

No. 1995-2

AN ACT

SB 1

Providing for the recycling of existing industrial and commercial sites; further defining the cleanup liability of new industries and tenants; establishing a framework for setting environmental remediation standards; establishing the Voluntary Cleanup Loan Fund, the Industrial Land Recycling Fund and the Industrial Sites Cleanup Fund to aid industrial site cleanups; assigning powers and duties to the Environmental Quality Board and the Department of Environmental Resources; and making repeals.

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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 Land Recycling and Environmental Remediation Standards Act.

Section 102. Declaration of policy.

The General Assembly finds and declares as follows:

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

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

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

(4) It is necessary for the General Assembly to adopt a statute which sets environmental remediation standards to provide a uniform framework for cleanup decisions because few environmental statutes set cleanup standards and to avoid potentially conflicting and confusing environmental standards. The General Assembly also has a duty to implement the provisions of section 27 of Article I of the Constitution of Pennsylvania with respect to environmental remediation activities.

(5) It is necessary for the General Assembly to adopt a statute which provides a mechanism to establish cleanup standards without relieving a person from any liability for administrative, civil or criminal fines or penalties otherwise authorized by law and imposed as a result of illegal disposal of waste or for pollution of the land, air or waters of this Commonwealth on an identified site.

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

(7) Cleanup plans should have as a goal remedies which treat, destroy or remove regulated substances whenever technically and economically feasible as determined under the provisions of this act.

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

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

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:

“Agricultural chemical.” A substance defined as a fertilizer, soil conditioner or plant growth substance under the act of May 29, 1956 (1955 P.L.1795, No.598), known as the Pennsylvania Fertilizer, Soil Conditioner and Plant Growth Substance Law, or a substance regulated under the act of March 1, 1974 (P.L.90, No.24), known as the Pennsylvania Pesticide Control Act of 1973.

“Agricultural chemical facility.” A facility where agricultural chemicals are held, stored, blended, formulated, sold or distributed. The term does not include facilities identified by SIC 2879 where agricultural chemicals are manufactured.

“Aquifer.” A geologic formation, group of formations or part of a formation capable of a sustainable yield of significant amount of water to a well or spring.

“Background.” The concentration of a regulated substance determined by appropriate statistical methods that is present at the site, but is not related to the release of regulated substances at the site.

“BADCT” or “Best Available Demonstrated Control Technology.” The commercially available engineering technology which has demonstrated at full scale on a consistent basis that it most effectively achieves the standard for

a remediation action for a regulated substance at a contaminated site under similar applications.

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

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

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

"Contaminant." A regulated substance released into the environment.

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

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

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

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

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

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

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

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

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

"Health advisory levels" or "HAL's." The health advisory levels published by the United States Environmental Protection Agency for particular substances.

"Industrial activity." Commercial, manufacturing, public utility, mining or any other activity done to further either the development, manufacturing or distribution of goods and services, intermediate and final products and solid waste created during such activities, including, but not limited to, administration of business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage,

repair and maintenance of commercial machinery and equipment and solid waste management.

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

“Medium-specific concentration.” The concentration associated with a specified environmental medium for potential risk exposures.

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

“Municipality.” A township, borough, city, incorporated village or home rule municipality. This term shall not include a county.

“Nonresidential property.” Any real property on which commercial, industrial, manufacturing or any other activity is done to further either the development, manufacturing or distribution of goods and services, intermediate and final products, including, but not limited to, administration of business activities, research and development, warehousing, shipping, transport, remanufacturing, stockpiling of raw materials, storage, repair and maintenance of commercial machinery and equipment, and solid waste management. This term shall not include schools, nursing homes or other residential-style facilities or recreational areas.

“Person.” An individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, authority, nonprofit corporation, 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 government, political subdivisions and Commonwealth instrumentalities.

“Point of compliance.” For the purposes of determining compliance with groundwater standards, the property boundary at the time the contamination is discovered or such point beyond the property boundary as the Department of Environmental Resources may determine to be appropriate.

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

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

“Regulated substance.” The term shall include hazardous substances and contaminants regulated under the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, and substances covered 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 July 13, 1988 (P.L.525, No.93),

referred to as the Infectious and Chemotherapeutic Waste Law, and the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act.

