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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 650      Session of  
1993

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INTRODUCED BY STEWART, BRIGHTBILL, MUSTO, BELAN, SHAFFER, STOUT,  
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STINSON AND ROBBINS, MARCH 9, 1993

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AS AMENDED ON THIRD CONSIDERATION, APRIL 18, 1994

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AN ACT

1 Limiting environmental liability for economic development  
2 agencies, financiers and fiduciaries.

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

5 Section 1. Short title.

6 This act shall be known and may be cited as the Economic  
7 Development Agency and Lender Environmental Liability Protection  
8 Act.

9 Section 2. Declaration of policy.

10 The General Assembly finds and declares as follows:

11 (1) The Commonwealth has provided grant and loan funds  
12 to a variety of economic development agencies, all for the  
13 purpose of assisting these agencies in their efforts to  
14 promote the general welfare of this Commonwealth by  
15 encouraging economic development and industrial redevelopment  
16 throughout this Commonwealth.

17 (2) Economic development agencies acquire title to

1 industrial property for financing purposes only and lease or  
2 sell the same to industrial occupants who have sole  
3 possession of the facilities for an amount of rent or  
4 installment payments pursuant to an installment sale contract  
5 which is determined solely on a basis of meeting the costs of  
6 the financing and other costs associated with ownership  
7 unrelated to profit.

8 (3) Economic development agencies acquire possession of  
9 these industrial sites from time to time when the industrial  
10 occupant defaults under its obligations to the agencies under  
11 its lease or installment sales agreements.

12 (4) Economic development agencies also acquire  
13 industrial property either for the purpose of financing or  
14 redevelopment but without a motive for profit or to occupy  
15 the property for their own industrial operations.

16 (5) Economic development agencies are reluctant to  
17 acquire title to or other interests in property whether for  
18 financing or redevelopment purposes or to secure repayment of  
19 obligations unless the economic development agencies are  
20 protected from liability for environmental contamination on  
21 those sites they seek to assist to develop.

22 (6) The taking of legal title and any foreclosure or  
23 retaking of possession of property by an industrial  
24 development agency, area loan organization or industrial and  
25 commercial development authority is pursuant to the following  
26 acts:

27 (i) The act of May 17, 1956 (1955 P.L.1609, No.537),  
28 known as the Pennsylvania Industrial Development  
29 Authority Act, which expressly requires that the  
30 Pennsylvania Industrial Development Authority loan money

1 to industrial development agencies secured by not less  
2 than a second mortgage lien.

3 (ii) The act of August 23, 1967 (P.L.251, No.102),  
4 known as the Industrial and Commercial Development  
5 Authority Law, which provides for issuance of debt by  
6 industrial and commercial development authorities and  
7 authorizes these authorities to take title to real  
8 property as security for the indebtedness.

9 (iii) The act of July 2, 1984 (P.L.545, No.109),  
10 known as the Capital Loan Fund Act, which requires that  
11 its loans be made to area loan organizations with  
12 adequate collateral.

13 (7) The maximum level of economic development and  
14 business opportunity and employment and the elimination or  
15 prevention of abandoned industrial and commercial property  
16 AND FEDERAL GOVERNMENT OR MILITARY LANDS WHICH can best be <—  
17 provided by the promotion, attraction, stimulation,  
18 rehabilitation and revitalization of all types of industry,  
19 commerce, manufacturing and business development within this  
20 Commonwealth.

21 (8) To continue and further the stimulation of business  
22 opportunities and economic development within this  
23 Commonwealth and thereby cause the reuse and rehabilitation  
24 of industrial and commercial property, it is necessary to  
25 ensure various means of financing to promote economic growth  
26 and the availability of fiduciary services to persons within  
27 this Commonwealth.

28 (9) Lenders are reluctant to provide funding for  
29 business opportunities and economic development, and  
30 fiduciaries are reluctant to provide services to persons with

1 environmental problems, because of catastrophic risks of  
2 environmental liability and remediation costs under  
3 environmental laws relating to releases and contamination  
4 which were not caused by lenders and fiduciaries.

5 (10) When borrowers default on loans, lenders are  
6 reluctant to foreclose upon commercial property with  
7 environmental problems because lenders may be forced to  
8 assume costly environmental liabilities; thus, commercial  
9 property is being abandoned in this Commonwealth and new  
10 businesses are unable to obtain financing to purchase such  
11 properties.

