilitation, restoration or acquisition of natural resources to remedy injuries or losses to natural resources resulting from the release of a hazardous substance or contaminant.

(8) Grants by the department to demonstrate alternatives to land disposal of hazardous waste, including reduction, separation, pretreatment, minimization, processing and resource recovery, and for education of persons involved in regulating and handling hazardous substances.

(9) Intervention and environmental mediation to facilitate cleanup of hazardous sites.

(10) State matching funds required under the Federal Superfund Act for the response at a site on the National Priority List established under the Federal Superfund Act.

(11) Studies of potential or actual human health effects from the release or potential release of hazardous substances at individual sites, including, but not limited to, studies of potential pathways of human exposure, the size and potential susceptibility of the community within the likely pathways of exposure, the comparison of expected health effects associated with identified hazardous substances and available recommended exposure or tolerance limits for the hazardous substances, the comparison of existing morbidity and mortality data on diseases that may be associated with the observed levels of exposure and epidemiological and clinical studies.

(12) Grants provided to municipalities under section 510.

(13) Reimbursement of expenses under section 505(f).

(b) Grants for recycling.—The department shall expend \$2,000,000, or as much thereof as may be necessary, annually from the fund for the purpose of providing grants to persons who purchase or lease recycling equipment to be used exclusively within this Commonwealth. The amount of each grant shall be 25% of the installed cost of the recycling equipment. Application for a grant must be made to the department by April 15 of each year. The application shall include a description of each item of recycling equipment pur-

chased or leased, the date of purchase or lease, the installed cost of the recycling equipment, a statement of where the recycling equipment is to be used and other information as the department may require. The department shall review all grant applications received to determine whether the expenditures meet the requirements of this subsection and shall advise the grant applicant of the grant amount for which said person is eligible. The grant allowed by this subsection shall apply only to recycling equipment that is installed and in operation prior to April 15, 1993. This subsection shall expire December 31, 1993.

(c) Annual report.—Beginning October 1, 1989, and annually thereafter, the secretary shall transmit to the General Assembly a report concerning activities and expenditures made pursuant to this chapter for the preceding State fiscal year. Included in this report shall be information concerning all revenues and receipts deposited into the Hazardous Site Cleanup Fund, all expenditures, including, but not limited to, expenditures for personnel, operating expenses, the purchase of fixed assets, grants and subsidies, other major objects of expenditures where appropriate and information detailing the department's efforts to obtain contributions for response actions from potentially responsible parties and a listing of sites where mixed funding as described in subsection (a)(3) was utilized for cleanup. The secretary shall also supply information on both authorized and filled complement and information concerning program activities, including, but not limited to:

(1) The number of response actions initiated and completed, and the costs incurred, in the aggregate and for each action.

(2) The number of public or private water supply replacements, and the costs incurred.

(3) Expenditures for the rehabilitation, restoration or acquisition of natural resources.

(4) Expenditures for intervention and environmental mediation.

(5) The number of Federal Superfund sites in which the Commonwealth participates in response activities, and the State matching costs incurred.

(6) The number of health effect studies undertaken, and the costs incurred.

(7) The number of grants provided to municipalities under section 510, and the amounts granted.

(8) The number of reimbursements of expenses under section 505(f), and the amounts reimbursed.

(d) Health study report.—Upon completion of health effect studies performed pursuant to subsection (a)(11), copies of the findings and any recommendations of such studies shall be transmitted to the General Assembly and the governing bodies of the affected communities. Except for personal health records of individuals, such studies shall be public information, and the department shall provide copies to any person upon request.

(e) Nonliability of other funds.—Whenever the department undertakes to use the fund for a response action, whether on its own initiative or pursuant to a mixed funding settlement, no such undertaking shall constitute a lia-

bility of the General Fund or of any other special funds or accounts whether administered by the department or otherwise.

Section 903. Hazardous waste transportation and management fees.

(a) **Assessment.**—Fees shall be assessed for the transportation and management of hazardous waste in accordance with this section.