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

“Residential property.” Any property or portion of the property which does not meet the definition of “nonresidential property.”

“Responsible person.” The term shall have the same meaning as given to it in the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, and shall include a person subject to enforcement actions for substances covered 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 July 13, 1988 (P.L.525, No.93), referred to as the Infectious and Chemotherapeutic Waste Law, and the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act.

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

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

“Systemic toxicant.” A material that manifests its toxic effect in humans in a form other than cancer.

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

Section 104. Powers and duties.

(a) Environmental Quality Board.—The Environmental Quality Board shall have the power and its duty shall be to adopt and amend periodically thereafter by regulation Statewide health standards, appropriate mathematically valid statistical tests to define compliance with this act and other regulations that may be needed to implement the provisions of this act. Any regulations needed to implement this act shall be proposed no later than 12 months after the effective date of this act and shall be finalized no later than 24 months after the effective date of this act unless otherwise specified in this act.

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

Section 105. Cleanup Standards Scientific Advisory Board.

(a) Establishment.—There is hereby created a 13-member Cleanup Standards Scientific Advisory Board for the purpose of assisting the

department and the Environmental Quality Board in developing Statewide health standards, determining the appropriate statistically and scientifically valid procedures to be used, determining the appropriate risk factors and providing other technical and scientific advice as needed to implement the provisions of this act.

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

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

(d) **Expenses.**—Members of the board shall be reimbursed for their travel expenses to attend meetings as authorized by the executive board.

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

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

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

Section 106. Scope.

(a) **Remediation standards.**—The environmental remediation standards established under this act shall be used whenever site remediation is voluntarily conducted or is required under 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 July 13, 1988 (P.L.525, No.93), referred to as the Infectious and Chemotherapeutic Waste Law, the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, and the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, to be eligible for cleanup liability protection under Chapter 5. In addition, the remediation standards established under this act shall be considered as applicable, relevant and appropriate requirements for this Commonwealth under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510, 42 U.S.C. § 9601 et seq.) and the Hazardous Sites Cleanup Act.

(b) Disclaimer.—Nothing in this act is intended to nor shall it be construed to amend, modify, repeal or otherwise alter any provision of any act cited in this section relating to civil and criminal penalties or enforcement actions and remedies available to the department or in any way to amend, modify, repeal or alter the authority of the department to take appropriate civil and criminal action under these statutes.

Section 107. Existing standards.

(a) General rule.—The department may continue to use remediation standards not adopted under the provisions of this act for a period of up to three years after the effective date of this act unless such existing standards are revised or replaced by regulations adopted under this act. All regulations, policies, guidance documents and procedures relating to remediation standards which were not adopted under the provisions of this act shall expire three years after the effective date of this act. The standards and procedures established in sections 301, 302, 303(b) and 304 shall be available for use on the effective date of this act and shall supersede existing regulations, policies, guidance documents and procedures.

(b) Agreements and consent orders.—The standards established under this act are not intended to impose more stringent cleanup standards than those which are contained in any prior administrative consent order, consent adjudication, judicially approved consent order or other settlement agreement entered into with the department under the authority of any of the statutes referred to in section 106 and which were entered into with the department on or before the effective date of this act unless all parties thereto agree to such change.

CHAPTER 3

REMIEDIATION STANDARDS AND REVIEW PROCEDURES

Section 301. Remediation standards.

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

(1) a background standard which achieves background as further specified in section 302;

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

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

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

(c) Determining attainment.—For the purposes of determining attainment of any one or a combination of remediation standards, the concentration of a regulated substance shall not be required to be less than the practical quantitation limit for a regulated substance as determined from time to time by the EPA. The department may, in consultation with the board, establish by regulation procedures for determining attainment of remediation standards when practical quantitation limits set by the EPA have a health risk that is greater than the risk levels set in sections 303(c) and 304(b) and (c). The department shall not establish procedures for determining attainment of remediation standards where maximum contaminant levels and health advisory levels have already been established for regulated substances.

Section 302. Background standard.