12 (11) Family businesses are unable to establish trusts to  
13 convey their business interests to the next generation and  
14 other businesses are unable to receive retirement, investment  
15 and other trust services from fiduciaries, when fiduciaries,  
16 in their personal or individual capacities, may be held  
17 liable for environmental contamination caused by other  
18 persons merely by virtue of owning property in their trustee  
19 capacities and providing fiduciary services.

20 (12) In order to continue to stimulate growth and  
21 continue the use or reuse of industrial and commercial  
22 property, it is necessary to provide protection, to lenders,  
23 fiduciaries and economic development agencies, from  
24 environmental liability and remediation costs under  
25 environmental laws for releases and contamination caused by  
26 others.

27 (13) Environmental liability for lenders, fiduciaries  
28 and economic development agencies shall be limited in scope  
29 as specifically provided in this act, and this act shall be  
30 interpreted as broadly as possible in order to preempt any

1 laws, regulations or ordinances imposing environmental  
2 liability on such persons in order to promote economic  
3 development.

4 Section 3. Definitions.

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

8 "Board." The Environmental Hearing Board of the  
9 Commonwealth.

10 ~~"Borrower." A person whose property is encumbered by a~~ <—  
11 ~~security interest. The term includes a debtor, a lessor or an~~  
12 ~~obligor.~~

13 "BORROWER." A PERSON WHO HAS RECEIVED AN EXTENSION OF <—  
14 CREDIT. THE TERM INCLUDES, BUT IS NOT LIMITED TO, A DEBTOR, A  
15 LESSOR, A LESSEE OR AN OBLIGOR.

16 "Conservancy." A charitable corporation, charitable  
17 association or charitable trust registered with the Bureau of  
18 Charitable Organizations and exempt from taxation pursuant to  
19 section 501(c)(3) of the Internal Revenue Code of 1986 (Public  
20 Law 99-514, 26 U.S.C. § 501(c)(3)) or other Federal or  
21 Commonwealth statutes or regulations, the purpose or powers of  
22 which include retaining or protecting natural, scenic,  
23 agricultural or open-space values of real property; assuring the  
24 availability of real property for agricultural, forest,  
25 recreational or open-space use; protecting natural resources and  
26 wildlife; maintaining or enhancing land, air or water quality;  
27 or preserving the historical, architectural, archaeological or  
28 cultural aspects of real property.

29 "Department." The Department of Environmental Resources of  
30 the Commonwealth.

1 "Economic development agencies." The term includes:

2 (1) Any redevelopment authority created under the act of  
3 May 24, 1945 (P.L.991, No.385), known as the Urban  
4 Redevelopment Law.

5 (2) Any industrial development agency as that term is  
6 defined in the act of May 17, 1956 (1955 P.L.1609, No.537),  
7 known as the Pennsylvania Industrial Development Authority  
8 Act.

9 (3) Any industrial and commercial development authority  
10 created under the act of August 23, 1967 (P.L.251, No.102),  
11 known as the Industrial and Commercial Development Authority  
12 Law.

13 (4) Any area loan organization as that term is defined  
14 in the act of July 2, 1984 (P.L.545, No.109), known as the  
15 Capital Loan Fund Act.

16 (5) Any other Commonwealth or municipal authority which  
17 acquires title or an interest in property.

18 (6) Municipalities or municipal industrial development  
19 or community development departments organized by ordinance  
20 under a home rule charter which buy and sell land for  
21 community development purposes.

22 (7) Tourist promotion agencies or their local community-  
23 based nonprofit sponsor which engage in the acquisition of  
24 former industrial sites as part of an "Industrial Heritage"  
25 or similar program.

26 (8) Conservancies engaged in the renewal or reclamation  
27 of an industrial site.

28 ~~"Emergency event." A sudden occurrence or condition of such~~ <—  
29 ~~severity or magnitude that it threatens immediate and~~  
30 ~~irreparable harm to the environment or public health, and an~~

1 ~~immediate emergency response measure is necessary for its~~  
2 ~~stabilization or control.~~

3 ~~"Emergency response measure." The notification of the~~  
4 ~~applicable county emergency management agency or the~~  
5 ~~Pennsylvania Emergency Management Agency and the Department of~~  
6 ~~Environmental Resources and such minimum steps as may be~~  
7 ~~reasonably necessary according to the equities of the situation~~  
8 ~~to attempt to stabilize and control the emergency event and to~~  
9 ~~mitigate further damages.~~