(b) **Transportation fee.**—A transporter of hazardous waste shall be assessed a transportation fee for hazardous waste transported within this Commonwealth, whether originating in-State or out-of-State. For purposes of computing the fee, each shipment requiring the use of a hazardous waste manifest to or from a Pennsylvania hazardous waste facility or between two Pennsylvania hazardous waste facilities shall be considered a discrete transportation activity and shall be subject to the fee.

(c) **Management fee.**—

(1) The operator of a hazardous waste management facility in Pennsylvania shall be assessed a management fee for hazardous waste stored, treated or disposed of at a facility. No management fee shall be charged for hazardous wastes which are reused or recycled in accordance with department regulations. For purposes of this paragraph, incineration shall be considered a form of treatment rather than disposal.

(2) A generator who disposes of hazardous waste at the site at which it was generated or at a captive disposal facility in Pennsylvania shall be assessed a fee for all hazardous waste disposed.

(3) No management fee shall be assessed for hazardous waste storage or treatment at the site at which it was generated or at a captive facility in Pennsylvania.

(4) No management fee shall be charged for waste stored prior to recycling at a legitimate commercial recycling facility.

(d) **Rates.**—The following rates shall apply unless the secretary adjusts the fee schedule in accordance with subsection (g):

(1) Transportation of hazardous waste (except as provided in paragraph (2)) - \$3 per ton.

(2) Transportation of hazardous waste to or from a recycler - \$1.50 per ton.

(3) Storage of hazardous waste at a commercial hazardous waste management facility - \$2 per ton.

(4) Treatment or incineration of hazardous waste at a commercial hazardous waste management facility - \$5 per ton.

(5) Disposal of hazardous waste at a commercial disposal facility - \$12 per ton.

(6) Disposal of hazardous waste on the site at which it was generated or at a captive facility - \$8 per ton.

(e) **Conversion.**—In the event that any hazardous waste is measured in units other than tonnage, the fee shall be levied on a conversion to tonnage determined by the department.

(f) **Cumulative nature.**—

(1) The transportation and management fees are cumulative.

(2) When several management activities occur at the same facility, the operator shall be assessed only one management fee for each quantity of waste, which shall be the highest rate of the management activities involved.

(3) However, when treatment or incineration prior to disposal results in a reduction in the tonnage of waste requiring disposal, the operator shall be assessed the disposal management fee for the waste requiring disposal after treatment or incineration and the treatment management fee for the rest of the waste which underwent treatment.

(4) For the purposes of subsection (d)(2), the term "recycler" shall mean any verified recycling process which uses, reuses or reclaims hazardous waste or which generates hazardous waste as a by-product of the recycling process.

(g) Adjustments.—The secretary may, by regulation, adjust the rates as appropriate in accordance with the following formula:

(1) The fees shall be calculated and rates adjusted to collect projected annual revenues of \$5,000,000 plus the reasonably projected administrative cost of collecting the fee.

(2) Management fee rates shall encourage preferred hazardous waste management practices by establishing four fee categories with graduated fee schedules. The fee categories from lowest rate per ton to highest rate per ton shall be:

(i) Hazardous waste stored at a hazardous waste management facility.

(ii) Hazardous waste treated or incinerated at a hazardous waste management facility.

(iii) Hazardous waste disposed of at a hazardous waste disposal facility at the site where the waste was generated or at a captive disposal facility.

(iv) Hazardous waste disposed of at a commercial hazardous waste disposal facility.

(3) No fee shall be charged for hazardous wastes which are recycled or reused in accordance with the department's regulations.

(4) The department may exclude small quantity generators from the fees.

(h) Annual disposal report.—

(1) By March 1, 1989, and by March 1 of each year thereafter, a person who submitted for offsite disposal or who disposed of onsite more than 500 pounds of hazardous waste in this Commonwealth during the preceding calendar year shall report to the department the total amount of hazardous waste which that person has submitted for disposal or disposed of in this Commonwealth during the preceding calendar year. This subsection does not apply to a person who is already providing this information to the department.

(2) The total amount of hazardous waste reported under this subsection shall be the total weight, measured in tons, of all components of the waste in the form in which the waste existed at the time of submission for disposal or at the time of disposal.

(3) A person who fails to file the report required by this subsection shall be liable for a civil penalty not to exceed \$500 for each day the violation continues. A person who knowingly fails to file the report commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not more than \$25,000 or to imprisonment for not more than one year, or both.