(a) Standard.—Persons selecting the background standard shall meet background for each regulated substance in each environmental medium.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Notice of the submission of the final report demonstrating attainment of the background standard shall be given to the municipality in which the remediation site is located and¹ published in a newspaper of general circulation serving the area and in the Pennsylvania Bulletin.

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

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

Section 303. Statewide health standard.

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

(b) Medium-specific concentrations.—The following requirements shall be used to establish a medium-specific concentration:

(1) Any regulated discharge into surface water occurring during or after attainment of the Statewide health standard shall comply with applicable laws and regulations relating to surface water discharges.

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

¹“located, published” in enrolled bill.

(3) The concentration of a regulated substance in groundwater in aquifers used or currently planned to be used for drinking water or for agricultural purposes shall comply with the maximum contaminant level or health advisory level established for drinking water. If the groundwater at the site has naturally occurring background total dissolved solids concentrations greater than 2,500 milligrams per liter, the remediation standard for a regulated substance dissolved in the groundwater may be adjusted by multiplying the medium-specific concentration for groundwater in aquifers by 100. The resulting value becomes the maximum contaminant level for groundwater.

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

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

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

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

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

(6) Exposure scenarios for medium-specific concentrations for nonresidential conditions shall be established using valid scientific methods reflecting worker exposure.

(c) Additional factors.—When establishing a medium-specific concentration, other than those established under subsection (b)(1), (2) or (3), the medium-specific concentration for the ingestion of groundwater, inhalation of soils, ingestion and inhalation of volatiles and particulates shall be calculated by the department using valid scientific methods, reasonable exposure pathway assumptions and exposure factors for residential and nonresidential land use which are no more stringent than the standard default exposure factors established by EPA based on the following levels of risk:

(1) For a regulated substance which is a carcinogen, the medium-specific concentration is the concentration which represents an excess upper bound lifetime cancer target risk of between 1 in 10,000 and 1 in 1,000,000.

(2) For a regulated substance which is a systemic toxicant, the medium-specific concentration is the concentration to which human populations could be exposed by direct ingestion or inhalation on a daily basis without appreciable risk of deleterious effects for the exposed population.

(d) Relationship to background.—The concentration of a regulated substance in an environmental medium of concern on a site where the Statewide health standard has been selected shall not be required to meet the Statewide health standard if the Statewide health standard is numerically less than the background standard. In such cases, the background standard shall apply.

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

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

(2) A final report that documents attainment of the Statewide health standard shall be submitted to the department which includes the descriptions of procedures and conclusions of the site investigation to characterize the nature, extent, direction, rate of movement of the site and cumulative effects, if any, volume, composition and concentration of contaminants in environmental media, the basis for selecting environmental media of concern, documentation supporting the selection of residential or nonresidential exposure factors, descriptions of removal or treatment procedures performed in remediation, summaries of sampling methodology and analytical results which demonstrate that contaminants have been removed or treated to applicable levels and documentation of compliance with postremediation care requirements if they are needed to maintain the Statewide health standard.

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

(f) Authority reserved.—If a person fails to demonstrate attainment of the Statewide health standard, the department may require that additional

remediation measures be taken in order to meet the health standard or the person may select to meet the requirements of section 302 or 304.

(g) Deed notice.—Persons attaining and demonstrating compliance with the Statewide health standard considering residential exposure factors for a regulated substance shall not be subject to the deed acknowledgment requirements of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, or the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act. An existing acknowledgment contained in a deed prior to demonstrating compliance with the residential Statewide health standard may be removed. The deed acknowledgment requirements shall apply where nonresidential exposure factors were used to comply with the Statewide health standard.

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

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

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

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

(2) Notice of the submission of the final report demonstrating attainment of the Statewide health standard shall be given to the municipality in which the remediation site is located and¹ published in a newspaper of general circulation serving the area and in the Pennsylvania Bulletin.

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

(4) The notices provided for in paragraphs (1) and (2) are not required to be made or published if the person conducting the remediation submits the final report demonstrating attainment of the Statewide health standard

¹“located, published” in enrolled bill.

as required by this section within 90 days of the release. If the final report demonstrating attainment is not submitted to the department within 90 days of the release, all notices and procedures required by this section shall apply. This paragraph is only applicable to releases occurring after the effective date of this act.