10 "Environmental acts." Collectively and separately, the act  
11 of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams  
12 Law, the act of January 8, 1960 (1959 P.L.2119, No.787), known  
13 as the Air Pollution Control Act, the act of July 7, 1980  
14 (P.L.380, No.97), known as the Solid Waste Management Act, the  
15 act of October 5, 1984 (P.L.734, No.159), known as the Worker  
16 and Community Right-to-Know Act, the act of July 13, 1988  
17 (P.L.525, No.93), referred to as the Infectious and  
18 Chemotherapeutic Waste Law, the act of October 18, 1988  
19 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act, the  
20 act of July 6, 1989 (P.L.169, No.32), known as the Storage Tank  
21 and Spill Prevention Act, the act of December 7, 1990 (P.L.639,  
22 No.165), known as the Hazardous Material Emergency Planning and  
23 Response Act, and the act of June 11, 1992 (P.L.303, No.52),  
24 known as the Oil Spill Responder Liability Act, and all such  
25 acts as they may be amended from time to time, and any Federal,  
26 State or local law, statute, regulation, rule, ordinance, court  
27 or administrative order or decree, interpretation or guidance,  
28 now or hereafter in existence pertaining to employees,  
29 occupational health and safety, public health or safety, natural  
30 resources or the environment.

1 "Environmental due diligence." Investigative techniques,  
2 including, but not limited to, visual property inspections,  
3 electronic environmental data base searches, review of ownership  
4 and use history of the property, environmental questionnaires,  
5 transaction screens, environmental assessments or audits.

6 "Fiduciary." Any person which is considered a fiduciary  
7 under section 3(21) of the Employee Retirement Income Security  
8 Act of 1974 (Public Law 93-406, 88 Stat. 829) or who acts as  
9 trustee, executor, administrator, custodian, guardian of  
10 estates, conservator, committee of estates of persons who are  
11 disabled, personal representative, receiver, agent, nominee,  
12 registrar of stocks and bonds, assignee or in any other capacity  
13 for the benefit of another person.

14 "Foreclosure." The date upon which title vests in property  
15 through realizing upon a security interest, including, but not  
16 limited to, any ownership of property recognized under  
17 applicable law as vesting the holder of the security interest  
18 with some indicia of title, legal or equitable title obtained at  
19 or in lieu of foreclosure, sheriff sales, bankruptcy  
20 distributions and their equivalents.

21 "Fund." Collectively and separately, any special fund of  
22 Commonwealth moneys administered by the Commonwealth or the  
23 Department of Environmental Resources, including, but not  
24 limited to, the Hazardous Sites Cleanup Fund and the Underground  
25 Storage Tank Indemnification Fund, as well as any other fund of  
26 Commonwealth moneys now or hereafter in existence created for  
27 the funding or reimbursement of costs and damages such as  
28 response costs, emergency response measures and their equivalent  
29 relating to natural resources or the environment.

30 "Guarantor." The term includes guarantors and sureties of



1 security interests, securities and other obligations, issuers of  
2 letters of credit and other credit enhancements, title insurers  
3 and entities which directly or indirectly acquire indicia of  
4 ownership in the course of protecting a security interest or  
5 acting as such guarantors, sureties, issuers of letters of  
6 credit or other credit enhancements or title insurers. The term  
7 includes guaranties, surety bonds, title insurance policies,  
8 letters of credit and other credit enhancements, and other  
9 agreements with a guarantor relating to the obligations  
10 described in this definition. The term directly or indirectly  
11 includes any interest in property, security interest, indicia of  
12 ownership title or right to title held or acquired by a  
13 fiduciary or similar entity for the benefit of a holder of a  
14 security interest.

15 ~~"Holder of a security interest." A person who holds indicia~~ <—  
16 ~~of ownership in property primarily to protect a security~~  
17 ~~interest. The term includes the following:~~

18 ~~(1) The initial holder and any subsequent holder of the~~  
19 ~~security interest on the secondary market.~~

20 ~~(2) Guarantor, lease financier or any successor where~~  
21 ~~the lessor does not initially select or ordinarily control~~  
22 ~~the daily operation or maintenance of the property.~~

23 ~~(3) Any person who holds indicia of ownership primarily~~  
24 ~~to protect a security interest.~~

25 ~~(4) A receiver or other person who acts on behalf or for~~  
26 ~~the benefit of a holder of a security interest.~~

27 "Indicia of ownership." Any legal or equitable interest in  
28 property acquired directly or indirectly:

29 (1) ~~for the purpose of~~ securing payment of a loan or <—  
30 indebtedness, a right of reimbursement or subrogation under a

1 guaranty or the performance of another obligation;

2 (2) evidencing ownership under a lease financing  
3 transaction where the lessor does not initially select or  
4 ordinarily control the daily operation or maintenance of the  
5 property; or

6 (3) in the course of creating, protecting or enforcing a  
7 security interest or right of reimbursement of subrogation  
8 under a guaranty.

