

No. 1990-165

AN ACT

SB 649

Establishing a Statewide hazardous material safety program; creating the Hazardous Material Response Fund; providing for the creation of Hazardous Material Emergency Response Accounts in each county; further providing for the powers and duties of the Pennsylvania Emergency Management Agency, of the Pennsylvania Emergency Management Council and of the counties and local governments; imposing obligations on certain handlers of hazardous materials; and imposing penalties.

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

CHAPTER 1
GENERAL PROVISIONS

Section 101. Short title.

This act shall be known and may be cited as the Hazardous Material Emergency Planning and Response Act.

Section 102. Legislative findings and purpose.

(a) **Findings.**—The General Assembly hereby determines, declares and finds that exposure to hazardous materials has the potential for causing undesirable health and environmental effects and poses a threat to the health, safety and welfare of the citizens of this Commonwealth, and that the citizens of this Commonwealth and emergency service personnel who respond to emergency situations should be protected from the health hazards and harmful exposure resulting from hazardous material releases at facilities and from transportation-related accidents.

(b) **Purpose.**—It is the purpose of this act to:

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

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

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

(4) Create the Hazardous Material Response Fund to provide financial assistance to Commonwealth agencies and counties to develop an effective and integrated response capability to the health hazards, dangers and risks which hazardous material releases pose to the general public.

(5) Establish an emergency notification system whereby the release of hazardous materials occurring at a facility or resulting from a transportation accident will be promptly reported to the proper Commonwealth and county emergency response officials.

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

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

(8) Require persons responsible for the release of hazardous materials to pay the costs incurred by certified hazardous material response teams or

supporting paid and volunteer emergency service organizations for emergency response activities necessitated by the hazardous material release.

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:

“Certified hazardous material response team.” A team of individuals who are certified and organized by a Commonwealth agency, a local agency, a regional hazardous material organization, a transporter, a manufacturer, supplier or user of hazardous materials, or a volunteer service organization, or a private contractor, for the primary purpose of providing emergency services to mitigate actual or potential immediate threats to public health and the environment in response to the release or threat of a release of a hazardous material, which is certified, trained and equipped in accordance with this act or regulations promulgated under this act. Hazardous material response teams may also be certified to perform stabilization actions needed to remove threats to public health and the environment from hazardous material releases.

“Commonwealth agency.” An executive agency or independent agency.

“Council.” The Pennsylvania Emergency Management Council.

“County.” Includes, but is not limited to, a city of the first class coterminous with a county of the first class.

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

“County emergency management coordinator.” The person designated to perform emergency management functions by the county under 35 Pa.C.S. Part V (relating to emergency management services).

“Emergency management.” The judicious planning, assignment and coordination of all available resources in an integrated program of prevention, mitigation, preparedness, response and recovery for emergencies of any kind, whether from attack, manmade or natural sources.

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

“Executive agency.” The Governor and the departments, boards, commissions, authorities and other nonlegislative officers and agencies of the Commonwealth, except any court or other officer or agency of the unified judicial system or the General Assembly and its officers and agencies or any independent agency.

“Extremely hazardous substance.” A substance appearing on the list of extremely hazardous substances published by the administrator of the Federal Environmental Protection Agency under the authority of section 302

of the Federal Emergency Planning and Community Right-To-Know Act of 1986 (Title III, Public Law 99-499, 42 U.S.C. § 11002), as set forth at 40 CFR Part 355 (“Appendix A - The List of Extremely Hazardous Substances and Their Threshold Planning Quantities”), or appearing on any successor list of extremely hazardous substances published by the Administrator of the Federal Environmental Protection Agency under the authority of section 302 of SARA, Title III.

“Facility.” All buildings, structures and other stationary items which are located on a single site or a contiguous or adjacent site which are owned or operated by the same person and which actually manufacture, produce, use, transfer, store, supply or distribute any hazardous material. The term includes railroad yards and truck terminals but does not include individual trucks, rolling stock, water vessels, airplanes or other transportation vehicles.

“Family farm enterprise.” A natural person, family farm corporation or family farm partnership engaged in farming which processes and markets its agricultural commodities in either intrastate or interstate commerce.

