

HOUSE BILL 1728 P.N. 4180
AMENDED

SENATE

PRIOR PRINTER'S NOS. 2133, 3414, 3597,
NO. 4180
4083

PRINTER'S

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1728 Session of 1999

INTRODUCED BY BROWNE, SEMMEL, ADOLPH, ARGALL, BARD,
BELFANTI,
CORRIGAN, FREEMAN, GRUCELA, HENNESSEY, MANN, ROONEY,
SCRIMENTI, SNYDER, E. Z. TAYLOR, WILLIAMS,
YOUNGBLOOD,
YUDICHAK, STEELMAN, RAYMOND AND SAMUELSON, JUNE 21,
1999

AS SENATOR TILGHMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED
AMENDED, NOVEMBER 14, 2000

AN ACT

1 Amending the act of December 7, 1990 (P.L.639, No.165),
entitled
2 "An act establishing a Statewide hazardous material
safety

3 program; creating the Hazardous Material Response
Fund;
4 providing for the creation of Hazardous Material
Emergency
5 Response Accounts in each county; further providing
for the
6 powers and duties of the Pennsylvania Emergency
Management
7 Agency, of the Pennsylvania Emergency Management
Council and
8 of the counties and local governments; imposing
obligations
9 on certain handlers of hazardous materials; and
imposing
10 penalties," further providing for additional powers
and
11 duties for the Pennsylvania Emergency Management
Agency, for
12 definitions, for establishment and functions of local
13 emergency planning committees, for hazardous material
safety
14 program, for emergency reporting and notification
15 requirements, for establishment of funds, for
emergency
16 management grants, for facility and vehicle
inspection and
17 testing, for immunity from civil liability and for
18 enforcement; and making editorial changes.

19 The General Assembly of the Commonwealth of
Pennsylvania
20 hereby enacts as follows:
21 Section 1. Sections 102, 103, 201, 203, 204, 205,
206, 207,
22 208, 209, 210, 211, 212, 213, 301 and 303 of the act of
December
23 7, 1990 (P.L.639, No.165), known as the Hazardous
Material

1 Emergency Planning and Response Act, are amended to
read:

2 Section 102. Legislative findings and purpose.

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

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

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

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

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

1 (4) Create the Hazardous Material Response Fund
to
2 provide financial assistance to Commonwealth agencies
and
3 counties to develop an effective and integrated
response
4 capability to the health hazards, dangers and risks
which
5 hazardous material releases pose to the general
public.
6 (5) Establish an emergency notification system
whereby
7 the release of hazardous materials occurring at a
facility or
8 resulting from a transportation accident will be
promptly
9 reported to the [proper Commonwealth] Pennsylvania
Emergency
10 Management Agency and county emergency [response
officials]
11 management agency.
12 (6) Assign responsibilities to various
Commonwealth
13 agencies and local agencies to ensure the development
and
14 furtherance of a comprehensive hazardous material
safety
15 program.
16 (7) Provide civil liability protection to
officials and
17 emergency response personnel of the Commonwealth and
18 municipalities who are properly carrying out their
duties and
19 responsibilities under the Commonwealth's hazardous
material
20 safety program.
21 (8) Require persons responsible for the release
of
22 hazardous materials to pay the costs incurred by
certified

23 hazardous material response teams [or] and supporting
paid
24 and volunteer emergency service organizations for
emergency
25 response activities [necessitated] caused by the
hazardous
26 material release.

27 Section 103. Definitions.

28 The following words and phrases when used in this act
shall

29 have the meanings given to them in this section unless
the

30 context clearly indicates otherwise:

19990H1728B4180

- 3 -

1 "Certified hazardous material response team." A team
of

2 individuals who are certified and organized by a
Commonwealth

3 agency, a local agency, a regional hazardous material
4 organization, a transporter, a manufacturer, supplier or
user of

5 hazardous materials, or a volunteer service
organization, or a

6 private contractor, for the primary purpose of providing
7 emergency response services to mitigate actual or
potential

8 immediate threats to public health and the environment
in

9 response to the release or threat of a release of a
hazardous

10 material, which is certified, trained and equipped in
accordance

11 with this act [or regulations promulgated under this
act].

12 Hazardous material response teams may also be certified
to

13 perform stabilization actions needed to remove threats
to public

14 health and the environment from hazardous material
releases.

15 "Commonwealth agency." An executive agency or
independent

16 agency.
17 "Council." The Pennsylvania Emergency Management
Council.
18 "County." Includes, but is not limited to, a city of
the
19 first class coterminous with a county of the first
class.
20 "County commissioner." Includes, but is not limited
to, the
21 mayor of a city of the first class coterminous with a
county of
22 the first class, or the designee of such mayor, and the
23 equivalent county official designated under a home rule
charter
24 or optional plan adopted under the act of April 13, 1972
25 (P.L.184, No. 62), known as the Home Rule Charter and
Optional
26 Plans Law.
27 "County emergency management coordinator." The
person
28 designated to perform emergency management functions by
the
29 county under 35 Pa.C.S. Part V (relating to emergency
management
30 services).
19990H1728B4180 - 4 -

1 "Emergency management." The judicious planning,
assignment
2 and coordination of all available resources in an
integrated
3 program of prevention, mitigation, preparedness,
response and
4 recovery for emergencies of any kind, whether from
attack,
5 manmade or natural sources.
6 "Emergency Service Organization." A team of
individuals
7 organized by a Commonwealth agency, a local agency or
any other
8 entity for the primary purpose of providing emergency
services

9 as defined in 35 Pa.C.S. § 7102 (relating to definitions).

10 "Executive agency." [The Governor and the departments,

11 boards, commissions, authorities and other nonlegislative

12 officers and agencies of the Commonwealth, except any court or

13 other officer or agency of the unified judicial system or the

14 General Assembly and its officers and agencies or any

15 independent agency] A department, board, commission, authority,

16 officer or agency of the Executive Department, subject to the

17 policy, supervision and control of the Governor.

18 "Extremely hazardous substance." A substance appearing on

19 the list of extremely hazardous substances published by the

20 administrator of the Federal Environmental Protection Agency

21 under the authority of section 302 of the Federal Emergency

22 Planning and Community Right-To-Know Act of 1986 (Title III,

23 Public Law 99-499, 42 U.S.C. § 11002), as set forth at 40 CFR

24 Part 355 ("Appendix A - The List of Extremely Hazardous Substances and Their Threshold Planning Quantities"), or

25 appearing on any successor list of extremely hazardous

26 substances published by the Administrator of the Federal

27 Environmental Protection Agency under the authority of section

28 302 of SARA, Title III.

29 "Facility." All buildings, structures and other stationary

19990H1728B4180

- 5 -

1 items which are located on a single site or a contiguous or

2 adjacent site which are owned or operated by the same person and

3 which actually manufacture, produce, use, transfer,
store,
4 supply or distribute any hazardous material. The term
includes
5 railroad yards and truck terminals but does not include
6 individual trucks, rolling stock, water vessels,
airplanes or
7 other transportation vehicles.

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

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

14 include the following:

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

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

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

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

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

1 "Hazardous material." Any of the following, as
defined in
2 this act:
3 (1) A hazardous substance.
4 (2) An extremely hazardous substance.
5 (3) A hazardous chemical.
6 (4) A toxic chemical.
7 [Except as provided in section 206, the term does not
include
8 the transportation, including the storage incident to
such
9 transportation, of any substance or chemical subject to
the
10 requirements of this act, including the transportation
and
11 distribution of natural gas.]
12 "Hazardous substance." A substance appearing on the
list of
13 hazardous substances prepared under section 102 of the
14 Comprehensive Environmental Response, Compensation, and
15 Liability Act of 1980 (Public Law 96-510, 94 Stat.
2767), as set
16 forth at 40 CFR Part 302 ("Table 302.4 - List of
Hazardous
17 Substances and Reportable Quantities"), or appearing on
any
18 successor list of hazardous substances prepared under
section
19 102 of the Comprehensive Environmental Response,
Compensation,
20 and Liability Act of 1980.
21 "Independent agency." [Boards, commissions,
authorities and
22 other agencies and officers of the Commonwealth which
are] A
23 board, commission, authority or officer of the Executive
24 Department which is not subject to the policy,
supervision and
25 control of the Governor[, except]. The term does not
include any
26 court or other officer or agency of the unified judicial
system

27 or the General Assembly and its officers and agencies.
28 "Local agency." A municipality or any officer or
agency
29 thereof.
30 "Local emergency planning committee" or "local
committee."