9 The term includes evidence of interest in mortgages, deeds of  
10 trust, liens, surety bonds, guaranties, lease financing  
11 transactions where the lessor does not initially select or  
12 ordinarily control the daily operation or maintenance of the  
13 property, other forms of encumbrances against property  
14 recognized under applicable law as vesting the holder of the  
15 security interest with some indicia of title.

16 "Industrial activity." Commercial, manufacturing, mining or  
17 any other activity done to further either the development,  
18 manufacturing or distribution of goods and services, including,  
19 but not limited to, research and development, warehousing,  
20 shipping, transport, remanufacturing, repair and maintenance of  
21 commercial machinery and equipment.

22 "Industrial site." A site which now has or once had an  
23 industrial activity on it.

24 "Lender." Any person regulated or supervised by any Federal  
25 or State regulatory agency and any of its affiliates or  
26 subsidiaries, successors or assigns, including its officers,  
27 directors, employees, representatives or agents, and any Federal  
28 or State banking or lending agency or its successors, including,  
29 but not limited to, Resolution Trust Corporation, Federal  
30 Deposit Insurance Corporation, Federal Reserve Bank, Board of

1 Governors of the Federal Reserve System, Federal Home Loan Bank,  
2 National Credit Union Administrator Board, Office of the  
3 Comptroller of the Currency, Office of Thrift Supervision, Farm  
4 Credit Administration and Small Business Administration or  
5 similarly chartered Federal instrumentality. The term also  
6 includes the initial lender and any subsequent holder of a  
7 security interest or note, guarantor, lease financier or any  
8 successor or a receiver or other person who acts on behalf or  
9 for the benefit of a holder of a security interest. The term  
10 includes an economic development agency.

11 "Occupant." A party which occupies or has the right to  
12 occupy property owned by an economic development agency by any  
13 instrument, including, but not limited to, a lease, mortgage,  
14 installment sale contract, disposition agreement or trust  
15 agreement.

16 "Person." An individual, partnership, corporation, business  
17 trust, joint-stock fund, estate trust, banking association,  
18 governmental, administrative or regulatory agency, institution  
19 or any other type of legal entity whatsoever.

20 "Property." All types of real and personal and tangible and  
21 intangible property.

22 "Redevelopment." Undertakings and activities made under the  
23 act of May 24, 1945 (P.L.991, No.385), known as the Urban  
24 Redevelopment Law, including, but not limited to, planning,  
25 acquisition, site preparation, demolition, rehabilitation,  
26 renovation, conservation, reuse, renewal, improvement,  
27 clearance, sale and lease of real property and improvements  
28 thereon.

29 "Regulated substance." Any element, compound or material  
30 which is subject to regulation under the environmental acts or

1 any element, compound or material defined as a HAZARDOUS, TOXIC, <—  
2 REGULATED INFECTIOUS CHEMOTHERAPEUTIC SUBSTANCE OR CHEMICAL  
3 contaminant, ~~pollution, waste, or~~ WASTE, ANY TYPE OF POLLUTION <—  
4 OR CONDITION OR ANY equivalent under the environmental acts.

5 "Release." Any spill, rupture, emission, discharge, other  
6 action, occurrence, CONDITION or any other term defined as a <—  
7 "release" or ~~other operative word~~ OTHER THREAT OF RELEASE OR <—  
8 OPERATIVE WORD OR EVENT WHICH WOULD TRIGGER COMPLIANCE  
9 REQUIREMENTS OR LIABILITY under the environmental acts.

10 ~~"Reportable event." Any release, threat of release or action <—~~  
11 ~~which must be reported to the Department of Environmental~~  
12 ~~Resources or any other governmental agency, including, but not~~  
13 ~~limited to, notices of amounts equal to or greater than~~  
14 ~~reportable released quantities of regulated substances, any~~  
15 ~~amounts equal to or greater than a discharge or any permit~~  
16 ~~violations or other violations which may require reports or~~  
17 ~~notifications to government agencies under the environmental~~  
18 ~~acts.~~

19 "Response action." An action, including, but not limited to,  
20 a response or interim response, remedial response or remedy or  
21 corrective action, closure, or any other action under the  
22 environmental acts IN RESPONSE TO A RELEASE, such as testing, <—  
23 inspections, sampling, installations, corrective action,  
24 removals, closure, response costs, assessments OR ANY TYPES OF <—  
25 claims, damages, actions, fines and penalties.