(i) Waste from cleanup.—The fees assessed pursuant to this section for the transportation, management or authorized disposal of hazardous waste shall not apply to hazardous waste that is derived from the cleanup of a site pursuant to this act, the Federal Superfund Act, the Solid Waste Disposal Act (Public Law 89-272, 42 U.S.C. § 6901 et seq.) or the Solid Waste Management Act.

Section 904. Loan fund.

(a) Establishment.—There is established a separate account in the State Treasury to be known as the Hazardous Sites Loan Fund, which shall be a special fund administered by the Department of Commerce.

(b) Purpose.—In the case of a release or threatened release of hazardous substances from a site for which the department has identified no more than two persons as potentially liable under section 702, such persons may be eligible, upon written application to the Department of Commerce, to receive long-term, low-interest loans in an amount sufficient to fund all or a portion of the response costs at the site. The Department of Commerce shall promulgate regulations establishing eligibility criteria for the loans. As part of this effort, the Department of Commerce shall include a determination of the availability of other sources of funds at reasonable rates to finance all or a portion of the response action and the need for Department of Commerce assistance to finance the response action.

(c) Funds.—In addition to any funds as may be appropriated by the General Assembly, at least 2% of the funds raised annually by the assessments imposed by section 903 shall be deposited into the loan fund.

(d) Annual report.—Beginning October 1, 1989, and annually thereafter, the Department of Commerce shall transmit to the General Assembly a report concerning activities and expenditures made pursuant to this section for the preceding State fiscal year. Included in this report shall be information concerning all revenues and receipts deposited into the loan fund and all loans extended to eligible applicants.

(e) Sunset.—The loan fund shall cease to exist on June 30, 1992, unless it is reestablished by action of the General Assembly. Any funds remaining in the loan fund on June 30, 1992, shall lapse to the Hazardous Sites Cleanup Fund. Money received by the Department of Commerce as repayment of outstanding loans after June 30, 1992, shall lapse to the Hazardous Sites Cleanup Fund.

CHAPTER 11
ENFORCEMENT AND REMEDIES

Section 1101. Public nuisances.

A release of a hazardous substance or a violation of any provision, regulation, order or response approved by the department under this act shall constitute a public nuisance. Any person allowing such a release or committing such a violation shall be liable for the response costs caused by the release or the violation. The board and any court of competent jurisdiction is hereby given jurisdiction over actions to recover the response costs.

Section 1102. Enforcement orders.

(a) General rule.—The department shall issue orders to persons as it deems necessary to aid in the enforcement of the provisions of this act. Orders shall include, but shall not be limited to, orders requiring response actions, studies and access and orders modifying, suspending or ceasing a response action by a responsible person even though the response may have been initially approved by the department. An order issued under this section shall take effect upon notice unless the order specifies otherwise. The power of the department to issue an order under this section is in addition to any other remedy which may be afforded to the department under this act or any other statute.

(b) Types.—The department, when it deems necessary for the response to a release or for the protection of public health, safety or welfare or the environment, shall order, orally or in writing, a person to immediately initiate, continue, suspend or modify a response action; conduct investigations; or provide access to property or information. The order shall be effective upon issuance and may only be superseded by further department action or, after an appeal has been perfected, by the board after notice and hearing. The order may require whatever alternative response actions are necessary for the abatement of the release. Within two business days after the issuance of the oral order, the department shall issue a written order reciting and modifying, where appropriate, the terms and conditions contained in the oral order.

(c) Compliance.—It shall be the duty of any person to proceed diligently to comply with an order issued under this section. When the person fails to proceed diligently or fails to comply with the order within the time specified, the person shall be guilty of contempt and shall be punished by the court in an appropriate manner. For this purpose, application may be made by the department to the Commonwealth Court.

(d) Appeal.—An order issued under this section may be appealed to the board under the act of July 13, 1988 (P.L.530, No.94), known as the Environmental Hearing Board Act. An appeal to the board shall not act as a supersedeas.

Section 1103. Restraining violations.