19990H1728B4180

- 7 -

1 The local committee within each emergency planning
district
2 responsible for preparing hazardous material plans and
3 performing other functions under the Emergency Planning
and
4 Community Right-To-Know Act of 1986 (Title III, Public
Law 99-
5 499, 42 U.S.C. § 11001 et seq.).
6 "Mentoring council." A voluntary organization of
companies
7 which handle, manufacture, use or distribute chemicals
and other
8 interested groups, formed in conjunction with a local
emergency
9 planning committee with the primary purpose of improving
safe
10 work practices.
11 "PEMA." The Pennsylvania Emergency Management
Agency.
12 "Person." An individual, corporation, firm,
association,
13 public utility, trust, estate, public or private
institution,
14 group, Commonwealth or local agency, political
subdivision, and
15 any legal successor, representative or agency of the
foregoing.
16 "Regional hazardous material organization." A
nonprofit
17 corporation, joint venture or authority formed under the
laws of
18 this Commonwealth which either contracts with or is
organized by
19 one or more Commonwealth agencies, local agencies or
volunteer

20 service organizations for the purpose of creating,
training,
21 equipping, maintaining and providing one or more
hazardous
22 material response teams to serve any specific geographic
area as
23 approved by the Pennsylvania Emergency Management
Council
24 within, but not limited to, the Commonwealth under this
act.
25 "Release." Any spilling, leaking, pumping, pouring,
26 emitting, emptying, discharging, injecting, escaping,
leaching,
27 dumping or disposing into the environment of a hazardous
28 material, including, but not limited to, the abandonment
or
29 discarding of barrels, containers and other receptacles
30 containing a hazardous material.
19990H1728B4180 - 8 -

1 "Reportable quantity." The quantity of a hazardous
material
2 stated on the various lists of hazardous substances and
3 extremely hazardous substances as defined in this
section, the
4 release of which shall be reported under this act.
5 "Rolling stock." Any railroad tank car, railroad
boxcar or
6 other railroad freight car as defined in 49 CFR 215, or
its
7 successor, that contains an extremely hazardous
substance in
8 excess of the threshold planning quantity established
for such
9 substance and is used as a storage site for such
substance.
10 "SARA, Title III." The Emergency Planning and
Community
11 Right-to-Know Act of 1986 (Title III, Public Law 99-499,
42
12 U.S.C. § 11001 et seq.).
13 "Service stations." A motor vehicle service station,
filling

14 station, garage or similar operation engaged in the
retail sale
15 of motor fuels that are regulated by the act of July 6,
1989
16 (P.L.169, No.32), known as the Storage Tank and Spill
Prevention
17 Act, or a facility whose primary function is auto body
repair.
18 "Toxic chemical." A substance appearing on the list
of
19 chemicals described in section 313 of SARA (Title III,
Public
20 Law 99-499, 42 U.S.C. § 11023), as set forth at 40 CFR
Part 372,
21 or appearing on any successor list of chemicals set
forth in the
22 Code of Federal Regulations under the authority of
section 313
23 of SARA, Title III.
24 "Unified judicial system." The unified judicial
system
25 existing under section 1 of Article V of the
Constitution of
26 Pennsylvania.
27 "Vehicle." Any truck, railroad car, water vessel,
airplane
28 or other transportation vehicle that ships, carries or
29 transports a hazardous material on any highway, rail
line or
30 waterway within the jurisdictional boundaries of this
19990H1728B4180 - 9 -

1 Commonwealth.
2 Section 201. Designation and functions of Pennsylvania
3 Emergency Management Council.
4 (a) Council.--The Pennsylvania Emergency Management
Council,
5 established and organized under the act of November 26,
1978
6 (P.L.1332, No.323), known as the Emergency Management
Services
7 Code, is designated and shall constitute the
Commonwealth's

8 emergency response commission to carry out the
responsibilities
9 assigned to the Commonwealth by SARA, Title III, to
develop
10 overall policy and direction for a Statewide hazardous
material
11 safety program and to supervise and coordinate the
12 responsibilities of the local emergency planning
committees.

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

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

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

30 (e) Meetings.--For the conduct of routine or
emergency

1 business, the council shall meet at the call of the
chairperson.

2 Five members of the council shall constitute a quorum
for the

3 purpose of conducting the business of the council and
for all

4 other purposes. All actions of the council shall be
taken by a

5 majority of the council members present. The council
shall be

6 subject to [the act of July 3, 1986 (P.L.388, No.212),
known as <--

7 the Sunshine Act] 65 PA.C.S. CH. 7 (RELATING TO OPEN
MEETINGS). <--

8 (f) Staff.--The council shall supervise PEMA as its
primary

9 agent responsible for performing the functions and
duties of the

10 council established under this act. For this purpose,
PEMA shall

11 employ such professional, technical, administrative and
other

12 staff personnel as may be deemed essential to carry out
the

13 purposes of this act and the development and maintenance
of a

14 comprehensive Commonwealth hazardous material safety
program and

15 report directly to the council.

16 (g) Powers and duties.--The council shall have the
duty and

17 power to:

18 (1) Carry out all of the duties and
responsibilities of

19 a State emergency response commission as specified in
SARA,

20 Title III.

21 (2) Promulgate as provided by law any rules and
22 regulations necessary to carry out and implement this

act and

23 SARA, Title III.

24 (3) Develop Commonwealth agency contingency
plans

25 relating to the implementation of this act and SARA,
Title

26 III.

27 (4) Provide guidance and direction to counties
for the
28 implementation of this act and SARA, Title III.
29 (5) Supervise the operation of local committees
and
30 ensure that local committees meet all Federal and
19990H1728B4180 - 11 -

1 Commonwealth standards and requirements as provided
by law.

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

4 (7) Delegate authority and assign primary
responsibility

5 to the Department of Labor and Industry for
receiving,

6 processing and managing hazardous chemical
information forms

7 and data, trade secrets and public information
requests under

8 this act and in coordination with the act of October
5, 1984

9 (P.L.734, No.159), known as the Worker and Community
Right-

10 to-Know Act. Emphasis should be given to
electronically

11 processing the information reported under this act to
12 maximize its use in emergency response and to enhance
its

13 availability to the public.

14 (8) Delegate authority and assign responsibility
to the

15 Department of Environmental [Resources] Protection
and the

16 Department of Health for providing technical advice
and

17 assistance consistent with established departmental
18 responsibilities in the alleviation of public health
and

19 environmental hazards associated with hazardous
material

20 releases or threatened releases of hazardous
materials,
21 including, but not limited to, dispatching emergency
response
22 personnel to accident sites during emergency
situations when
23 requested by PEMA. This act shall not affect any
existing
24 authority these agencies have to respond to hazardous
25 material releases.
26 (9) Prescribe duties and responsibilities for
27 Commonwealth agencies, counties and local emergency
planning
28 committees to conduct comprehensive emergency
management
29 activities consistent with this act.
30 (10) Prescribe standards for hazardous material
response
19990H1728B4180 - 12 -

1 team training or certification, the equipping of
hazardous
2 material response team units and other matters
involving
3 hazardous material response activities.
4 (11) Develop a public information, education and
5 participation program for the public and facility
owners
6 covering the requirements of this act and the Worker
and
7 Community Right-to-Know Act and interpretation of the
8 chemical information collected under this act and the
risks
9 those chemicals pose to the public health and
environment.
10 (12) Develop a mechanism or guidelines for the
use of
11 local emergency planning committees to act as boards
of
12 arbitration for resolving cost recovery disputes
concerning
13 those costs defined in section 210(c) that arise
between a

14 person who causes a release of a hazardous material
and the
15 organizers of any certified hazardous material
response teams
16 [and/or] or emergency service organizations that
responded to
17 the hazardous material release.
18 (13) Do all other acts and things necessary for
the
19 exercise of the powers and duties of the council and
for the
20 implementation of this act and SARA, Title III.
21 (h) Council expenses.--The council shall develop a
specific
22 operating budget to implement the provisions of this act
which
23 shall be submitted separately by PEMA with its regular
budget
24 each year, subject to the requirements of section 207.
25 [(i) Advisory committee.--The council shall appoint
a
26 Hazardous Material Emergency Planning and Response
Advisory
27 Committee from the members of the council and other
persons
28 representative of those groups affected by this act as
the
29 council chairman may determine. Meetings of the
committee shall
30 be convened by PEMA for the purpose of reviewing
guidelines,

19990H1728B4180

- 13 -

1 standards or regulations developed to implement this
act. PEMA
2 shall participate in all meetings of the advisory
committee and
3 provide administrative support. For the purpose of
convening
4 meetings, a majority of the advisory committee members
shall
5 constitute a quorum.]