Section 304. Site-specific standard.

(a) **General.**—Where a site-specific standard is selected as the environmental remediation standard or where the background or Statewide health standard is selected but not achieved, remedial investigation, risk assessment, cleanup plans and final reports shall be developed using the procedures and factors established by this section.

(b) **Carcinogens.**—For known or suspected carcinogens, soil and groundwater cleanup standards shall be established at exposures which represent an excess upper-bound lifetime risk of between 1 in 10,000 and 1 in 1,000,000. The cumulative excess risk to exposed populations, including sensitive subgroups, shall not be greater than 1 in 10,000.

(c) **Systemic toxicants.**—For systemic toxicants, soil and groundwater cleanup standards shall represent levels to which the human population could be exposed on a daily basis without appreciable risk of deleterious effect to the exposed population. Where several systemic toxicants affect the same target organ or act by the same method of toxicity, the hazard index shall not exceed one. The hazard index is the sum of the hazard quotients for multiple systemic toxicants acting through a single-medium exposure pathway or through multiple-media exposure pathways.

(d) **Groundwater.**—Cleanup standards for groundwater shall be established in accordance with subsections (b) and (c) using the following considerations:

(1) For groundwater in aquifers, site-specific standards shall be established using the following procedures:

(i) The current and probable future use of groundwater shall be identified and protected. Groundwater that has a background total dissolved solids content greater than 2,500 milligrams per liter or is not capable of transmitting water to a pumping well in usable and sustainable quantities shall not be considered a current or potential source of drinking water.

(ii) Site-specific sources of contaminants and potential receptors shall be identified.

(iii) Natural environmental conditions affecting the fate and transport of contaminants, such as natural attenuation, shall be determined by appropriate scientific methods.

(2) Groundwater not in aquifers shall be evaluated using current or probable future exposure scenarios. Appropriate management actions shall be instituted at the point of exposure where a person is exposed to groundwater by ingestion or other avenues to protect human health and the environment. This shall not preclude taking appropriate source management actions by the responsible party to achieve the equivalent level of protection.

(e) **Soil.**—Concentrations of regulated substances in soil shall not exceed values calculated in accordance with subsections (b) and (c) based on human ingestion of soil where direct contact exposure to the soil may reasonably occur; values calculated to protect groundwater in aquifers at levels determined in accordance with subsections (b), (c) and (d); and values calculated to satisfy the requirements of subsection (g) with respect to discharges or releases to surface water or emissions to the outdoor air. Such determinations shall take into account the effects of institutional and engineering controls, if any, and shall be based on sound scientific principles, including fate and transport analysis of the migration of a regulated substance in relation to receptor exposures.

(f) **Factors.**—In determining soil and groundwater cleanup standards under subsections (d) and (e), the following factors shall also be considered:

(1) Use of appropriate standard exposure factors for the land use of the site with reference to current and currently planned future land-use and the effectiveness of institutional or legal controls placed on the future use of the land.

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

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

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

(g) **Air and surface water.**—Any regulated discharge into surface water or any regulated emissions to the outdoor air which occur during or after attainment of the site-specific standard shall comply with applicable laws and regulations relating to surface water discharges or emissions into the outdoor air.

(h) **Relationship to background.**—The concentration of a regulated substance in an environmental medium of concern on a site where the site-specific standard has been selected shall not be required to meet the site-specific standard if the site-specific standard is numerically less than the background standard. In such cases, the background standard shall apply.

(i) **Combination of measures.**—The standards may be attained through a combination of remediation activities that can include treatment, removal, engineering or institutional controls and can include innovative or other demonstrated measures. The department shall disapprove a site-specific remediation plan that consists solely of fences, warning signs or future land use restrictions unless the site-specific standard is developed on the basis of exposure factors which are no less stringent than those which would apply to the site at the time the contamination is discovered.

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

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

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

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

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

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

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

(vi) Time to achieve cleanup standards.

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

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

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

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

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

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

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

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

valid application of statistical tests. The Department of Environmental Resources shall also recognize those methods of attainment demonstration generally recognized as appropriate for that particular remediation.