(a) Department.—In addition to any other remedy provided in this act, the department may institute a suit in equity in the name of the Commonwealth, where a violation of law or nuisance exists, for an injunction to

restrain a violation of this act or the regulations, standards or orders promulgated or issued hereunder and to restrain the maintenance or threat of a public nuisance. In a proceeding under this subsection, the court shall, upon motion of the Commonwealth, issue a prohibitory or mandatory preliminary injunction when it finds that the defendant is engaging in unlawful conduct as defined by this act or is engaged in conduct which is causing immediate and irreparable harm to the public. The Commonwealth shall not be required to furnish bond or other security in connection with the proceedings. In addition to an injunction, the court may levy civil penalties under section 1104.

(b) **Local government.**—In addition to any other remedies provided for in this act, upon relation of a district attorney of an affected county or upon relation of the solicitor of an affected municipality, an action in equity may be brought in a court of competent jurisdiction for an injunction to restrain any and all violations of this act or regulations promulgated under it or to restrain a public nuisance or detriment to public health, safety or welfare or the environment.

(c) **Concurrent remedies.**—The penalties and remedies prescribed by this act shall be deemed concurrent. The existence of or exercise of one remedy shall not prevent the department from exercising any other remedy under this act, at law or in equity.

(d) **Jurisdiction.**—Actions instituted under this section may be filed in the appropriate court of common pleas or in the Commonwealth Court. Actions may also be filed in a Federal court or administrative tribunal having jurisdiction over the matter.

Section 1104. Civil penalties.

(a) **General rule.**—In addition to proceeding with any other remedy available at law or in equity for a violation of a provision of this act, a regulation or order of the department or a term or condition of a response approved by the department, the department may assess a civil penalty upon a person for the violation. A penalty may be assessed whether or not the violation was willful or negligent. In determining the amount of the penalty, the department shall consider the willfulness of the violation; damage to air, water, land or other natural resources of this Commonwealth or their uses; cost of restoration and abatement; savings resulting to the person in consequence of such violation; and other relevant factors.

(b) **Procedure.**—When the department proposes to assess a civil penalty, it shall inform the person of the proposed amount of the penalty. The person charged with the penalty shall then have 30 days to pay the proposed penalty in full. When the person wishes to contest either the amount of the penalty or the fact of the violation, the person must, within the 30-day period, file an appeal of the action with the board. Failure to appeal within 30 days shall result in a waiver of all legal rights to contest the violation or the amount of the penalty.

(c) **Amount.**—The maximum civil penalty which may be assessed under this section is \$25,000 per offense. Each violation for each separate day and each violation of a provision of this act, a regulation under this act, an order

of the department or any term or condition of an approved response shall constitute a separate and distinct offense under this section.

(d) **Minimum.**—A person who fails to comply with an order issued under section 503 shall be subject to a minimum penalty of \$5,000 for each day the order is violated.

(e) **Additional penalties.**—The Environmental Quality Board shall have the authority to establish, by regulation, specific major violations and additional mandatory minimum civil penalties.

Section 1105. Criminal penalties.

(a) **Falsity.**—

(1) A person may not knowingly make a false statement or representation in an application, record, report, plan, proposal or other document which:

(i) relates to the actual or threatened release of a hazardous substance or to a response to the actual or threatened release of a hazardous substance; or

(ii) is filed, submitted, maintained or used for purposes of compliance with this act.

(2) A person who violates paragraph (1) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$1,000 and not more than \$25,000 per day for each violation or to imprisonment for a period of not more than one year, or both.

(b) **Altering response action.**—A person who, without written authorization from the department, alters or modifies a response action approved or undertaken by the department commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 and not more than \$1,000 for each day on which the offense occurs or, in default of payment of the fine, to imprisonment for not more than 90 days.

(c) **Obstruction.**—A person who refuses, hinders, obstructs, delays or threatens any agent or employee of the department in the course of performance of a duty under this act, including, but not limited to, entry and inspection under any circumstances, commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 and not more than \$1,000 for each day on which the offense occurs or, in default of payment of the fine, to imprisonment for not more than 90 days.

(d) **Intentional or negligent.**—A person who intentionally or negligently commits an offense under subsection (b) or (c) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$1,000 and not more than \$25,000 for each day on which the offense occurred or to imprisonment for not more than one year, or both.