6 Section 203. Establishment and functions of local
emergency

7 planning committees.

8 (a) Local emergency planning committees.--In order
to carry

9 out the provisions of Federal and Commonwealth law, a
minimum of

10 one local emergency planning committee shall be
established in

11 each county. The local committee shall elect a chairman
from

12 among its members. The local committee shall be subject
to the

13 supervision of the council and shall cooperate with the
county

14 emergency management agency and SARA facilities to
prepare the

15 emergency response plans required by section 303 of
SARA, Title

16 III, for facilities where extremely hazardous chemicals
are

17 present.

18 (b) Membership.--A local committee shall be composed
of the

19 county emergency management coordinator, one county
commissioner

20 and at least one person selected from each of the
following

21 groups:

22 (1) Elected officials representing local
governments

23 within the county.

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

26 (3) Firefighting personnel.

27 (4) Civil defense and emergency management
personnel.

28 (5) Broadcast and print media.

29 (6) Community groups not affiliated with
emergency

30 service groups.

19990H1728B4180

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

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

8 (d) Appointment.--The members of a local committee
shall be
9 appointed by the council from a list of nominees
submitted by

10 the governing body of the county. The list of nominees
shall

11 contain the names of at least one person from each of
the groups

12 enumerated in subsection (b). Upon the failure of the
governing

13 body of a county to submit a list of nominees to the
council

14 within a time fixed by the council, the council may
appoint

15 members at its pleasure.

16 (e) Vacancies.--[Within 60 days of] As soon as
practicable

17 after the occurrence of a vacancy, the council shall
appoint, in

18 the manner provided in subsection (d), a successor
member to a

19 local committee for the remainder of the unexpired term
of the

20 member for which the vacancy exists. A vacancy shall
occur upon

21 the death, resignation, disqualification or removal of a
member

22 of a local committee.

23 (f) Meetings.--For the conduct of routine or
emergency

24 business, the local committee shall meet at the call of
the

25 chairperson. A majority of the members of the local
committee,

26 or such other number of members of the local committee
as set by

27 the local committee, shall constitute a quorum for the
purpose
28 of conducting the business of the local committee and
for all
29 other purposes. All actions of the local committee shall
be
30 taken by a majority of the local committee members
present. The
19990H1728B4180 - 15 -

1 local committee shall be subject to [the act of July 3,
1986 <--
2 (P.L.388, No.84), known as the Sunshine Act] 65 PA.C.S.
CH. 7 <--
3 (RELATING TO OPEN MEETINGS).
4 (g) Duties.--A local committee shall have the duty
and
5 authority to:
6 (1) Make, amend and repeal bylaws and other
procedures
7 in order to carry out the duties, requirements and
8 responsibilities of a local committee as set forth in
SARA,
9 Title III, and as required by the council.
10 (2) Take appropriate actions to ensure the
11 implementation and updating of the local emergency
response
12 [plan] plans required by this act.
13 (3) Report to the council on alleged violations
of this
14 act.
15 (4) Prepare reports, recommendations or other
16 information related to the implementation of this
act, as
17 requested by the council.
18 (5) Meet, when appropriate, with any
Commonwealth agency
19 or local or regional agency which is empowered to
exercise
20 the governmental functions of planning and zoning, to
21 regulate land use and land use development, or to
authorize

22 the siting of a facility within the county to discuss
and
23 review with the Commonwealth agency and local agency
all
24 mitigation factors necessary to protect the health,
safety
25 and welfare of the general public from a potential
release of
26 hazardous materials from a proposed facility.
Mitigation
27 factors include, but are not limited to,
environmental
28 impacts, shelter and evacuation feasibility,
emergency
29 warning and communications, availability of response
30 equipment and future population and economic growth
in the
19990H1728B4180 - 16 -

1 area of the proposed facility.
2 (6) Accept and deposit into its county Hazardous
3 Material Emergency Response Account any grants, gifts
or
4 other funds received which are intended for the
purpose of
5 carrying out this act.
6 (h) Expenses.--The administrative and operational
expenses
7 of a local committee may be paid through a combination
of
8 sources by the county from the fees collected by the
county,
9 from grants received from the council in accordance with
the
10 provisions of sections 207 and 208, respectively, or by
11 accepting private donations.
12 (i) Agency and compensation for injury.--A member of
a local
13 committee shall be an agent of the council and shall be
deemed a
14 duly enrolled emergency management volunteer for the
purposes of

15 35 Pa.C.S. § 7706 (relating to compensation for
accidental
16 injury).
17 (j) Advisory capacity.--The local committee may
perform
18 other emergency management advisory duties as requested
by
19 county elected officials.
20 (k) Plan provisions.--Each emergency plan shall
include, but
21 not be limited to, each of the following:
22 (1) Identification of the facility subject to
the
23 requirements of section 303 of SARA, Title III,
within the
24 county, identification of routes likely to be used
for the
25 transportation of substances on the list of extremely
26 hazardous substances and identification of additional
27 facilities contributing or subjected to additional
risk due
28 to their proximity to the facility subject to the
29 requirements of this section, such as hospitals or
natural
30 gas facilities.

19990H1728B4180

- 17 -

1 (2) Methods and procedures to be followed by
facility
2 owners and operators and local emergency and medical
3 personnel to respond to any release of such
substances.
4 (3) Designation of a county emergency management
5 coordinator and facility emergency coordinators, who
shall
6 make determinations necessary to implement the plan.
7 (4) Procedures providing reliable, effective and
timely
8 notification by the facility emergency coordinators
and the
9 county emergency management coordinator to persons
designated

10 in the emergency plan, and to the public, that a
release has
11 occurred, consistent with the notification
requirements of
12 section 304 of SARA, Title III.
13 (5) Methods for determining the occurrence of a
release,
14 and the area or population likely to be affected by
such
15 release.
16 (6) A description of emergency equipment [and
facilities
17 in the county and] at each facility in the county
subject to
18 the requirements of this section, and an
identification of
19 the persons responsible for such equipment and
facilities.
20 The facility's equipment list shall be included in
the plan.
21 Community equipment lists may be maintained in the
22 county/municipal emergency operations centers.
23 (7) Evacuation plans, including provisions for a
24 precautionary evacuation and alternative traffic
routes.
25 (8) [Training] Refer to the location of training
26 programs, including schedules for training of local
emergency
27 response and medical personnel.
28 (9) [Methods and] Refer to the location of
schedules for
29 exercising the emergency plan.
30 (10) The latitude and longitude of the facility.
19990H1728B4180 - 18 -

1 (11) The vulnerability radius for each extremely
2 hazardous substance that meets threshold planning
quantity
3 requirements.
4 (12) All appropriate response organizations that
would
5 likely be called to the facility in the event of an
6 emergency.

7 (13) The location, quantity and type of any
extremely
8 hazardous substance that meets the threshold planning
9 quantity at the facility.
10 (14) A standard list of information to be
collected for
11 each emergency in the initial notification system.
12 (15) A statement the local emergency planning
committee
13 will review the results of emergency response
activities and
14 hazardous material exercises to incorporate relevant
15 adjustments to the plan.
16 (l) Mentoring council.--Nothing in this act shall
prohibit
17 the creation of an additional voluntary council formed
for the
18 purpose of furthering education and outreach to
facilities to
19 ensure awareness of and have access to safety tools and
20 resources necessary to effectively implement and comply
with the
21 requirements of this act.
22 Section 204. Hazardous material safety program.
23 (a) Program components.--In conjunction with the
Departments
24 of Environmental [Resources] Protection, Health,
Transportation,
25 Agriculture, Labor and Industry and [Commerce] Community
and
26 Economic Development, Pennsylvania Public Utility
Commission,
27 Fish and Boat Commission, Pennsylvania Turnpike
Commission and
28 the Pennsylvania State Police, or any other Commonwealth
29 agencies as determined by the council, PEMA shall
develop a
30 hazardous material safety program for incorporation into
the

19990H1728B4180

- 19 -

2 Plan developed by PEMA under 35 Pa.C.S. Pt. V (relating
to

3 emergency management services). The hazardous material
safety

4 program shall include an assessment of the potential
dangers and

5 risks that hazardous material releases occurring at
facilities

6 and from transportation-related accidents pose to the
general

7 public and the environment. The Pennsylvania State Fire
Academy

8 shall be utilized as [a primary training facility] the
9 Commonwealth's center for hazardous materials training

pursuant

10 to its duties under [35 Pa.C.S. § 7316(c) (relating to
11 Pennsylvania State Fire Academy). The council may also

utilize

12 other institutions that have in place appropriate
training

13 resources, such as the Center for Hazardous Materials
Research

14 at the University of Pittsburgh's Applied Research
Center, to

15 fulfill its training responsibilities] the act of
November 13,

16 1995 (P.L.604, No.61), known as the State Fire
Commissioner Act.