26 "Security interest." An interest in property created or  
27 established for the purpose of securing a loan, right of  
28 reimbursement or subrogation under a guaranty or other  
29 obligation or constituting a lease financing transaction. The  
30 term includes security interests created under 13 Pa.C.S.

1 (relating to commercial code), mortgages, deeds of trust, liens,  
2 lease financing transactions in which the lessor does not  
3 initially select or ordinarily control the daily operation or  
4 maintenance of the property, trust receipt transactions and  
5 their equivalents. Security interest may also arise from  
6 transactions such as sales and leasebacks, conditional sales,  
7 installment sales, certain assignments, factoring agreements,  
8 accounts receivable, financing arrangements and consignments, if  
9 the transaction creates or establishes an interest in property  
10 for the purpose of securing a loan, right of reimbursement or  
11 subrogation under a guaranty or other obligation. The term also  
12 includes a confession of judgment or money judgment whereby a  
13 lender commences an execution on such judgments with a writ of  
14 execution and thereby causes property to be levied and attached.

15 Section 4. Limitation of economic development agency  
16 environmental liability.

17 An economic development agency that holds an indicia of  
18 ownership in property as a security interest for the purpose of  
19 developing or redeveloping the property or to finance an  
20 economic development or redevelopment activity shall not be  
21 liable under the environmental acts to the department or to any  
22 other person in accordance with the following:

23 (1) An economic development agency shall not be liable  
24 in an action by the department, as a responsible person,  
25 owner, operator or occupier, for remediating a release if the  
26 economic development agency demonstrates any of the  
27 following:

28 (i) The economic development agency exercised  
29 reasonable maintenance of the property when it had  
30 possession of the property.

1           (ii) The economic development agency, including its  
2 employees and agents, did not cause or exacerbate a  
3 release of regulated substances on or from the property.

4           (iii) The property is an industrial site.

5           (2) An economic development agency which forecloses on  
6 or assumes possession of a property shall remain within the  
7 exemption from liability under this section.

8           (3) An economic development agency that conducts a  
9 remedial action in accordance with a written agreement with  
10 the department shall not be liable, as a responsible party,  
11 owner, operator or occupier, in any action by the department  
12 for a release or potential release of any regulated  
13 substance.

14           (4) There is cooperation with governmental agencies  
15 performing a remedial action, as follows:

16           (i) An economic development agency and any of its  
17 successors and assigns may take no action that would  
18 disturb or be inconsistent with remedial response that is  
19 proposed, approved or implemented by the Federal  
20 Environmental Protection Agency.

21           (ii) An economic development agency and any of its  
22 successors and assigns shall permit access to Federal and  
23 Commonwealth agencies and other parties acting under the  
24 direction of these agencies to evaluate, perform or  
25 maintain a remedial action.

26           (iii) An economic development agency or any of its  
27 successors and assigns shall perform, operate and  
28 maintain remedial actions pursuant to State laws as  
29 directed by the department.

30 Section 5. Limitation of lender environmental liability.

1     ~~(a) Scope of lender liability. A lender who provides~~ <—  
2     ~~financial services or holds indicia of ownership in property as~~  
3     ~~a security interest shall not be liable under the environmental~~  
4     ~~acts to the department or to any other person by virtue of fact~~  
5     ~~that the lender provides financial services or holds indicia of~~  
6     ~~ownership primarily to protect its security interest in the~~  
7     ~~property, unless:~~

8     (A) SCOPE OF LENDER LIABILITY.--A LENDER WHO ENGAGES IN <—  
9     ACTIVITIES INVOLVED IN THE ROUTINE PRACTICES OF COMMERCIAL  
10    LENDING, INCLUDING, BUT NOT LIMITED TO, THE PROVIDING OF  
11    FINANCIAL SERVICES, HOLDING OF SECURITY INTERESTS, WORKOUT  
12    PRACTICES, FORECLOSURE OR THE RECOVERY OF FUNDS FROM THE SALE OF  
13    PROPERTY SHALL NOT BE LIABLE UNDER THE ENVIRONMENTAL ACTS OR  
14    COMMON LAW EQUIVALENTS TO THE DEPARTMENT OF ENVIRONMENTAL  
15    RESOURCES OR TO ANY OTHER PERSON BY VIRTUE OF THE FACT THAT THE  
16    LENDER ENGAGES IN SUCH COMMERCIAL LENDING PRACTICE UNLESS:

17           (1) the lender, its employees or ~~agents cause or~~ AGENTS <—  
18           DIRECTLY CAUSE AN IMMEDIATE RELEASE OR DIRECTLY exacerbate a  
19           release of regulated substances on or from the property; or

20           (2) the lender, its employees or agents knowingly and  
21           willfully compelled the borrower to:

22                   (i) do an action which caused an immediate release  
23                   of regulated substances; or

24                   (ii) violate an environmental act.