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

(1) A remedial investigation report which includes:

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

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

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

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

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

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

(3) A cleanup plan which evaluates the relative abilities and effectiveness of potential remedies to achieve the requirements for remedies described in subsection (k) when considering the evaluation factors described in subsection (j). The plan shall select a remedy which achieves the requirements for remedies described in subsection (k). The department may require a further evaluation of the selected remedy or an evaluation of one or more additional remedies in response to comments received from the community surrounding the site as a result of the community involvement plan established in subsection (o) which are based on the factors described in subsection (j) or as a result of its own analysis which are based on the evaluation factors described in subsection (j).

(4) A final report demonstrating that the approved remedy has been completed in accordance with the cleanup plan.

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

(m) Deed notice.—Persons attaining and demonstrating compliance with site-specific standards for a regulated substance shall be subject to the deed acknowledgment requirements of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, or the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act. The notice shall include whether residential or nonresidential exposure factors were used to comply with the site-specific standard.

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

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

(ii) The notices required by this paragraph shall include a 30-day public and municipal comment period during which the municipality can request to be involved in the development of the remediation and reuse plans for the site. If requested by the municipality, the person undertaking the remediation shall develop and implement a public involvement program plan which meets the requirements of subsection (o). Persons undertaking the remediation are encouraged to develop a proactive approach to working with the municipality in developing and implementing remediation and reuse plans.

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

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

(ii) The department shall review the report or plan within no more than 90 days of its receipt or notify the person submitting the report of deficiencies. If the department does not respond with deficiencies within 90 days, the report shall be deemed approved.

(3) If the remedial investigation report, risk assessment report and cleanup plan are submitted at the same time to the department, the department shall notify persons of any deficiencies in 90 days. If the department does not respond with deficiencies within 90 days, the reports are deemed approved.

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

Section 305. Special industrial areas.

(a) Special sites.—For property used for industrial activities where there is no financially viable responsible person to clean up contamination or for land located within enterprise zones designated pursuant to the requirements of the Department of Community Affairs, the review procedures of this section shall apply for persons conducting remediation activities who did not cause or contribute to contamination on the property. Any environmental remediation undertaken pursuant to this section shall comply with one or more of the standards established in this chapter.

(b) Baseline report.—A baseline remedial investigation shall be conducted on the property based on a work plan approved by the department, and a baseline environmental report shall be submitted to the department to establish a reference point showing existing contamination on the site. The report shall describe the proposed remediation measures to be undertaken within the limits of cleanup liability found in section 502. The report shall also include a description of the existing or potential public benefits of the use or reuse of the property for employment opportunities, housing, open space, recreation or other use.

(c) Public review.—Persons undertaking the cleanup and reuse of sites under this section shall comply with the following public notice and review requirements:

(1) A notice of intent to remediate a site shall be submitted to the department which provides, to the extent known, a brief description of the location of the site, a listing of the contaminant or contaminants involved and the proposed remediation measures. The department shall publish an

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

(2) The notices required by this subsection shall include a 30-day public and municipal comment period during which the municipality can request to be involved in the development of the remediation and reuse plans for the site. If requested by the municipality, the person undertaking the remediation shall develop and implement a public involvement program plan which meets the requirements of section 304(o). Persons undertaking the remediation are encouraged to develop a proactive approach to working with the municipality in developing and implementing remediation and reuse plans.

(d) Department review.—No later than 90 days after the completed environmental report is submitted for review, the department shall determine whether the report adequately identifies the environmental hazards and risks posed by the site. The comments obtained as a result of a public involvement plan developed under section 304(o) shall also be considered by the department. The department shall notify the person submitting the report of deficiencies within 90 days. If the department does not respond within 90 days, the report is considered approved.

(e) Agreement.—The department and the person undertaking the reuse of a special industrial site shall enter into an agreement based on the environmental report which outlines cleanup liability for the property.

(f) Department actions.—A person entering into an agreement pursuant to this section shall not interfere with any subsequent remediation efforts by the department or others to deal with contamination identified in the baseline environmental report so long as it does not disrupt the use of the property.