17 The program shall also consider the impacts,
consequences and

18 necessary protective measures required to respond to and
19 mitigate the effects of such releases and accidents. The

program

20 shall include, but not be limited to:

21 (1) Development of comprehensive emergency
management

22 guidance for hazardous materials for the Commonwealth
and

23 Commonwealth agencies which sets forth the specific
duties,

24 responsibilities, roles and missions of Commonwealth
25 agencies.

26 (2) Development of comprehensive emergency
management

27 guidance consistent with the Emergency Management
Services

28 Code for hazardous materials that can be used by the
local

1 (3) Development of specific procedures for
counties to
2 complete [the Hazardous Material Emergency Response
3 Preparedness Assessment within 30 days of the
effective date
4 of this act] periodic reports conforming to the
requirements
5 of subsection (b.1) as required by PEMA on the status
and
6 capabilities of each county's hazardous materials
safety
7 program.

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

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

24 (6) Training and equipping local agency public
safety
25 and emergency response personnel.
26 (7) Establishing training standards and a
certification
27 program for the formation of Commonwealth agency,
local
28 agency or regional hazardous material response teams.
All
29 Commonwealth agency, supporting paid and volunteer
emergency
30 service organizations, local agency or other agencies
and
19990H1728B4180 - 21 -

1 committees that establish training standards for
emergency
2 service, law enforcement, firefighting or other
personnel
3 shall cooperate with the council in the
implementation of
4 these training standards and certification program.
5 (8) [Periodical] Periodic exercise of hazardous
material
6 release scenarios at facilities and transportation
sites that
7 are designed to test the response capabilities of
8 Commonwealth agency, local agency and regional public
safety
9 and emergency response personnel and certified
hazardous
10 materials response teams.
11 (9) Assistance in procuring of specialized
hazardous
12 material response supplies and equipment to be used
by local
13 and regional public safety and emergency response
personnel.
14 (10) PEMA's staffing and operation of a 24-hour
State
15 emergency operations center to provide effective
emergency

16 response coordination for all types of natural and
manmade
17 disaster emergencies, including the ability to
receive and
18 monitor the emergency notification reports required
under
19 sections 205 and 206 from all facilities and
transporters
20 involved with hazardous material incidents.
21 (11) Provisions for financial assistance to
counties as
22 provided in sections 207 and 208 and for the payment
of
23 compensation benefits awarded to duly enrolled
emergency
24 management volunteers under 35 Pa.C.S. § 7706
(relating to
25 compensation for accidental injury).
26 [(b) County preparedness assessment.--
27 (1) Within one year of the completion of
procedures
28 called for in subsection (a)(3), counties shall
develop and
29 submit to the council a Hazardous Material Emergency
Response
30 Preparedness Assessment. The assessment shall be
updated
19990H1728B4180 - 22 -

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

9 (3) The assessment shall include the following:
10 (i) Potential threats posed by facilities
requiring 11 emergency response plans under section 303 of
SARA, Title 12 III, and other concentrations of hazardous
materials in 13 the county or in areas immediately adjacent to
the county 14 that may pose a threat.
15 (ii) Potential threats posed by hazardous
material 16 transported by highway and railroad in the
county. 17 (iii) Identification of existing
capabilities to 18 respond to hazardous material releases, including
19 personnel, equipment, training, planning and
20 identification of existing hazardous material
response 21 zones.
22 (iv) Selection of an option to comply with
this act 23 under section 209(e) and identification of the
need for 24 personnel, equipment, training and planning
needed to 25 respond to the potential threats, including the
26 designation of proposed levels of preparedness
for local 27 or regional response teams and proposed local or
regional 28 response zones.
29 (v) Identification of other resources needed
to 30 implement the provisions of this act and to
support the

19990H1728B4180

- 23 -

1 local emergency planning committee.
2 (vi) An audit of the Hazardous Material
Emergency 3 Response Account.

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

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

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

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

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

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

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

1 (4) Selection of an option to comply with this
act under
2 section 209(e) and identification of the need for
personnel,
3 equipment, training and planning needed to respond to
the
4 potential threats, including the designation of
proposed
5 levels of preparedness for local or regional response
teams
6 and proposed local or regional response zones.
7 (5) Identification of other resources needed to
8 implement the provisions of this act and to support
the local
9 emergency planning committee.
10 (6) An audit of the Hazardous Material Emergency
11 Response Account.
12 (7) Such other information as PEMA may deem
necessary.
13 Section 205. Emergency reporting requirements.
14 (a) Requirements.--The owner or operator of a
facility in
15 this Commonwealth shall comply with the following
requirements:
16 (1) The owner or operator of a facility in this
17 Commonwealth covered under section 302 of SARA, Title
III,
18 shall comply with the emergency planning and
notification
19 requirements under sections 302 and 303 of SARA,
Title III.
20 (2) The owner or operator of a facility in this
21 Commonwealth covered under section 311 of SARA, Title
III,
22 shall comply with the reporting requirements under
sections
23 311 and 312 of SARA, Title III. The reporting
threshold for <--
24 all hazardous chemicals as defined by the
Occupational Safety
25 and Health Administration shall be 10,000 pounds and
shall
26 report information concerning any employee who
required

27 medical treatment as a result of such emergency.
28 (3) The owner or operator of a facility in this
29 Commonwealth subject to section 313 of SARA, Title
III, shall
30 comply with the toxic chemical release form
requirements
19990H1728B4180 - 25 -

1 under section 313 of SARA, Title III.
2 (4) The owner of a facility in this Commonwealth
subject
3 to the requirements of paragraphs (2) and (3) shall
comply
4 with the procedures for providing information under
section
5 323 of SARA, Title III.
6 (5) The owner or operator of a facility in this
7 Commonwealth covered under section 304 of SARA, Title
III,
8 shall comply with the notification requirements of
section
9 304 of SARA, Title III, and section 206 of this act.
10 (a.1) Report to health care provider.--The owner or
operator <--
11 of a facility in this Commonwealth shall report to the
health
12 care provider, in the same manner as required by this
section,
13 the appropriate safety data sheet on the material
necessary for
14 medical treatment given to any employee of the facility
who came
15 into contact with a hazardous or extremely hazardous
substance
16 even though the amount of such substance may be less
than the
17 reporting threshold.
18 (A.1) REPORT TO HEALTH CARE PROVIDER.--WHEN AN
EMPLOYEE OF A <--
19 FACILITY IS EXPOSED TO A SUBSTANCE COVERED BY SARA,
TITLE III
20 AND THE SUBSTANCE IS OVER THE REPORTING THRESHOLD, THE
OWNER OR <--

21 OPERATOR OF THE FACILITY SHALL PROVIDE TO THE HEALTH CARE

22 PROVIDER THE APPROPRIATE MATERIAL SAFETY DATA SHEET NECESSARY

23 FOR APPROPRIATE MEDICAL TREATMENT.

24 (b) Document repository.--For the purposes of complying with

25 the reporting requirements set forth in sections 311, 312 and

26 313 of SARA, Title III, the owner or operator of any facility

27 shall submit its material safety data sheets or chemical lists,

28 emergency and hazardous chemical inventory forms and toxic

29 chemical release forms to the Department of Labor and Industry,

30 which is the council's repository for those documents at the

19990H1728B4180

- 26 -

1 State level.

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

3 has one or more rolling stock, whether owned or leased, located

4 within its property boundaries for any period of time in excess

5 of [30] five days continuous days and containing an extremely

6 hazardous substance in excess of the threshold planning quantity

7 shall notify the council and the appropriate local committee of

8 that fact and shall [prepare] assist the local committee in

9 preparing an emergency response plan, which contains those

10 provisions that either the council or the appropriate local

11 committee directs, in order to deal with any potential release

12 of an extremely hazardous substance from that rolling
stock.