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

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

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

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

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

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

“Hazardous material.” Any of the following, as defined in this act:

(1) A hazardous substance.

(2) An extremely hazardous substance.

(3) A hazardous chemical.

(4) A toxic chemical.

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

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

list of hazardous substances prepared under section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

“Independent agency.” Boards, commissions, authorities and other agencies and officers of the Commonwealth which are not subject to the policy supervision and control of the Governor, except any court or other officer or agency of the unified judicial system or the General Assembly and its officers and agencies.

“Local agency.” A municipality or any officer or agency thereof.

“Local emergency planning committee” or “local committee.” The local committee within each emergency planning district responsible for preparing hazardous material plans and performing other functions under the Emergency Planning and Community Right-To-Know Act of 1986 (Title III, Public Law 99-499, 42 U.S.C. § 11001 et seq.).

“PEMA.” The Pennsylvania Emergency Management Agency.

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

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

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

“Reportable quantity.” The quantity of a hazardous material stated on the various lists of hazardous substances and extremely hazardous substances as defined in this section, the release of which shall be reported under this act.

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

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

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

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

“Unified judicial system.” The unified judicial system existing under section 1 of Article V of the Constitution of Pennsylvania.

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

CHAPTER 2 HAZARDOUS MATERIAL PROTECTION

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

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

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

(c) Chairperson.—The Governor shall designate a member of the council to serve as chairperson of the council. In the absence of the chairperson, the director of PEMA shall serve as chairperson. The chairperson shall have the authority to assign, delegate or transfer tasks, duties and responsibilities to members of the council. The chairperson shall approve the appointment of members to the council who are designated by their respective department or office and authorized to fulfill the duties and responsibilities of the appointed member of the council.

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

(e) Meetings.—For the conduct of routine or emergency business, the council shall meet at the call of the chairperson. Five members of the council shall constitute a quorum for the purpose of conducting the business of the council and for all other purposes. All actions of the council shall be taken by a majority of the council members present. The council shall be subject to the act of July 3, 1986 (P.L.388, No.212), known as the Sunshine Act.

(f) Staff.—The council shall supervise PEMA as its primary agent responsible for performing the functions and duties of the council estab-

lished under this act. For this purpose, PEMA shall employ such professional, technical, administrative and other staff personnel as may be deemed essential to carry out the purposes of this act and the development and maintenance of a comprehensive Commonwealth hazardous material safety program and report directly to the council.

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

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

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

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

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

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

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

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

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

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

(10) Prescribe standards for hazardous material response team training or certification, the equipping of hazardous material response team units and other matters involving hazardous material response activities.

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

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

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

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

(i) Advisory committee.—The council shall appoint a Hazardous Material Emergency Planning and Response Advisory Committee from the members of the council and other persons representative of those groups affected by this act as the council chairman may determine. Meetings of the committee shall be convened by PEMA for the purpose of reviewing guidelines, standards or regulations developed to implement this act. PEMA shall participate in all meetings of the advisory committee and provide administrative support. For the purpose of convening meetings, a majority of the advisory committee members shall constitute a quorum.

Section 202. Establishment of emergency planning districts.

Each county is designated and constituted an emergency planning district for the purposes of SARA, Title III.

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

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

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

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

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

(3) Firefighting personnel.

(4) Civil defense and emergency management personnel.

(5) Broadcast and print media.

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

(7) Owners and operators of facilities subject to the requirements of SARA, Title III.

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

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

(e) Vacancies.—Within 60 days of the occurrence of a vacancy, the council shall appoint, in the manner provided in subsection (d), a successor member to a local committee for the remainder of the unexpired term of the member for which the vacancy exits. A vacancy shall occur upon the death, resignation, disqualification or removal of a member of a local committee.

(f) Meetings.—For the conduct of routine or emergency business, the local committee shall meet at the call of the chairperson. A majority of the members of the local committee, or such other number of members of the local committee as set by the local committee, shall constitute a quorum for the purpose of conducting the business of the local committee and for all other purposes. All actions of the local committee shall be taken by a majority of the local committee members present. The local committee shall be subject to the act of July 3, 1986 (P.L.388, No.84), known as the Sunshine Act.