(g) Deed notice.—Persons entering into agreements pursuant to this section shall be subject to the deed acknowledgment requirements of the act of July 7, 1980 (P.L.380, No.97), known as the Solid Waste Management Act, or the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, where applicable.

Section 306. Local land development controls.

This act shall not affect the ability of local governments to regulate land development under the act of July 31, 1968 (P.L.805, No.247), known as the Pennsylvania Municipalities Planning Code. The use of the identified property and any deed restrictions used as part of a remediation plan shall comply with local land development controls adopted under the Pennsylvania Municipalities Planning Code.

Section 307. Immediate response.

(a) Emergency response.—The provisions of this chapter shall not prevent or impede the immediate response of the department or responsible person to an emergency which involves an imminent or actual release of a regulated

substance which threatens public health or the environment. The final remediation of the site shall comply with the provisions of this chapter which shall not be prejudiced by the mitigation measures undertaken to that point.

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

Section 308. Appealable actions.

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

CHAPTER 5 CLEANUP LIABILITY PROTECTION

Section 501. Cleanup liability protection.

(a) General.—Any person demonstrating compliance with the environmental remediation standards established in Chapter 3 shall be relieved of further liability for the remediation of the site under the statutes outlined in section 106 for any contamination identified in reports submitted to and approved by the department to demonstrate compliance with these standards and shall not be subject to citizen suits or other contribution actions brought by responsible persons. The cleanup liability protection provided by this chapter applies to the following persons:

- (1) The current or future owner of the identified property or any other person who participated in the remediation of the site.
- (2) A person who develops or otherwise occupies the identified site.
- (3) A successor or assign of any person to whom the liability protection applies.
- (4) A public utility to the extent the public utility performs activities on the identified site.

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

Section 502. Special industrial areas.

(a) Agreement.—The department and the person undertaking the reuse in a special industrial area under section 305 shall enter into an agreement based on the environmental report which outlines cleanup liability for the property.

Any person included in such an agreement shall not be subject to a citizen suit, other contribution actions brought by responsible persons not participating in the remediation of the property or other actions brought by the department with respect to the property except those which may be necessary to enforce the terms of the agreement.

(b) **Liability.**—The cleanup liabilities for the person undertaking the reuse of the property shall include the following:

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

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

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

(c) **Developer or occupier.**—A person who develops or occupies the property shall not be considered a responsible person for purposes of assigning cleanup liability.

(d) **Successor or assign.**—A successor or assign of any person to whom cleanup liability protection applies for a property shall not be considered a responsible person for purposes of assigning cleanup liability, provided the successor or assign is not a person responsible for contamination on the property who did not participate in the environmental remediation action.

(e) **Public utility.**—A public utility shall not be considered a responsible person for purposes of assigning cleanup liability to the extent the public utility performs activities on the identified property, provided the public utility is not a person responsible for contamination on the property.

Section 503. Existing exclusions.

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

Section 504. New liability.

Nothing in this act shall relieve a person receiving protection from cleanup liability under this chapter from any cleanup liability for contamination later caused by that person on a site which has demonstrated compliance with one or more of the environmental remediation standards established in Chapter 3. **Section 505. Reopeners.**

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

(1) fraud was committed in demonstrating attainment of a standard at the site that resulted in avoiding the need for further cleanup of the site;

(2) new information confirms the existence of an area of previously unknown contamination which contains regulated substances that have

been shown to exceed the standards applied to previous remediation at the site;

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

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

or

(5) (i) the release occurred after the effective date of this act on a site not used for industrial activity prior to the effective date of this act;

(ii) the remedy relied in whole or in part upon institutional or engineering controls instead of treatment or removal of contamination; and

(iii) treatment, removal or destruction has become technically and economically feasible on that part.

Section 506. Authority reserved.

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

CHAPTER 7 INDUSTRIAL LAND RECYCLING FUND

Section 701. Industrial Land Recycling Fund.

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

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

(c) Funds.—In addition to any funds appropriated by the General Assembly, Federal funds and private contributions and any fines and penalties assessed under this act shall be deposited into the fund. Moneys in the fund are hereby appropriated, upon the approval of the Governor, for the purposes of this act.

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

Section 702. Industrial Sites Cleanup Fund.