13 (d) Facility duties.--The owner or operator of any
facility

14 that manufactures, produces, uses, transfers, stores,
supplies

15 or distributes any hazardous material after the
effective date

16 of this subsection shall:

17 (1) Provide the emergency planning notification
and

18 information required by section 302(c) and 303(d) of
SARA,

19 Title III, to the council and the appropriate local
emergency

20 planning committee within five business days after an

21 extremely hazardous substance is first present at
such

22 facility.

23 (2) Submit its material safety data sheets or
chemical

24 lists and emergency hazardous chemical inventory
forms to the

25 Department of Labor and Industry, the appropriate
local

26 emergency planning committee, and the fire department
with

27 jurisdiction over the facility within five business
days

28 after the hazardous chemical is first present at the

29 facility. The owner or operator shall also comply
with the

30 requirements of section 311(d)(2) of SARA, Title III
within

19990H1728B4180

- 27 -

1 five business days.

2 Section 206. Emergency notification requirements.

3 (a) Facility or transportation accident or
incident.--Except

4 as provided in subsection (e), the owner or operator of
a

5 facility that manufactures, produces, uses, imports,
exports,
6 stores, supplies or distributes any hazardous substance
or
7 extremely hazardous substance and the owner or operator
of a
8 vehicle that ships, transports or carries any hazardous
9 substance or extremely hazardous substance to, within,
through
10 or across this Commonwealth shall immediately report the
release
11 of the substance which exceeds the reportable quantity
and which
12 extends beyond the property boundaries of the facility
or which
13 results from a transportation accident or incident to
the
14 appropriate Commonwealth and county emergency response
office as
15 follows:
16 (1) Two notifications shall be made by the owner
or
17 operator of a facility. The first call shall be to
the 24-
18 hour response telephone number of the county office
19 designated and acting as the emergency response
coordinator
20 for the local committee, which may be known as the
county
21 emergency management office 24-hour response number.
The
22 second call shall be made to the PEMA 24-hour
response
23 number.
24 (2) Notification shall be made by the owner or
operator
25 of a vehicle by dialing 911 or, in the absence of a
911
26 emergency telephone number, calling the operator in
order to
27 notify the county emergency management office 24-hour
28 response number within whose jurisdiction the
transportation
29 accident or incident has occurred, and reporting that
a
30 hazardous substance or an extremely hazardous
substance

1 release has occurred. The county emergency management
office
2 shall report any notification made under this
subsection to
3 the PEMA 24-hour response number within one hour of
its
4 receipt.
5 (a.1) Additional notice.--A county emergency
management
6 agency which receives notification under subsection (a)
must
7 immediately provide information to the fire chief in the
8 appropriate jurisdiction relating to the details of the
release,
9 including, but not limited to, the substance involved.
10 (b) Contents.--The notification required by this
section
11 shall include each of the following to the extent known
at the
12 time of the notice and so long as no delay in responding
to the
13 emergency results:
14 (1) The name and telephone number of the person
making
15 the notification.
16 (2) The name of the person employed by the owner
or
17 operator of the facility or vehicle who has the
authority or
18 responsibility to supervise, conduct or perform any
cleanup
19 activities required at the facility or transportation
20 accident site or to contract for the performance of
any
21 cleanup activities at the facility or transportation
accident
22 site.
23 (3) The chemical name or identity of any
substance
24 involved in the release.
25 (4) An indication of whether the substance is an

26 extremely hazardous substance or other hazardous
material or
27 appears on a Federal or Commonwealth list of
hazardous
28 materials as periodically amended.
29 (5) An estimate of the quantity of the substance
that
30 was released into the environment.
19990H1728B4180 - 29 -

1 (6) The time, location and duration of the
release.
2 (7) The medium or media into which the release
occurred.
3 (8) Any known or anticipated acute or chronic
health
4 risks associated with the emergency and, where
appropriate,
5 advice regarding medical attention necessary for
exposed
6 individuals.
7 (9) Proper precautions to take as a result of
the
8 release, including evacuation, unless the information
is
9 readily available to the community emergency
coordinator
10 under an emergency plan, and any other relevant
information
11 which may be requested.
12 (10) The name and telephone number of the person
or
13 persons to be contacted for further information.
14 (11) Additional information required by Federal
or
15 Commonwealth law or regulation.
16 (c) PEMA notice.--The notification to PEMA shall be
made to
17 the PEMA 24-hour response number. This notification
shall
18 contain the information required by subsection (b). The
notice

19 to PEMA shall fulfill the requirements in SARA, Title
III, to
20 notify the council[. Notice under this section shall
not] and
21 shall fulfill any requirements in other State laws to
notify the
22 Department of Environmental [Resources or any other
State agency
23 of a spill or release of a hazardous chemical.]
Protection about
24 the same hazardous chemical spill or release. PEMA shall
provide
25 notice of the spill or release to the Department of
26 Environmental Protection.
27 (d) Written report.--Within 14 calendar days after a
release
28 which required notice under this section, the owner or
operator
29 of a facility and the owner or operator of a vehicle
shall
30 provide a written follow-up [emergency notice, or
notices]
19990H1728B4180 - 30 -

1 report or reports if more information becomes available,
to PEMA
2 and the county emergency management office setting forth
and
3 updating the information required under subsection (b),
and
4 including additional information with respect to:
5 (1) Actions taken to respond to and contain the
release.
6 (2) Any known or anticipated acute or chronic
health
7 risks associated with the release.
8 (3) Advice regarding medical attention necessary
for
9 exposed individuals, where appropriate.
10 (4) Actions to be taken to mitigate potential
future
11 incidents.

12 (e) Exception.--The provisions of this section shall
not
13 apply to a release of a hazardous substance or an
extremely
14 hazardous substance if the release of such substance is
15 exempted, excluded or permitted by Federal or
Commonwealth
16 statute, law, rule or regulation.
17 (f) Coordinated notification system.--
18 (1) The council shall, within one year of the
effective
19 date of this act, complete a study of current
notification
20 procedures to determine the feasibility of
establishing a
21 single notification center and simplified alternative
22 notification processes for State agencies to receive
23 notification of all emergencies involving hazardous
or
24 potentially hazardous substances or releases into the
air or
25 water or on the land. The council shall study the
feasibility
26 of replacing notification of individual State
agencies with a
27 single point of contact and simplified alternative
28 notification procedures covering substances regulated
by this
29 act, by the act of June 22, 1937 (P.L.1987, No.394),
known as
30 The Clean Streams Law, the act of January 8, 1960
(1959

19990H1728B4180

- 31 -

1 P.L.2119, No.787), known as the Air Pollution Control
Act,
2 the act of July 7, 1980 (P.L.380, No.97), known as
the Solid
3 Waste Management Act, the act of October 18, 1988
(P.L.756,
4 No.108), known as the Hazardous Sites Cleanup Act,
the act of

5 July 6, 1989 (P.L.169, No.32), known as the Storage
Tank and
6 Spill Prevention Act, or by any other State statute
requiring
7 notification of any State agency of spills and
releases into
8 the environment. The study shall consider any impact
a single
9 point of contact and alternative notification
procedures may
10 have on the regulated community, any enforcement
programs
11 within the Department of Environmental [Resources]
Protection
12 or other agencies and notification requirements
established
13 in Federal law and make specific recommendations for
14 implementing its findings, including recommended
changes to
15 State law. The Hazardous Material Emergency Planning
and
16 Response Advisory Committee shall be involved in the
17 development of the study.
18 (2) The council shall forward a copy of the
final study,
19 including a recommended timetable for implementing
any
20 recommendations, to the House Conservation Committee
and the
21 Senate Environmental Resources and Energy Committee.
22 Section 207. Establishment of funds.
23 (a) Hazardous Material Response Fund.--
24 (1) There is hereby created in the State
Treasury a
25 nonlapsing restricted account to be known as the
Hazardous
26 Material Response Fund. The fund shall consist of the
fees
27 collected under subsections (c), (d) and (e), civil
penalties
28 and fines and funds appropriated by the General
Assembly.
29 Moneys in the fund and the interest [it] which
accrues shall
30 be appropriated annually to PEMA [to be disbursed by
the