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

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

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

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

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

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

(6) Accept and deposit into its county Hazardous Material Emergency Response Account any grants, gifts or other funds received which are intended for the purpose of carrying out this act.

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

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

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

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

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

(2) Methods and procedures to be followed by facility owners and operators and local emergency and medical personnel to respond to any release of such substances.

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

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

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

(6) A description of emergency equipment and facilities in the county and at each facility in the county subject to the requirements of this section, and an identification of the persons responsible for such equipment and facilities.

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

(8) Training programs, including schedules for training of local emergency response and medical personnel.

(9) Methods and schedules for exercising the emergency plan.

Section 204. Hazardous material safety program.

(a) Program components.—In conjunction with the Departments of Environmental Resources, Health, Transportation, Agriculture, Labor and Industry and Commerce, Pennsylvania Public Utility Commission, Fish Commission, Pennsylvania Turnpike Commission and the Pennsylvania State Police, or any other Commonwealth agencies as determined by the council, PEMA shall develop a hazardous material safety program for incorporation into the Pennsylvania Emergency Management Plan developed by PEMA under 35 Pa.C.S. Pt. V (relating to emergency management services). The hazardous material safety program shall include an assessment of the potential dangers and risks that hazardous material releases occurring at facilities and from transportation-related accidents pose to the general public and the environment. The Pennsylvania State Fire Academy shall be utilized as a primary training facility pursuant to its duties under 35 Pa.C.S. § 7316(c) (relating to Pennsylvania State Fire Academy). The council may also utilize other institutions that have in place appropriate training resources, such as the Center for Hazardous Materials Research at the University of Pittsburgh's Applied Research Center, to fulfill its training responsibilities. The program shall also consider the impacts, consequences and necessary protective measures required to respond to and mitigate the effects of such releases and accidents. The program shall include, but not be limited to:

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

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

(3) Development of specific procedures for counties to complete the Hazardous Material Emergency Response Preparedness Assessment within 30 days of the effective date of this act.

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

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

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

(7) Establishing training standards and a certification program for the formation of Commonwealth agency, local agency or regional hazardous material response teams. All Commonwealth agency, supporting paid and volunteer emergency service organizations, local agency or other agencies and committees that establish training standards for emergency service, law enforcement, firefighting or other personnel shall cooperate with the council in the implementation of these training standards and certification program.

(8) Periodical exercise of hazardous material release scenarios at facilities and transportation sites that are designed to test the response capabilities of Commonwealth agency, local agency and regional public safety and emergency response personnel.

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

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

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

(b) County preparedness assessment.—

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

(2) The county shall assess the potential dangers and risks that hazardous material releases from facilities and transportation accidents pose to public health and the environment, identify the county's needs and resources for hazardous material response teams to deal with those dangers and risks and outline its plan for implementing county and local emergency planning functions under this act.

(3) The assessment shall include the following:

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

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

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

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

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

(vi) An audit of the Hazardous Material Emergency Response Account.

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

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

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

Section 205. Emergency reporting requirements.

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

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

(2) The owner or operator of a facility in this Commonwealth covered under section 311 of SARA, Title III, shall comply with the reporting requirements under sections 311 and 312 of SARA, Title III.

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

(4) The owner of a facility in this Commonwealth subject to the requirements of paragraphs (2) and (3) shall comply with the procedures for providing information under section 323 of SARA, Title III.

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

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

(c) **Rolling stock.**—The owner or operator of a property that has one or more rolling stock, whether owned or leased, located within its property boundaries for any period of time in excess of 30 continuous days and containing an extremely hazardous substance in excess of the threshold planning quantity shall notify the council and the appropriate local committee of that fact and shall prepare an emergency response plan, which contains those provisions that either the council or the appropriate local committee directs, in order to deal with any potential release of an extremely hazardous substance from that rolling stock.