25    (b) Limitation of lender liability.--Liability pursuant to  
26    this act shall be limited to the cost for a response action  
27    which may be directly attributable to the lender's activities as  
28    specified in subsection (a). LIABILITY SHALL ARISE ONLY IF THE <—  
29    LENDER'S ACTIONS WERE THE PROXIMATE AND EFFICIENT CAUSE OF THE  
30    RELEASE OR VIOLATION. OWNERSHIP OR CONTROL OF THE PROPERTY AFTER

1 FORECLOSURE SHALL NOT BY ITSELF TRIGGER LIABILITY. No lender  
2 shall be liable for ~~any damages, including~~ any response action, <—  
3 if such ~~damages arise~~ RESPONSE ACTION ARISES solely from a <—  
4 release of regulated substances which occurred prior to or  
5 commences before and continues after foreclosure, provided,  
6 however, that the lender shall be responsible for that portion  
7 of ~~damages which are~~ THE RESPONSE ACTION WHICH IS directly <—  
8 attributed to the lender's exacerbation of a release. A release  
9 of regulated substances discovered in the course of conducting  
10 environmental due diligence shall be presumed to be a prior or  
11 continuing release on the property.

12 ~~(c) Emergency event after foreclosure. If an emergency~~ <—  
13 ~~event occurs after foreclosure and, if upon the basis of~~  
14 ~~information available to the lender at the time of that~~  
15 ~~emergency event, there is a clear and convincing basis to~~  
16 ~~believe that prompt action is necessary, then the lender shall~~  
17 ~~undertake an emergency response measure without the loss of the~~  
18 ~~protection afforded by this act. A lender which undertakes an~~  
19 ~~emergency response measure must use reasonable care and endeavor~~  
20 ~~to complete the emergency response measure so as to stabilize~~  
21 ~~the emergency event. No lender shall be liable for any damages~~  
22 ~~resulting from an emergency event or emergency response measure~~  
23 ~~or any other damages, including, but not limited to, costs for~~  
24 ~~response actions at the property, adjoining areas and locations~~  
25 ~~to which hazardous substances are transported for handling,~~  
26 ~~treatment, storage and disposal, except for damages due to the~~  
27 ~~lender's acts or omissions which constitute gross negligence or~~  
28 ~~willful misconduct. Liability pursuant to this subsection shall~~  
29 ~~be limited to the lesser amount of:~~

30 ~~(1) the remaining value of the affected property;~~



~~(2) the principal amount of the loan secured by the affected property; or~~

~~(3) the extent of the damages that result due to the lender's acts or omissions which constitute gross negligence or willful misconduct in undertaking the emergency response measure.~~

~~It shall be a rebuttable presumption of law that a lender who has taken steps to conduct an emergency response measure has acted properly and is entitled to protection from liability and reimbursement as provided in this act; and provided further that an occurrence or condition constituting a reportable event under the environmental acts alone shall not be considered by reason of such status as a reportable event to be an emergency event.~~

~~(d) Notification requirements. Notification for an emergency response measure under this section shall include the following to the extent known by the lender at the time of such notification:~~

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

~~(2) The name and telephone number of the person employed by the lender who has the authority to take or coordinate the emergency response measure.~~

~~(3) The time, location and duration of the release.~~

~~(4) The chemical name or identity of any substance involved in the release.~~

~~(5) The medium or media into which the release occurred.~~

~~(6) An estimate of the quantity of the substance that was released into the environment.~~

~~(7) Such steps taken to attempt to stabilize and control the emergency event and mitigate damages.~~

~~(8) Any additional information that such person deems appropriate under the circumstances.~~

~~(c) Emergency response measure costs. A lender who undertakes an emergency response measure may be reimbursed for its costs, including, but not limited to, legal fees, from the fund by filing an action with the board within 60 days after completion of the emergency response measure in accordance with section 505(f) of the act of October 18, 1988 (P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act. To recover costs, the action must include a written summary of the acts taken for the emergency response measure and documentation of the costs. Notwithstanding the foregoing, a lender who undertakes an emergency response measure may also recover its costs and damages, including legal fees, or seek contribution from a responsible person in a legal action brought before a court of competent jurisdiction. In the event that a lender recovers duplicative costs and damages in a legal action against a responsible person after being reimbursed for its costs by the board, the lender shall promptly return to the board any duplicative amounts received from the fund.~~

Section 6. Limitation of fiduciary environmental liability.