(a) **Establishment.**—There is hereby established a separate account in the State Treasury, to be known as the Industrial Sites Cleanup Fund, which shall be a special fund administered by the Department of Commerce. Within 60 days of the effective date of this act, the Department of Commerce shall finalize guidelines and issue application forms to administer this fund.

(b) **Purpose.**—The Industrial Sites Cleanup Fund is to provide financial assistance to persons who did not cause or contribute to the contamination on property used for industrial activity on or before the effective date of this act and who propose to undertake a voluntary cleanup of the property. The financial assistance shall be in an amount of up to 75% of the costs incurred for completing an environmental study and implementing a cleanup plan by an eligible applicant. Financial assistance may be in the form of grants as provided in this section or low-interest loans, to be lent at a rate not to exceed 2%.

(c) **Grants.**—Grants may be made to political subdivisions or their instrumentalities or local economic development agencies for the purposes of this section if the grantee owns the site on which the cleanup is being conducted and the grantee is overseeing the cleanup. The total amount of grants awarded under this section in any one fiscal year shall not exceed 20% of the total amount of the Industrial Sites Cleanup Fund.

(d) **Loans.**—Loans meeting the requirements of subsection (b) may be made to the following categories of applicants:

(1) Local economic development agencies.

(2) Political subdivisions or their instrumentalities.

(3) Other persons determined to be eligible by the Department of Commerce.

(e) **Priority for financial assistance.**—The Department of Commerce shall take all of the following factors into consideration when determining which applicants shall receive financial assistance under this section:

(1) The benefit of the remedy to public health, safety and the environment.

(2) The permanence of the remedy.

(3) The cost effectiveness of the remedy in comparison with other alternatives.

(4) The financial condition of the applicant.

(5) The financial or economic distress of the area in which the cleanup is being conducted.

(6) The potential for economic development.

The Department of Commerce shall consult with the department when determining priorities for funding under this section.

(f) **Terms and conditions.**—The Department of Commerce shall have the power to set terms and conditions applicable to loans and grants it deems appropriate. The Department of Commerce may consider such factors as it deems relevant, including current market interest rates and the necessity to maintain the moneys in this fund in a financially sound manner. Loans may

be made based upon the ability to repay from future revenue to be derived from the cleanup, by a mortgage or other collateral, or on any other fiscal matters which the Department of Commerce deems appropriate.

(g) Funds.—In addition to any funds appropriated by the General Assembly, \$15,000,000 shall be transferred upon approval of the Governor from the Hazardous Sites Cleanup Fund established by the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, to the Industrial Sites Cleanup Fund for the purpose of implementing the program established in this section. Moneys received by the Department of Commerce as repayment of outstanding loans shall be deposited in the fund. Any interest earned by moneys in this fund shall remain in this fund. Moneys in the fund are hereby appropriated to the Department of Commerce for the purpose of implementing this section.

(h) Annual report.—The Department of Commerce shall on October 1 of each year report to the General Assembly on the grants, loans, expenditures and commitments made from this fund. The annual report shall include an evaluation of the effectiveness of this fund in recycling industrial and commercial sites. The evaluation shall include any recommendations for additional changes if necessary to improve the effectiveness of this fund in recycling such sites.

Section 703. Fees.

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

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

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

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

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

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

CHAPTER 9 MISCELLANEOUS PROVISIONS

Section 901. Plain language.

Remedial investigation, risk assessment, cleanup plans and other reports and notices required to be submitted to implement the provisions of this act

shall contain a summary or special section that includes a plain language description of the information included in the report in order to enhance the opportunity for public involvement and understanding of the remediation process.

Section 902. Permits and other requirements.

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

(b) Applicable requirements.—The department may waive in whole or in part, in writing, otherwise applicable requirements where responsible persons demonstrate that any of the following apply:

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

(2) Compliance with a requirement at a site will substantially interfere with natural or artificial structures or features.

(3) The proposed remedial action will attain a standard of performance that is equivalent to that required under the otherwise applicable requirement through the use of an alternative method or approach.

(4) Compliance with a requirement at a site will not provide for a cost-effective remedial action.

The department may not waive the remediation standards established under sections 301, 302, 303 and 304.