Section 206. Emergency notification requirements.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) PEMA notice.—The notification to PEMA shall be made to the PEMA 24-hour response number. This notification shall contain the information required by subsection (b). The notice to PEMA shall fulfill the requirements in SARA, Title III, to notify the council. Notice under this section shall not fulfill any requirements in other State laws to notify the Department of Environmental Resources or any other State agency of a spill or release of a hazardous chemical.

(d) Written report.—Within 14 calendar days after a release which required notice under this section, the owner or operator of a facility and the owner or operator of a vehicle shall provide a written follow-up emergency notice, or notices if more information becomes available, to PEMA and the county emergency management office setting forth and updating the information required under subsection (b), and including additional information with respect to:

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

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

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

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

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

(f) Coordinated notification system.—

(1) The council shall, within one year of the effective date of this act, complete a study of current notification procedures to determine the feasibility of establishing a single notification center and simplified alternative notification processes for State agencies to receive notification of all emer-

gencies involving hazardous or potentially hazardous substances or releases into the air or water or on the land. The council shall study the feasibility of replacing notification of individual State agencies with a single point of contact and simplified alternative notification procedures covering substances regulated by this act, by 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, the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, or by any other State statute requiring notification of any State agency of spills and releases into the environment. The study shall consider any impact a single point of contact and alternative notification procedures may have on the regulated community, any enforcement programs within the Department of Environmental Resources or other agencies and notification requirements established in Federal law and make specific recommendations for implementing its findings, including recommended changes to State law. The Hazardous Material Emergency Planning and Response Advisory Committee shall be involved in the development of the study.

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

Section 207. Establishment of funds.

(a) Hazardous Material Response Fund.—

(1) There is hereby created in the State Treasury a nonlapsing restricted account to be known as the Hazardous Material Response Fund. The fund shall consist of the fees collected under subsections (c), (d) and (e), civil penalties and fines and funds appropriated by the General Assembly. Moneys in the fund and the interest it accrues shall be appropriated annually to PEMA to be disbursed by the council through PEMA and shall be used to carry out the purposes, goals and objectives of SARA, Title III, and the Commonwealth's hazardous material safety program.

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

(i) Up to 10% shall be expended on training programs for hazardous material response teams.

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

(iii) No more than 10% shall be used for the general administrative and operational expenses of this act, excluding the expenses of the Hazardous Material Emergency Planning and Response Advisory Committee.

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

(b) County emergency response financing.—

(1) The treasurer of each county shall establish a nonlapsing restricted account to be known as the Hazardous Material Emergency Response Account. The account shall consist of revenue from fees authorized by this section, county, Federal or State funds, grants, loans or penalties and any private donations provided to finance the hazardous material safety program. Expenditures from the account shall be authorized by the county consistent with the needs identified in the county Hazardous Material Emergency Response Preparedness Assessment approved by the council. The Hazardous Material Emergency Response Account shall also be utilized by the local emergency planning committee to resolve cost recovery disputes that arise between a person who causes a release of a hazardous material and a volunteer emergency services organization when acting as part of a certified hazardous material response team in accordance with this act. Each volunteer services organization shall be eligible to receive no more than \$300 per response to cover expenses related to a response from the Hazardous Material Emergency Response Account, if the person who causes a release of a hazardous material is financially unable to pay costs as defined in section 210(b).

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

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

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

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

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

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

(g) Exemptions.—The owners or operators of family farm enterprises, service stations and facilities owned by State and local governments shall be exempt from payment of the fees required under subsections (b), (c), (d), (e) and (f).

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

(i) Changes in threshold quantities and chemicals.—For purposes of the fees established in this section, the term “hazardous chemical” shall mean chemicals on lists established by the United States Environmental Protection Agency effective on July 1, 1989. No fee may be applied to additional facilities or hazardous materials because of changes made by the United States Environmental Protection Agency in lists of hazardous materials, threshold

planning quantities or other requirements under SARA, Title III, without complying with the provisions of section 213.

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

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

(l) Status of fund.—The Hazardous Material Response Fund shall not be subject to 42 Pa.C.S. Ch. 37 Subch. C (relating to judicial computer system). Section 208. Emergency management grants.