(a) Scope of fiduciary liability.--Any person who acts or has acted as a fiduciary to another person shall not be liable in its personal or individual capacity under the environmental acts OR COMMON LAW EQUIVALENTS to the department or to any other person by virtue of the fact that the fiduciary provides or provided such services unless:

(1) during the time when the fiduciary services were actively provided, an event occurred which constituted a release of regulated substances according to the

environmental acts at the time of such event;

(2) the fiduciary had the express power and authority to control property which was the cause of or the site of such release as part of actively providing services; and

(3) the release was caused by an act or omission which constituted gross negligence or willful misconduct of the fiduciary according to the law or standard practices at the time of the release.

(b) Limitation of fiduciary liability.--Liability under this act shall be limited to only the cost for a response action

which is directly attributable to the fiduciary's activities as specified in this section. UNDER SUBSECTION (A)(2), CONTROL OF PROPERTY SHALL BE DEEMED TO BE IN THE LESSEE AND NOT THE LESSOR FOR LEASED PROPERTY. No fiduciary shall be liable for any

~~damages, including any response action, if such damages solely~~

~~arise~~ RESPONSE ACTION, IF SUCH RESPONSE ACTION ARISES from a release of regulated substances which occurred prior to, or

commences before and continues after the fiduciary takes action as specified in subsection (a). Notwithstanding the foregoing, a fiduciary shall be responsible for that portion of ~~damages which~~

~~are~~ A RESPONSE ACTION WHICH IS directly attributable to

exacerbating a release. A release of regulated substances discovered in the course of conducting an environmental due diligence shall be presumed to be a prior and continuing release on the property.

(c) Estate claims.--Nothing in this section shall prevent claims against the fiduciary in its representative capacity.

Section 7. Defenses to liability.

~~A lender or fiduciary can avoid liability under this act by A~~

LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY CAN AVOID

1 LIABILITY UNDER THE ENVIRONMENTAL ACTS OR THE COMMON-LAW  
2 EQUIVALENTS BY showing evidence that a release or threatened  
3 release of regulated substances for which the lender or  
4 fiduciary otherwise ~~be responsible~~ IS RESPONSIBLE UNDER SECTIONS <—  
5 4, 5 AND 6 was caused by any of the following:

- 6 (1) An act of God.  
7 (2) An intervening act of a public agency.  
8 (3) Migration from property owned by a third party.  
9 (4) Actions taken or omitted in the course of rendering  
10 care, assistance or advice in accordance with the  
11 environmental acts or at the direction of the department.

12 (5) An act of a third party who was not an agent or  
13 employee of the lender or fiduciary. <—

14 ~~(6) If the alleged liability for a lender arises after~~  
15 ~~foreclosure and the lender exercised due care with respect to~~  
16 ~~the regulated substance and took precautions against~~  
17 ~~foreseeable actions of third parties and the consequences~~  
18 ~~arising therefrom.~~ LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT <—

19 AGENCY.

20 (6) IF THE ALLEGED LIABILITY FOR A LENDER OR ECONOMIC  
21 DEVELOPMENT AGENCY ARISES AFTER FORECLOSURE, AND THE LENDER  
22 OR ECONOMIC DEVELOPMENT AGENCY EXERCISED DUE CARE WITH  
23 RESPECT TO THE LENDER'S OR ECONOMIC DEVELOPMENT AGENCY'S  
24 KNOWLEDGE ABOUT THE REGULATED SUBSTANCES, AND TOOK REASONABLE  
25 PRECAUTIONS BASED UPON SUCH KNOWLEDGE AGAINST FORESEEABLE  
26 ACTIONS OF THIRD PARTIES AND THE CONSEQUENCES ARISING  
27 THEREFROM. A LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY  
28 CAN AVOID LIABILITY BY PROVING ANY OTHER DEFENSE WHICH MAY BE  
29 AVAILABLE TO IT UNDER THE ENVIRONMENTAL ACTS OR COMMON LAW.