1 council through PEMA] for disbursement and shall be
used to
2 carry out the purposes, goals and objectives of SARA,
Title
3 III, and the Commonwealth's hazardous material safety
4 program.
5 (2) [The council, through] PEMA, shall
administer and
6 allocate moneys in the fund, including all interest
generated
7 therein, in the following manner:
8 (i) Up to 10% [shall] may be expended on
training
9 programs [for hazardous material response teams].
10 (ii) Up to 10% [shall] may be expended for
public
11 and facility owner education, information and
12 participation programs.
13 (iii) [No more than 10% shall] Up to 10% may
be used
14 for the general administrative and operational
expenses
15 of this act[, excluding the expenses of the
Hazardous
16 Material Emergency Planning and Response Advisory
17 Committee].
18 (iv) The remaining revenue in the fund shall
be used
19 as grants to support the activities of counties
under
20 this act, as described in section 208.
21 (b) County emergency response financing.--
22 (1) The treasurer of each county shall establish
a
23 nonlapsing restricted account to be known as the
Hazardous
24 Material Emergency Response Account. The account
shall
25 consist of revenue from fees authorized by this
section,
26 county, Federal or State funds, grants, loans or
penalties

27 and any private donations provided to finance the
hazardous
28 material safety program. Expenditures from the
account shall
29 be authorized by the county consistent with the needs
30 identified in the [county Hazardous Material
Emergency
19990H1728B4180

- 33 -

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

19 is located a local hazardous chemical fee of from \$35
to \$75,
20 as established by the county by ordinance, for each
hazardous
21 chemical within the meaning of 29 CFR 1910.1200(c) or
its
22 successor which is required by section 312 of SARA,
Title
23 III, to be listed on the hazardous chemical inventory
form
24 (Tier II) which the owner or operator of the facility
submits
25 to the local emergency planning committee. Counties
shall
26 grant facility owners up to 100% credit toward their
chemical
27 fee obligation under this section for training,
equipment or
28 other in-kind services donated to the county to
support the
29 hazardous material safety program if such training,
equipment
30 or in-kind services are accepted by the county. The
credit
19990H1728B4180 - 34 -

1 shall be based on the fair market value of equipment
donated
2 and the agreed-upon value of training or in-kind
services
3 donated.
4 (3) Counties may establish a program to provide
funding
5 through the Hazardous Material Emergency Response
Account for
6 certified hazardous material response teams [within]
serving
7 the county [consistent with the Hazardous Material
Emergency
8 Response Preparedness Assessment]. This grant program
shall
9 not be bound by any dollar limits on assistance to
local fire

10 protection services imposed by other statutes.
11 (c) Hazardous chemical fee.--Each owner or operator
of a
12 facility shall pay a fee, to be known as a hazardous
chemical
13 fee, of \$10 by March 1 of each year to the council for
each
14 hazardous chemical within the meaning of 29 CFR
1910.1200(c) or
15 its successor which is required by section 312 of SARA,
Title
16 III, to be listed on the hazardous chemical inventory
form (Tier
17 II) which the owner or operator of the facility submits
to the
18 council. The fees collected under this subsection shall
be
19 deposited by the council into the Hazardous Material
Response
20 Fund.
21 (d) Toxic chemical registration fee.--Each owner or
operator
22 of a facility that submits a toxic chemical release form
to the
23 Department of Labor and Industry on or before July 1,
1990, as
24 required by section 313 of SARA, Title III, shall pay a
\$1,000
25 registration fee to the Department of Labor and
Industry. The
26 registration fees collected under this subsection shall
be
27 deposited by the Department of Labor and Industry into
the
28 Hazardous Material Response Fund. The Department of
Labor and
29 Industry may retain up to 10% of the fees collected for
30 administration of the program and management of the data
19990H1728B4180 - 35 -

1 collected.
2 (e) Toxic chemical release form fee.--Each owner or
operator

3 of a facility shall pay a fee of \$250 on or before July
1, 1991,

4 and the first day of July of every year thereafter, to
the

5 Department of Labor and Industry for each toxic chemical
which

6 is required by section 313 of SARA, Title III, to be
listed on

7 the toxic chemical release form which the owner or
operator of

8 the facility submits to the Department of Labor and
Industry.

9 The cumulative amount of this fee shall not exceed
\$5,000 per

10 facility. The fees collected under this subsection shall
be

11 deposited by the Department of Labor and Industry into
the

12 Hazardous Material Response Fund. The Department of
Labor and

13 Industry may retain up to 10% of the fees collected for

14 administration of the program and management of the data

15 collected.

16 (f) Emergency planning fee.--By March 1 of each
year, each

17 owner or operator of a facility that manufactures,
produces,

18 uses, stores, supplies or distributes any extremely
hazardous

19 substance in quantities larger than the threshold
planning

20 quantities shall be required to pay to the county
treasurer

21 where the facility is located an emergency planning fee
of up to

22 \$100 as established by the county by ordinance. Counties
shall

23 grant facility owners up to 100% credit toward any
emergency

24 planning fee obligation under this section for training,

25 equipment or other in-kind services donated to the
county to

26 support the hazardous material safety program if such
training,

27 equipment or in-kind services are accepted by the
county, in

28 addition to those for which a credit is claimed under
subsection

29 (b) (2). The credit shall be based on the fair market
value of
30 equipment donated and the agreed-upon value of training
or in-

19990H1728B4180

- 36 -

1 kind services donated.
2 (g) Exemptions.--The owners or operators of family
farm
3 enterprises, service stations and facilities owned by
State and
4 local governments shall be exempt from payment of the
fees
5 required under subsections (b), (c), (d), (e) and (f).
6 (h) Federal funds, grants or other gifts.--The
council is
7 authorized to accept and may deposit into the Hazardous
Material
8 Response Fund grants, gifts and Federal funds for the
purpose of
9 carrying out the provisions of this act.
10 [(i) Changes in threshold quantities and chemicals.-
-For
11 purposes of the fees established in this section, the
term
12 "hazardous chemical" shall mean chemicals on lists
established
13 by the United States Environmental Protection Agency
effective
14 on July 1, 1989. No fee may be applied to additional
facilities
15 or hazardous materials because of changes made by the
United
16 States Environmental Protection Agency in lists of
hazardous
17 materials, threshold planning quantities or other
requirements
18 under SARA, Title III, without complying with the
provisions of
19 section 213.
20 (j) Termination.--The fees established in this
section or

21 pursuant to section 213 shall terminate ten years after
the
22 effective date of this act unless reestablished by the
General
23 Assembly by statute.]
24 (k) Transportation fee study.--Within one year of
the
25 effective date of this act, the council shall report to
the
26 General Assembly on the feasibility of establishing a
fee on the
27 transporters of hazardous materials regulated under this
act.
28 The purpose of this fee would be to supplement the funds
29 provided by fixed facility owners or operators to the
Hazardous
30 Material Response Fund.
19990H1728B4180 - 37 -

1 (l) Status of fund.--The Hazardous Material Response
Fund
2 shall not be subject to 42 Pa.C.S. Ch. 37 Subch. C
(relating to
3 judicial computer system).
4 Section 208. Emergency management grants.
5 (a) General.--Each county shall participate in the
hazardous
6 material safety program and may be eligible to receive
an
7 emergency management grant from the Hazardous Material
Response
8 Fund in order to comply with the requirements of SARA,
Title
9 III, and the Commonwealth's hazardous material safety
program.
10 (b) Applications.--A county [or group of counties]
may apply
11 annually to [the council] PEMA for an emergency
management
12 grant. Applications shall be made in [the manner
specified by
13 the council in regulations promulgated under section
201(g)

14 consistent with the county preparedness assessment]
accordance
15 with the guidelines established by PEMA.
16 (c) Eligible costs.--Eligible costs for emergency
management
17 grants are limited to the cost of:
18 (1) Developing [a county Hazardous Material
Emergency
19 Response Preparedness Assessment required in section
204(b).]
20 periodic reports conforming to the requirements of
section
21 204(b.1).
22 (2) Developing, updating and exercising
emergency
23 response plans required under section 303 of SARA,
Title III.
24 (3) Performing public information functions as
required
25 by section 324 of SARA, Title III.
26 (4) Collecting, documenting and processing
chemical
27 inventory forms and other documents required by SARA,
Title
28 III.
29 (5) Developing an emergency planning and
response
30 capability for responding to hazardous material
releases and

19990H1728B4180

- 38 -

1 meeting the requirements of the Commonwealth's
hazardous
2 material safety program, including training,
equipment,
3 material and other supplies needed to respond to a
release.
4 (6) Supporting the operation and administration
of local
5 committees.
6 (7) Reimbursing certain response costs of
supporting

7 volunteer emergency service organizations in
accordance with
8 section 207(b)(1).
9 (d) Grant amount.--The amount of the annual grant
from the
10 Hazardous Material Response Fund shall not exceed the
sum of:
11 (1) the funds of local revenues made available by
the
12 county for the purpose of complying with the
requirements and
13 provisions of SARA, Title III, and the Emergency
Management
14 Services Code with respect to hazardous material
releases,
15 retroactive to November 1986 [and]; and
16 (2) the revenues collected under section
207(b)(2) and
17 (f)[,];
18 except that any county emergency management coordinator
whose
19 Hazardous Material Emergency Response Account receives
less than
20 \$10,000 annually in fees established in this section or
meets
21 the requirements of subsection (e)(3) shall be eligible
for
22 additional grants equal to county funds specifically
23 appropriated for compliance with this act, not to exceed
\$5,000.
24 (e) Payment of grants.--[The council] PEMA shall
review
25 annually all applications received under this section
and may
26 make grants to the counties from the Hazardous Material
Response
27 Fund. [The council] PEMA shall prioritize the available
funds
28 among the eligible applicants based upon the following
criteria:
29 [(1) Completion of initial county Hazardous
Material
30 Emergency Response Preparedness Assessment.]