Section 1106. Search warrants.

An agent or employee of the department may apply to any Commonwealth official authorized to issue a search warrant for the purposes of searching any property, building, premises or place, of seizing any book, record or other physical evidence, of conducting tests, or of taking samples of any solid waste. Such warrant shall be issued upon probable cause. It shall be sufficient probable cause to show any of the following:

(1) The search, seizure, test or sampling is pursuant to a general administrative plan to determine compliance with this act.

(2) The agent or employee has reason to believe that a violation of this act has occurred or may occur.

(3) The agent or employee has been refused access to the property, building, premises or place, has been refused possession of any book, record or physical evidence, or has been prevented from conducting tests or taking samples.

(4) The employee has reason to believe that a release or a threat of a release of a hazardous substance or contaminant exists on the property or on a nearby property and that testing and sampling are needed for determining the nature or extent of the release.

(5) The employee has reason to believe that there are containers or impoundments on the property which are typical of those used for containing or impounding hazardous substances and that testing, sampling or the review of records is necessary to determine whether hazardous substances are present.

Section 1107. Existing and cumulative rights and remedies.

Nothing in this act shall be construed as estopping the Commonwealth, a district attorney or solicitor or a municipality from proceeding in courts of law or equity to abate releases forbidden under this act, or to abate nuisances under existing law. It is declared to be the purpose of this act to provide additional and cumulative remedies to control the release of hazardous substances within this Commonwealth. Nothing contained in this act shall abridge or alter rights of action or remedies at law or in equity. No provision of this act, the granting of approval under this act, nor an act done by virtue of this act shall be construed as estopping the Commonwealth, persons or municipalities in the exercise of their rights at law or in equity; from proceeding in courts of law or equity to suppress nuisances or to abate a pollution; or from enforcing common law or statutory rights. No courts of this Commonwealth having jurisdiction to abate public or private nuisances shall be deprived of jurisdiction in an action to abate any private or public nuisance because the nuisance constitutes pollution of air or water or soil.

Section 1108. Unlawful conduct.

It shall be unlawful for a person to do any of the following:

(1) Cause or allow a release of a hazardous substance.

(2) Alter or modify any response action which has been approved by the department unless authorized in writing by the department.

(3) Refuse, hinder, obstruct, delay or threaten an agent or employee of the department in the course of performance of a duty under this act, including, but not limited to, entry and inspection under any circumstances.

(4) Cause or assist in the violation of any provision of this act, a regulation of the department or an order of the department.

(5) Fail to make a timely payment of the hazardous waste transportation and management fee.

(6) Hinder, obstruct, prevent or interfere with host municipalities or their personnel in the performance of any duty related to the collection of the hazardous waste transportation and management fees.

(7) Cause or allow release of a contaminant in a manner that creates a public nuisance.

Section 1109. Presumption of law for civil and administrative proceedings.

It shall be presumed as a rebuttable presumption of law that a person who causes or allows the release of a hazardous substance shall be liable, without proof of fault, negligence, or causation, for all damages, contamination or pollution within 2,500 feet of the perimeter of the area where the release has occurred. This presumption may be overcome by clear and convincing evidence that the person so charged did not contribute to the damage, contamination or pollution.

Section 1110. Collection of fines and penalties.

Fines and penalties under this act shall be collectible in the manner provided by section 509. Upon collection they shall be paid into the fund.

Section 1111. Right of citizen to intervene in proceedings.

A citizen of this Commonwealth having an interest which is or may be adversely affected shall have the right, on his own behalf, without posting bond, to intervene in any proceeding brought under this act.

Section 1112. Whistleblower provisions.

(a) Adverse action prohibited.—No employer may discharge, threaten or otherwise discriminate or retaliate against an employee regarding the employee's compensation or terms, conditions, location or privileges of employment because the employee makes or is about to make a good faith report, verbally or in writing, to the employer or appropriate authority of an instance of wrongdoing under this act.

(b) Remedies.—The remedies, penalties and enforcement procedures for violations of this section shall be as provided in the act of December 12, 1986 (P.L.1559, No.169), known as the Whistleblower Law.