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

(b) Applications.—A county or group of counties may apply annually to the council for an emergency management grant. Applications shall be made in the manner specified by the council in regulations promulgated under section 201(g) consistent with the county preparedness assessment.

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

(1) Developing a county Hazardous Material Emergency Response Preparedness Assessment required in section 204(b).

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

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

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

(5) Developing an emergency planning and response capability for responding to hazardous material releases and meeting the requirements of the Commonwealth's hazardous material safety program, including training, equipment, material and other supplies needed to respond to a release.

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

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

(d) Grant amount.—The amount of the annual grant from the Hazardous Material Response Fund shall not exceed the sum of the funds of local revenues made available by the county for the purpose of complying with the requirements and provisions of SARA, Title III, and the Emergency Management Services Code with respect to hazardous material releases, retroactive to November 1986 and the revenues collected under section 207(b)(2) and (f), except that any county emergency management coordinator whose

Hazardous Material Emergency Response Account receives less than \$10,000 annually in fees established in this section or meets the requirements of subsection (e)(3) shall be eligible for additional grants equal to county funds specifically appropriated for compliance with this act, not to exceed \$5,000.

(e) **Payment of grants.**—The council shall review annually all applications received under this section and may make grants to the counties from the Hazardous Material Response Fund. The council shall prioritize the available funds among the eligible applicants based upon the following criteria:

(1) Completion of initial county Hazardous Material Emergency Response Preparedness Assessment.

(2) Compliance with the requirements of SARA, Title III, and the Commonwealth's hazardous material safety program and Emergency Management Services Code with respect to hazardous material releases.

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

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

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

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

Section 209. Certified hazardous material response teams.

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

(1) Standards for certifying response teams with several preparedness levels patterned after levels established by the United States Occupational Safety and Health Administration at 29 CFR Part 1910.120.

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

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

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

(d) Compliance with guidelines and regulations.—Hazardous material response teams shall comply with any guidelines, regulations, directives or other documents developed by the council for incorporation into the Commonwealth's hazardous material safety program and shall be consistent with the county Hazardous Material Emergency Response Preparedness Assessment approved by the Council.

(e) Compliance with act.—Each county shall comply with the hazardous material safety program and 35 Pa.C.S. Pt. V (relating to emergency management services) by doing any of the following, consistent with the county Hazardous Material Emergency Response Preparedness Assessment:

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

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

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

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

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

(h) Insurance.—Each Commonwealth agency, local agency, regional hazardous material organization, volunteer service organization, hazardous material transporter, manufacturer, supplier or user, or other entity that organizes a certified hazardous material response team as identified on the team certification, shall be responsible for providing, directly or by agreement with a third party, workers' compensation and ordinary public liability insurance for its certified hazardous material response team. The Commonwealth, a county or municipality may self-insure to meet this obligation to the extent it is now authorized by State law. A certified hazardous material response team that meets the training standards or certification requirements

established under the Commonwealth's hazardous material safety program shall receive a discount from the applicable insurance company as that insurance company's loss experience justifies based on guidelines developed by the Insurance Commissioner.

(i) **Emergency response.**—A certified hazardous material response team may, when authorized by the county emergency management coordinator, enter onto any private or public property on which a release of a hazardous material has occurred or the occurrence or the threat of a hazardous material release is imminent. A certified hazardous material response team may enter any adjacent or surrounding property to which the hazardous material release has entered or threatens to enter. A certified hazardous material response team may enter any private or public property in order to respond to the release or threatened release of a hazardous material, to monitor and contain the hazardous material release, to perform cleanup and stabilization actions and to perform any other emergency response activities deemed necessary by the certified hazardous material response team or by the representatives of PEMA, the county emergency management office as established under 35 Pa.C.S. Pt. V or the local committee.

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

Section 210. Recovery of response costs.

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

(b) **Amount.**—In an action to recover response costs, a Commonwealth agency, local agency, regional hazardous material organization, supporting paid or volunteer emergency service organization, or a hazardous material transporter, manufacturer, supplier or user may include operational, administrative personnel and legal costs incurred from its initial response action up to the time that it recovers its costs. Only those certified hazardous material response teams or supporting paid or volunteer emergency service organizations that are properly trained in accordance with the standards developed

under this act and that are properly requested and dispatched by a legally constituted authority shall be eligible to recover their response costs.