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

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

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

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

20 (f) Initial grant.--In addition to any other grants
provided

21 for in this section, each county of the third through
eighth

22 class shall, within 18 months of the effective date of
this act,

23 receive an initial grant of \$1,500 for the purpose of
complying

24 with the provisions of this act. The initial grant shall
be made

25 from the Hazardous Material Response Fund.]

26 Section 209. Certified hazardous material response
teams.

27 (a) General rule.--The council shall establish a
program for
28 certifying hazardous material response teams, setting
standards
29 for training, equipment, safety, operations and
administration
30 of the teams. The certification program shall include,
but not
19990H1728B4180 - 40 -

1 be limited to:
2 (1) Standards for certifying response teams with
several
3 preparedness levels patterned after levels
established by the
4 United States Occupational Safety and Health
Administration
5 at 29 CFR Part 1910.120.
6 (2) Reviewing existing hazardous material
training and
7 certification programs to establish specific
procedures for
8 crediting that training and certification under the
program
9 established by this section.
10 (b) Hazardous material response zones.--The council
may
11 establish hazardous material response zones, consisting
of
12 portions of counties or multiple counties, that may be
served by
13 certified hazardous material response teams that are
certified
14 by the council where counties have not identified zones
in their
15 Hazardous Material Emergency Response Preparedness
Assessment.
16 (c) Grants.--Each certified hazardous material
response team
17 may be eligible to receive, through an application
submitted by
18 a county, an emergency management grant from the
Hazardous

19 Material Response Fund. Counties are required to submit
copies

20 of all applications and requests they receive from
certified

21 hazardous material response teams as part of their
application.

22 (d) Compliance with guidelines and regulations.--
Hazardous

23 material response teams shall comply with any
guidelines,

24 regulations, directives or other documents developed by
PEMA and

25 the council for incorporation into the Commonwealth's
hazardous

26 material safety program [and shall be consistent with
the county

27 Hazardous Material Emergency Response Preparedness
Assessment

28 approved by the Council].

29 (e) Compliance with act.--Each county shall comply
with the

30 hazardous material safety program and 35 Pa.C.S. Pt. V
(relating

19990H1728B4180

- 41 -

1 to emergency management services) by doing any of the
2 following[, consistent with the county Hazardous

Material

3 Emergency Response Preparedness Assessment]:

4 (1) Individually organizing and operating a
certified

5 hazardous material response team.

6 (2) Contracting or having formal agreements with
a

7 certified hazardous material response team, including
those

8 formed by a regional hazardous material organization
or

9 private companies.

10 (3) Participating as a member of a regional
hazardous

11 material organization for the purpose of creating and

12 organizing a certified hazardous material response
team.

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

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

29 (h) Insurance.--Each Commonwealth agency, local
agency,
30 regional hazardous material organization, volunteer
service

19990H1728B4180

- 42 -

1 organization, hazardous material transporter,
manufacturer,
2 supplier or user, or other entity that organizes a
certified
3 hazardous material response team as identified on the
team

4 certification, shall be responsible for providing,
directly or
5 by agreement with a third party, workers' compensation
and
6 ordinary public liability insurance for its certified
hazardous
7 material response team. The Commonwealth, a county or
8 municipality may self-insure to meet this obligation to
the
9 extent it is now authorized by State law. A certified
hazardous
10 material response team that meets the training standards
or
11 certification requirements established under the
Commonwealth's
12 hazardous material safety program shall receive a
discount from
13 the applicable insurance company as that insurance
company's
14 loss experience justifies based on guidelines developed
by the
15 Insurance Commissioner.
16 (i) [Emergency] Incident response.--A certified
hazardous
17 material response team may, when authorized by the
county
18 emergency management coordinator, enter onto any private
or
19 public property on which a release of a hazardous
material has
20 occurred or the occurrence or the threat of a hazardous
material
21 release is imminent. A certified hazardous material
response
22 team may enter any adjacent or surrounding property to
which the
23 hazardous material release has entered or threatens to
enter. A
24 certified hazardous material response team may enter any
private
25 or public property in order to respond to the release or
26 threatened release of a hazardous material, to monitor
and
27 contain the hazardous material release, to perform
cleanup and
28 stabilization actions and to perform any other
[emergency]

29 response activities deemed necessary by the certified
hazardous
30 material response team or by the representatives of
PEMA, the
19990H1728B4180

- 43 -

1 county emergency management office as established under
35

2 Pa.C.S. Pt. V or the local committee.

3 (j) State agency.--Notwithstanding any Federal law
to the

4 contrary, the Department of Environmental [Resources]
5 Protection, consistent with the State emergency
operations plan,

6 is designated as the State agency assigned the
responsibility to

7 direct cleanup efforts at a release site upon the
occurrence of

8 a release.

9 Section 210. Recovery of response costs.

10 (a) General rule.--A person who causes a release of
a

11 hazardous material shall be liable for the response
costs

12 incurred by a certified hazardous material response team
or a

13 supporting paid or volunteer emergency service
organization, or

14 both. The Commonwealth agency, local agency, regional
hazardous

15 material organization, volunteer emergency service
organization,

16 or hazardous material transporter, manufacturer,
supplier or

17 user that organized the certified hazardous material
response

18 team, as identified on the team certification, or
supporting

19 paid or volunteer emergency service organizations, that

20 undertakes a response action may recover those response
costs in

21 law or an action in equity brought before a court of
competent

22 jurisdiction or may proceed under the provisions of
subsection

23 (d). Should more than one certified hazardous material
response

24 team incur response costs for the same hazardous
material

25 release or incident, the organizing entities of those
certified

26 hazardous material response teams may file a joint
action in law

27 or equity and may designate one entity to represent the
others

28 in the law suit.

29 (b) Amount.--In an action to recover response costs,
a

30 Commonwealth agency, local agency, regional hazardous
material

19990H1728B4180

- 44 -

1 organization, supporting paid or volunteer emergency
service

2 organization, or a hazardous material transporter,
manufacturer,

3 supplier or user may include operational, administrative
4 personnel and legal costs incurred from its initial
response

5 action up to the time that it recovers its costs. Only
those

6 certified hazardous material response teams [or] and
supporting

7 paid or volunteer emergency service organizations that
are

8 properly trained in accordance with the standards
developed

9 under this act and that are properly requested and
dispatched by

10 a legally constituted authority shall be eligible to
recover

11 their response costs under this act.

12 (c) Definitions.--When used in this section, the
term

13 "response cost" includes, but is not limited to, the
following:

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

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

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

24 (4) Decontamination of equipment contaminated
during the
25 response.