Section 903. Future actions.

At any time, a request may be made to the department to change the land use of the site from nonresidential to residential. The department shall only approve the request upon a demonstration that the site meets all the applicable cleanup standards for residential use of the property. Any existing deed acknowledgment contained in the deed prior to the demonstrating compliance with the residential use standard may be removed.

Section 904. Relationship to Federal and State programs.

(a) Federal.—The provisions of this act shall not prevent the Commonwealth from enforcing specific numerical cleanup standards, monitoring or compliance requirements specifically required to be enforced by the Federal Government as a condition to receive program authorization, delegation, primacy or Federal funds.

(b) State priority list.—Any remediation undertaken on a site included on the State priority list established under the act of October 18, 1988 (P.L.756, No.108), known as the *Hazardous Sites Cleanup Act*, shall be performed in compliance with the administrative record and other procedural and public review requirements of the *Hazardous Sites Cleanup Act*.

(c) Storage tanks.—The environmental remediation standards established under this act shall be used in corrective actions undertaken pursuant to the act of July 6, 1989 (P.L.169, No.32), known as the *Storage Tank and Spill Prevention Act*. However, the procedures in the *Storage Tank and Spill*

Prevention Act for reviewing and approving corrective actions shall be used in lieu of the procedures and reviews required by this act.

(d) Agricultural chemical facilities.—The environmental remediation standards and procedures established under this act shall be used in any remediation undertaken at an agricultural chemical facility. The Department of Agriculture shall have the power and its duty shall be to promulgate regulations providing for the option of safely reusing soil and groundwater contaminated with agricultural chemicals generated as a result of remediation activities at agricultural chemical facilities through the land application of these materials on agricultural lands. Such regulations shall provide for the appropriate application rates of such materials, either alone or in the combination with other agricultural chemicals, and¹ prescribe appropriate operations controls and practices to protect the public health, safety and welfare and the environment at the site of land application.

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

Section 905. Enforcement.

(a) General.—The department is authorized to use the enforcement and penalty provisions applicable to the environmental medium or activity of concern, as appropriate, established under 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 July 13, 1988 (P.L.525, No.93), referred to as the Infectious and Chemotherapeutic Waste Law, the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, or the act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank and Spill Prevention Act, to enforce the provisions of this act.

(b) No defense to illegal activities.—The provisions of this act do not create a defense against the imposition of criminal and civil fines or penalties or administrative penalties otherwise authorized by law and imposed as the result of the illegal disposal of waste or for the pollution of the land, air or waters of this Commonwealth on the identified site.

(c) Fraud.—Any person who willfully commits fraud demonstrating attainment with one or more standards established under this act shall, upon conviction, be subject to an additional penalty of \$50,000 for each separate offense or to imprisonment for a period of not more than one year for each separate offense, or both. Each day shall be a separate offense.

(d) Criminal convictions.—If a person is convicted in a court of competent jurisdiction of a violation of the criminal provisions of an act identified in section 106 in the degree of misdemeanor or felony and the

¹“and” omitted in enrolled bill.

violation arises from unlawful conduct which results in a release at a site, the court may, in addition to any fines, imprisonment or other penalties imposed under the appropriate act, order the person to perform remediation at the site consistent with the provisions and standards established under section 302 or 303.

Section 906. Past penalties.

Persons who have no responsibility for contamination on a site and participate in environmental remediation activities under this act shall not be responsible for paying any fines or penalties levied against any person responsible for contamination on the property.

Section 907. Evaluation.

Beginning three years after the effective date of this act and every two years thereafter, the department shall conduct and submit to the General Assembly an evaluation of the effectiveness of this act in recycling existing industrial and commercial sites. The evaluation shall include any recommendations for additional incentives or changes, if needed, to improve the effectiveness of this act in recycling such sites.

Section 908. Repeals.

(a) Absolute.—Section 504(b) through (d) of the act of October 18, 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, are repealed.

(b) General.—All other acts and parts of acts are repealed insofar as they are inconsistent with this act and related to environmental remediation.

Section 909. Effective date.

This act shall take effect in 60 days.

APPROVED—The 19th day of May, A.D. 1995.

THOMAS J. RIDGE