(c) Definitions.—When used in this section, the term “response cost” includes the following:

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

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

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

(4) Decontamination of equipment contaminated during the response.

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

(6) Special technical services specifically required for the response, for example, costs associated with the time and efforts of technical experts or specialists.

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

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

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

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

(d) Arbitration.—

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

(2) Once the parties agree to submit the response cost dispute to binding arbitration, the local committee shall notify the council and the parties of the request for a board of arbitration and shall request the recommendation of the parties for persons to be appointed to the board. The board of arbitration shall consist of three persons, one to be selected by each of the parties and a third person to be agreed upon by the arbitrators as specified in paragraph (3). Within five days of the request for arbitra-

tion, the parties shall submit the names of the arbitrators that they have chosen and the local committee shall appoint those persons to the board of arbitration.

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

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

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

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

Section 211. Facility and vehicle inspection and testing.

(a) **Inspection.**—In order to determine compliance with this act and SARA, Title III, either the qualified council or local committee member or representative, as defined in subsection (e), may enter a facility or vehicle site, during normal business hours, to inspect the facility or vehicle and to request information or reports from the facility or vehicle owner or operator concerning the chemical name, identity, amount or any other information necessary for emergency planning and response purposes for any substance, liquid, mixture, compound, material or product manufactured, produced, used, stored, supplied, imported, exported or distributed at, to or from the facility or vehicle.

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

(c) **Emergency situations.**—Should a release or threatened release of a known or unknown substance, liquid, mixture, compound, material or product occur or appear to be imminent at a facility or vehicle site, which endangers or has the potential to endanger the health, safety and welfare of the public, employees of the facility or the vehicle's owner or operator, or the employees of the owner or operator of the vehicle, the council or the local committee may send qualified representatives to the facility or vehicle site at any time in order to inspect the facility or vehicle and to assess the danger posed by the release or threatened release and to obtain samples or specimens of the substance, liquid, mixture, compound, material or product involved in the release or threatened release and to perform any other emergency response activities deemed necessary by the representatives of the council or the local committee.

(d) **Trade secrets.**—A person shall provide the qualified representative of the council or the local committee with the chemical name, identity or any other information requested concerning any substance, liquid, mixture, compound, material or product present at the facility or vehicle, whether or not the chemical name, identity or other information requested is entitled to protection as a trade secret under section 322 of SARA, Title III, unless the manufacturer of the substance will not provide the information requested to the facility owner because it has received trade secret protection under SARA, Title III. For that information which has received trade secret protection under section 322 of SARA, Title III, prior to the date of the inspection or request, the qualified representative shall give a written assurance to the person that reasonable measures will be taken to protect the confidentiality of any information provided to the qualified representative.

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

- (1) Training in inspection and enforcement activities related to enforcing environmental or fire incident investigations.
- (2) Training in the handling and recognition of hazardous materials.
- (3) Conflict of interest standards and procedures designed to prevent a local committee member or representative from using the authority of this section to gather information on a business competitor or other trade secret information.
- (4) Procedures for decertifying a member or representative who was determined to be a qualified representative of the council or local committee.

Section 212. Annual report.

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

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

Response Accounts along with a description of the projects undertaken with these funds and a projection of future activities.

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

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

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

Section 213. Changes in fees.

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

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

CHAPTER 3 MISCELLANEOUS PROVISIONS

Section 301. Immunity from civil liability.

(a) General.—No Commonwealth agency, local agency, regional hazardous material organization, volunteer emergency service organization or hazardous material transporter, manufacturer, supplier or user that organized the certified hazardous material response team nor their elected officers, officials, directors and employees, and no certified hazardous material response team member, member of an industrial hazardous material response team, law enforcement officer, ambulance service or rescue squad member, firefighter or other emergency response or public works personnel engaged in any emergency service or response activities involving a hazardous material release at a facility or transportation accident site shall be liable for the death of or any injury to persons or loss or damage to property or the environment resulting from a response to a hazardous material release, except for any acts or omissions which constitute gross negligence or willful misconduct. Nothing in this section shall exempt any hazardous material transporter, manufacturer, supplier or user from liability for the death of or any injury to persons or loss or damage to property or the environment resulting from the release of any hazardous material.