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

19990H1728B4180

- 45 -

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

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

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

8 (9) Costs associated with the services, supplies
and
9 equipment used to conduct an evacuation during the
response.
10 (10) Costs associated with the removal and
disposal of
11 hazardous materials.
12 (d) Arbitration.--
13 (1) In lieu of bringing an action at law or in
equity in
14 a court of competent jurisdiction in the matter of a
response
15 cost dispute under subsection (a), the party who is
the
16 person who caused a release of a hazardous material
and the
17 party who is the certified hazardous material
response team,
18 including any volunteer emergency service
organizations
19 requested and dispatched by a legally constituted
authority,
20 may agree to submit the response cost dispute to
binding
21 arbitration as provided in this subsection. By
submitting the
22 response cost dispute to arbitration, the parties
shall have
23 waived all rights to remedies available under
subsection (a)
24 or to any other remedies available at law.
25 (2) Once the parties agree to submit the
response cost
26 dispute to binding arbitration, the local committee
shall
27 notify the council and the parties of the request for
a board
28 of arbitration and shall request the recommendation
of the
29 parties for persons to be appointed to the board. The
board
30 of arbitration shall consist of three persons, one to
be

1 selected by each of the parties and a third person to
be
2 agreed upon by the arbitrators as specified in
paragraph (3).
3 Within five days of the request for arbitration, the
parties
4 shall submit the names of the arbitrators that they
have
5 chosen and the local committee shall appoint those
persons to
6 the board of arbitration.
7 (3) Within five days after their appointment,
the two
8 arbitrators shall meet and select a third arbitrator
who
9 shall be appointed to the board by the local
committee, and
10 who will be chairman of the board of arbitration.
11 (4) If the two arbitrators fail to select a
third
12 arbitrator as provided in paragraph (3), the council
shall,
13 within five days, select a third arbitrator who shall
be
14 appointed to the board. The person so selected shall
not be a
15 member of the council, a member of any local
committee or a
16 person or a relative of a person employed by the
party or a
17 subsidiary of the party who caused the hazardous
material
18 release or who has an ownership or equity interest in
the
19 party or subsidiary of the party who caused the
hazardous
20 material release.
21 (5) Upon appointment of the third member, the
board
22 shall commence its proceedings and within 30 days
shall make
23 its determination, which shall be binding on all
parties.
24 (6) Unless otherwise prescribed in the agreement
to

25 arbitrate, the expenses and fees of the arbitrators
and other
26 expenses, but not including counsel fees, incurred in
the
27 conduct of the arbitration shall be paid as
prescribed in the
28 award.
29 Section 211. Facility and vehicle inspection and
testing.
30 (a) Inspection.--In order to determine compliance
with this
19990H1728B4180 - 47 -

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

12 (b) Testing.--Should the qualified council or local
13 committee member or representative determine during the
course
14 of a facility or vehicle inspection that the chemical
name,
15 identity, amount or any other requested information for
any
16 substance, liquid, mixture, compound, material or
product

17 present at the facility or vehicle cannot be identified
or
18 determined to his satisfaction, due to the lack of
proper
19 labeling, placarding, recordkeeping or for any other
reason, the
20 representative shall have the authority to analyze or
arrange
21 for the analysis of the substance to identify the
chemical
22 properties of the sample or specimen, the amount of the
23 substance, liquid, mixture, compound, material or
product
24 manufactured, produced, used, stored, supplied,
imported,
25 exported or distributed at, to or from the facility or
vehicle
26 to determine if it is regulated by this act. The owner
or
27 operator of a facility or vehicle shall pay any testing
and
28 laboratory analysis costs incurred by the council or a
local
29 committee as performed under this section. Samples of
any
30 substance required to be taken under this section by the
19990H1728B4180 - 48 -

1 qualified council or local representative shall be split
with
2 the facility for analysis.
3 (c) Emergency situations.--Should a release or
threatened
4 release of a known or unknown substance, liquid,
mixture,
5 compound, material or product occur or appear to be
imminent at
6 a facility or vehicle site[,] which endangers or has the
7 potential to endanger the health, safety and welfare of
the
8 public, employees of the facility or the vehicle's owner
or

9 operator, or the employees of the owner or operator of
the
10 vehicle, the council or the local committee may send
qualified
11 representatives or the certified hazardous material
response
12 team, or both, to the facility or vehicle site at any
time in
13 order to inspect the facility or vehicle and to assess
the
14 danger posed by the release or threatened release and to
obtain
15 samples or specimens of the substance, liquid, mixture,
16 compound, material or product involved in the release or
17 threatened release and to perform any other [emergency]
incident
18 response activities deemed necessary by the
representatives of
19 the council or the local committee or the certified
hazardous
20 material response team.

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

1 received trade secret protection under SARA, Title III.
For that
2 information which has received trade secret protection
under
3 section 322 of SARA, Title III, prior to the date of the
4 inspection or request, the qualified representative
shall give a
5 written assurance to the person that reasonable measures
will be
6 taken to protect the confidentiality of any information
provided
7 to the qualified representative.

8 (e) Qualified person.--For purposes of this section,
the

9 council shall develop qualification standards for
members of the
10 council, local committees or their representatives who
exercise
11 the reporting, inspection and testing authority
contained in
12 this section. At a minimum, those qualifications shall
include:

13 (1) Training in inspection and enforcement
activities
14 related to enforcing environmental or fire incident
15 investigations.
16 (2) Training in the handling and recognition of
17 hazardous materials.
18 (3) Conflict of interest standards and
procedures
19 designed to prevent a local committee member or
20 representative from using the authority of this
section to
21 gather information on a business competitor or other
trade
22 secret information.

23 (4) Procedures for decertifying a member or
24 representative who was determined to be a qualified
25 representative of the council or local committee.
26 Section 212. Annual report.

27 [The council] PEMA shall submit an annual report to
the

28 General Assembly by October 1 of each year on the
activities it
29 has undertaken to implement this act. The report shall
include,

30 but not be limited to:

19990H1728B4180

1 (1) An accounting of revenues and expenditures
from the
2 Hazardous Material Response Fund and the county
Hazardous
3 Material Emergency Response Accounts along with a
description
4 of the projects undertaken with these funds and a
projection
5 of future activities.

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

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

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

13 [Section 213. Changes in fees.

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

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

25 Section 301. Immunity from civil liability.
26 (a) General.--No Commonwealth agency, local agency,
regional
27 hazardous material organization, volunteer emergency
service
28 organization or hazardous material transporter,
manufacturer,
29 supplier or user that organized the certified hazardous
material
30 response team nor their elected officers, officials,
directors
19990H1728B4180 - 51 -

1 and employees, and no certified hazardous material
response team
2 member, member of an industrial hazardous material
response
3 team, law enforcement officer, ambulance service or
rescue squad
4 member, firefighter or other emergency response or
public works
5 personnel engaged in any emergency service or response
6 activities involving a hazardous material release at a
facility
7 or transportation accident site shall be liable for the
death of
8 or any injury to persons or loss or damage to property
or the
9 environment resulting from a response to a hazardous
material
10 release, except for any acts or omissions which
constitute gross
11 negligence or willful misconduct. Nothing in this
section shall
12 exempt any hazardous material transporter, manufacturer,
13 supplier or user from liability for the death of or any
injury
14 to persons or loss or damage to property or the
environment
15 resulting from the release of any hazardous material.
16 (b) Council [and], local committees and mentoring
council.--

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

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

19990H1728B4180

- 52 -

1 willful misconduct.
2 Section 303. Enforcement.
3 (a) Civil actions.--
4 (1) The Office of Attorney General [or]; the
Office of <--
5 General Counsel or a county or municipality may
commence a
6 civil action against any person for failure to comply
with
7 this act or its regulations. No action may be
commenced under
8 this subsection prior to 60 days after the Office of
Attorney

9 General or Office of General Counsel or the
appropriate
10 county or municipality has given written notice of
the
11 alleged violation to the alleged violator. [The
council, a] A
12 county or a municipality may commence a civil action
against
13 any person for failure to comply with this act or its
14 regulations if the Office of Attorney General or the
Office
15 of General Counsel has not commenced such action and
more
16 than 120 days have elapsed since [the council,] a
county or a
17 municipality gave notice of the alleged violation to
the
18 alleged violator.
19 (2) An individual may commence a civil action
against <--
20 any person for failure to comply with this act or its
21 regulations if an action is not brought by the Office
of
22 Attorney General, the Office of General Counsel, a
county or
23 a municipality and 180 days have elapsed since a
county or a
24 municipality gave notice of the alleged violation to
the
25 alleged violator.
26 (b) Criminal actions.--The Office of Attorney
General under
27 the act of October 15, 1980 (P.L.950, No.164), known as
the
28 Commonwealth Attorneys Act, or the district attorney for
the
29 county in which the violation is alleged to have
occurred may
30 commence criminal proceedings for the enforcement of
this act

19990H1728B4180

- 53 -

1 and its regulations.

2 (c) Venue.--A proceeding under subsection (a) or (b)
may be
3 brought in the court of common pleas for the county in
which the
4 defendant is located or for the county in which the
violation is
5 alleged to have occurred.
6 Section 2. This act shall take effect in 60 days.