(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Appropriate authority.” A Federal, State or local government body, agency or organization having jurisdiction over criminal law enforcement, regulatory violations, professional conduct or ethics, or waste; or a member, officer, agent, representative or supervisory employee of the body, agency or organization. The term includes, but is not limited to, the Office of Attorney General, the Department of the Auditor General, the Treasury Department, the General Assembly and committees of the General Assembly having the power and duty to investigate criminal law enforcement, regulatory violations, professional conduct or ethics or waste.

“Employee.” A person who performs a service for wages or other remuneration under a contract of hire, written or oral, express or implied, for an employer, whether or not the employer is a public body.

“Employer.” A person supervising one or more employees, including the employee in question; a superior of that supervisor; or an agent of a public body.

“Good faith report.” A report of conduct defined in this act as wrongdoing or waste which is made without malice or consideration of personal benefit and which the person making the report has reasonable cause to believe is true.

“Public body.” All of the following:

(1) A State officer, agency, department, division, bureau, board, commission, council, authority or other body in the executive branch of State government.

(2) A county, city, township, regional governing body, council, school district, special district or municipal corporation, or a board, department, commission, council or agency.

(3) Any other body which is created by Commonwealth or political subdivision authority or which is funded in any amount by or through Commonwealth or political subdivision authority or a member or employee of that body.

“Waste.” An employer’s conduct or omissions which result in substantial abuse, misuse, destruction or loss of funds or resources belonging to or derived from Commonwealth or political subdivision sources.

“Whistleblower.” A person who witnesses or has evidence of wrongdoing or waste while employed and who makes a good faith report of the wrongdoing or waste, verbally or in writing, to one of the person’s superiors, to an agent of the employer or to an appropriate authority.

“Wrongdoing.” A violation which is not of a merely technical or minimal nature of a Federal or State statute or regulation, of a political subdivision ordinance or regulation or of a code of conduct or ethics designed to protect the interest of the public or the employer.

Section 1113. Notice of proposed settlement.

When a settlement is proposed in any proceeding brought under this act, notice of the proposed settlement shall be sent to all known responsible persons and published in the Pennsylvania Bulletin and in a newspaper of general circulation in the area of the release. The notice shall include the terms of the settlement and the manner of submitting written comments during a 60-day public comment period. The settlement shall become final upon the filing of the department’s response to the significant written comments. The notice, the written comments and the department’s response shall constitute the written record upon which the settlement will be reviewed. A person adversely affected by the settlement may file an appeal to the board. The settlement shall be upheld unless it is found to be arbitrary and capricious on the basis of the administrative record.

Section 1114. Limitation on action.

Notwithstanding the provisions of any other statute to the contrary, actions for civil or criminal penalties under this act or civil actions for releases of hazardous substances may be commenced at any time within a period of 20 years from the date the unlawful conduct or release is discovered. Actions to recover response costs may be commenced within six years of the date those costs are incurred. The initial action to recover response costs shall be controlling as to liability in all subsequent actions.

Section 1115. Citizen suits.

(a) **General rule.**—A person who has experienced or is threatened with personal injury or property damage as a result of a release of a hazardous substance may file a civil action against any person to prevent or abate a violation of this act or of any order, regulation, standard or approval issued under this act.

(b) **Jurisdiction.**—The courts of common pleas shall have jurisdiction over any actions authorized under this section. No action may be commenced under this section prior to 60 days after the plaintiff has given notice to the department, to the host municipality and to the alleged violator of this act, or of any regulations or orders of the department under this act; nor may such action be commenced when the department has commenced and is diligently prosecuting a civil or criminal action in a court of the United States or a state to require compliance with the statute, permit, standard, regulation, condition, requirement, prohibition or order. In any such civil action commenced by the department, any person may intervene as a plaintiff as a matter of right. The court may grant any equitable relief; may impose a civil penalty under section 1104; and may award litigation costs, including reasonable attorney and witness fees, to the prevailing or substantially prevailing party whenever the court determines such an award is appropriate.

(c) **Departmental intervention.**—The department may intervene as a matter of right in any action authorized under this section.

CHAPTER 13 MISCELLANEOUS

Section 1301. Relation to other laws.