(b) Council and local committees.—No member of the council or a local committee shall be liable for the death of or any injury to persons or loss or damage to property or the environment or any civil damages resulting from any act or omission arising out of the performance of the functions, duties and responsibilities of the council or local committee, except for acts or omissions which constitute willful misconduct.

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

Section 302. Penalties and fines.

(a) Civil penalty.—A person who violates any of the emergency reporting, planning or notification requirements of, or fails to pay the fees outlined in, sections 201 through 207 or any regulations promulgated under those sections shall be subject to a civil penalty of not less than \$1,000 and not more than \$25,000. Each day of a continuing violation shall be considered a separate offense.

(b) Misdemeanor.—A person who:

(1) Knowingly and willfully fails to report the release of a hazardous substance or extremely hazardous substance as required by sections 205 and 206 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 \$2,500 for each separate offense or imprisonment in the county jail for a period of not more than one year, or both. For the purposes of this paragraph, each day of continued violation constitutes a separate offense.

(2) Intentionally obstructs or impairs, by force, violence, physical interference or obstacle, a representative of PEMA, a certified hazardous material response team or the local committee attempting to perform the duties and functions set forth in section 211 commits a misdemeanor of the second degree and shall, upon conviction, be sentenced to pay a fine of not less than \$1,000 and not more than \$5,000 for each separate offense or imprisonment in the county jail for a period of not more than two years, or both.

(c) Disposition.—One half of all civil penalties and fines collected under this section shall be deposited into the Hazardous Material Response Fund and one-half shall be deposited into the appropriate county Hazardous Material Emergency Response Account.

Section 303. Enforcement.

(a) Civil actions.—The Office of Attorney General or the Office of General Counsel may commence a civil action against any person for failure to comply with this act or its regulations. No action may be commenced under this subsection prior to 60 days after the Office of Attorney General or Office of General Counsel has given written notice of the alleged violation to the alleged violator. The council, a county or a municipality may commence a civil action against any person for failure to comply with this act or its regulations if the Office of Attorney General or the Office of General Counsel has not commenced such action and more than 120 days have elapsed since the council, a county or a municipality gave notice of the alleged violation to the alleged violator.

(b) Criminal actions.—The Office of Attorney General under the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attor-

neys Act, or the district attorney for the county in which the violation is alleged to have occurred may commence criminal proceedings for the enforcement of this act and its regulations.

(c) Venue.—A proceeding under subsection (a) or (b) may be brought in the court of common pleas for the county in which the defendant is located or for the county in which the violation is alleged to have occurred.

Section 304. Relationship to other laws.

(a) Federal law.—This law shall be read in conjunction with Federal acts, laws or regulations providing for the identification, labeling or reporting of information concerning hazardous material releases, and any other health and safety matters related to hazardous materials, and is intended to supplement Federal acts, laws and regulations in the interests of protecting the health and safety of the citizens of this Commonwealth. In those instances where the provisions of this act are more comprehensive or stringent than the provisions of an applicable Federal act, law or regulation, the provisions of this act shall be controlling.

(b) State law.—Nothing in this act shall affect or modify in any way the obligations or liabilities of any person under other statutes of this Commonwealth.

(c) Local law.—This act shall preempt any ordinances or resolutions passed or adopted by any political subdivision that is effective on or before or after the effective date of this act to the extent that such ordinance or resolution conflicts or is inconsistent with the provisions of this act.

Section 305. Facility insurance.

A facility that complies with the emergency reporting requirements of section 205(a), (b) and (c), as applicable to that facility, may receive a discount from that facility's insurance company as that insurance company loss experience justifies.

Section 306. Severability.

The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 307. Effective date.

This act shall take effect in 60 days.

APPROVED—The 7th day of December, A. D. 1990.

ROBERT P. CASEY