30 Section 8. Savings clause.

1 Nothing in this act shall affect the rights, immunities or  
2 other defenses that are available under other applicable law to  
3 a ~~lender or fiduciary~~ LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT <—  
4 AGENCY, including, but not limited to, rights of contribution  
5 and indemnity. Nothing in this act shall be construed to create  
6 any NEW, DIFFERENT OR ADDITIONAL liability for or create a <—  
7 private right of action against any ~~lender or fiduciary~~ LENDER, <—  
8 FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY.

9 Section 9. Apportionment of liability.

10 Notwithstanding anything to the contrary, if two or more  
11 persons acting independently cause distinct harm or a single  
12 harm for which there is a reasonable basis for division  
13 according to the contribution of each, a ~~lender or fiduciary~~ <—  
14 LENDER, FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY shall be <—  
15 subject to liability only for the portion of the total liability  
16 that is directly attributable to the lender or fiduciary.

17 Section 10. Construction of act.

18 The terms and conditions of this act are to be liberally  
19 construed so as to best achieve and effectuate the goals and  
20 purposes of this act. LIABILITY SHALL BE BASED ON PROXIMATE AND <—  
21 EFFICIENT CAUSATION. THIS ACT PREEMPTS AND ELIMINATES ALL  
22 PRESENT LIABILITY STANDARDS, INCLUDING, BUT NOT LIMITED TO, THE  
23 CONCEPT OF A PERSON WHO, WITHOUT PARTICIPATION IN THE MANAGEMENT  
24 OF PROPERTY, HOLDS INDICIA OF OWNERSHIP PRIMARILY TO PROTECT A  
25 SECURITY INTEREST. UNDER ALL PROVISIONS HEREIN, THE BURDEN OF  
26 PROOF SHALL BE UPON THE PERSON SEEKING TO HAVE A LENDER,  
27 FIDUCIARY OR ECONOMIC DEVELOPMENT AGENCY HELD LIABLE FOR A  
28 RESPONSE ACTION. The burden of proof shall be upon the person  
29 seeking to have a lender or a fiduciary held liable for a  
30 response action or damages.

1 Section 11. Severability.

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

7 Section 12. Repeals.

8 ~~To the extent that any environmental acts are inconsistent~~ <—  
9 ~~with this act, such laws are deemed repealed so that the~~  
10 ~~provisions of this act may be enforced. No environmental law~~  
11 ~~enacted after this act shall be applied retroactively to impose~~  
12 ~~liability upon lenders and fiduciaries.~~

13 TO THE EXTENT THAT ANY ENVIRONMENTAL ACTS ARE INCONSISTENT <—  
14 WITH THIS ACT, OR POSE LIABILITY AS ADDRESSED IN THIS ACT, SUCH  
15 PROVISION OF THOSE LAWS ARE PREEMPTED AND DEEMED REPEALED SO  
16 THAT THE PROVISIONS OF THIS ACT MAY BE ENFORCED. NO  
17 ENVIRONMENTAL LAW ENACTED AFTER THIS ACT SHALL BE APPLIED  
18 RETROACTIVELY TO IMPOSE LIABILITY UPON LENDERS, FIDUCIARIES OR  
19 ECONOMIC DEVELOPMENT AGENCIES, UNLESS THERE ARE EXPRESS  
20 REPEALERS WHICH EXPLAIN THE EXTENT OF THE REPEAL.

21 Section 13. Applicability.

22 The provisions of this act shall apply to the following:

23 (1) All indicia of ownership, including those presently  
24 or subsequently acquired, or those acquired prior to the date  
25 of enactment that are held primarily to protect a security  
26 interest in the property.

27 (2) Each fiduciary with respect to any services provided  
28 by the fiduciary, including those presently or subsequently  
29 provided, and those rendered prior to the date of enactment.

30 (3) All administrative actions, actions, suits or claims

1     against ~~lenders or fiduciaries~~ LENDERS, FIDUCIARIES OR     <—  
2     ECONOMIC DEVELOPMENT AGENCIES not yet finally resolved by the  
3     department or any court or administrative hearing board  
4     having any action, suit or claim pending before it or an  
5     appeal from a lower court, REGARDLESS OF WHEN THE RELEASE OR     <—  
6     INTEREST IN THE SUBJECT PROPERTY OCCURRED.

7     Section 14.   Effective date.

8     This act shall take effect immediately UPON THE EFFECTIVE     <—  
9     DATE OF THE ACT OF                   , 1994 (P.L.     , NO.     ) KNOWN  
10    AS THE LAND RECYCLING AND ENVIRONMENTAL REMEDIATION STANDARDS  
11    ACT.