(a) **Application.**—Notwithstanding the provisions of subsection 505(c) and section 507, an identified and responsible owner or operator of a site with a release or threatened release of a hazardous substance or a contaminant shall not be subject to enforcement orders or the cost recovery provisions of this act, until the department has instituted administrative or judicial enforcement action against the owner or operator under other applicable environmental laws and the owner or operator has failed to comply with or is financially unable to comply with such administrative or judicial enforcement action. In the event of noncompliance with such administrative or judicial enforcement action, the provisions of this act may be applied by the department unless the owner or operator has obtained a supersedeas from the board or the court conducting any such judicial enforcement action. For the purposes of this subsection, such a supersedeas shall be based on whether there is a release or threatened release at the site which constitutes a danger to the public health and safety or the environment. An appeal of the department's enforcement action shall not serve as a bar that prevents the department from applying the provisions of this act to the owner or operator in the absence of the issuance of a supersedeas.

(b) **Department action.**—The department may not initiate enforcement orders nor apply the cost recovery provisions of this act against a responsible person for the release or threatened release of a hazardous substance or a

contaminant at a site that is the subject of subsection (a), where the owner or operator of the site is financially able to comply with an administrative or judicial enforcement action instituted under subsection (a), and the owner or operator has undertaken appropriate action to abate the release or threatened release of the hazardous substance or contaminant, as required by the administrative or judicial enforcement action, or the owner or operator has obtained a supersedeas from the board or the court conducting any such judicial enforcement action. For the purposes of this subsection, such a supersedeas shall be based on whether there is a release or threatened release at the site which constitutes a danger to the public health and safety or the environment. An appeal of the department's enforcement action shall not serve as a bar that prevents the department from applying the provisions of this act to the responsible person in the absence of the issuance of a supersedeas to the owner or operator.

(c) Authority.—Nothing in this section shall affect the authority of the department or the Governor to implement an interim response or an emergency response.

Section 1302. Studies.

The Department of Commerce shall within one year of the effective date of this act complete a study to investigate the use of the Pennsylvania Industrial Development Authority, the Pennsylvania Economic Revitalization Fund and other economic development grants and loans to encourage the reuse, recycling, recovery, minimization and treatment which results in detoxification of hazardous waste.

Section 1303. Balance in fund/deposit of proceeds.

(a) Determination.—By October 1, 1992, and every October 1 thereafter, the Secretary of the Budget shall determine the prior year's expenditures and encumbrances, including site-specific encumbrances where fully executed contracts are in place, for the fiscal year. By October 1, 1992, and every October 1 thereafter, the Secretary of the Budget shall also determine the available balance in the fund at the close of the previous fiscal year.

(b) Reduction in tax.—When the Secretary of the Budget finds that the available balance in the fund exceeds the prior year's expenditures and encumbrances, including site-specific encumbrances where fully executed contracts are in place by two times the total of those two, the tax imposed under section 602 of the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, shall be reduced by one-half mill, provided that no additional reduction may occur prior to an intervening increase under subsection (c).

(c) Increase in tax.—When the Secretary of the Budget in any year following a year where the tax has been reduced by one-half mill finds that the available balance in the fund is less than one times the prior year's expenditures and encumbrances, including site-specific encumbrances where fully executed contracts are in place, the tax imposed under section 602 of the Tax Reform Code of 1971, shall be increased by one-half mill, provided that no additional increase may occur prior to an intervening reduction under subsection (b).

Section 1304. Repeals.

As much of subsection (a) as reads: "...through calendar year 1991 and fiscal years beginning in 1991 and at the rate of nine mills upon each dollar of the capital stock value as defined in section 601(a) for the calendar year 1992 and fiscal years beginning in 1992..." (2 occasions) and as much of subsections (b)(1) and (e) as reads: "...through calendar year 1991 and fiscal years beginning in 1991 and at the rate of nine mills for calendar year 1992 and fiscal years beginning in 1992..." of section 602 of the act of March 4, 1971 (P.L. 6, No.2), known as the Tax Reform Code of 1971, are repealed.

Section 1305. Effective date.

This act shall take effect in 60 days.

APPROVED—The 18th day of October, A. D. 1988.

ROBERT P. CASEY