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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 972      Session of  
1993

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APRIL 22, 1993

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REFERRED TO ENVIRONMENTAL RESOURCES AND ENERGY, APRIL 22, 1993

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AN ACT

1 Providing for the voluntary cleanup of existing industrial  
2 sites; further defining the cleanup liability of new  
3 industries, financial institutions and tenants; providing for  
4 the voluntary cleanup of industrial sites by responsible  
5 owners; establishing the Voluntary Cleanup Loan Fund and the  
6 Industrial Land Recycling Fund to aid industrial site  
7 cleanups; and providing for the registration of environmental  
8 consulting professionals.

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

10 CHAPTER 1

11 PRELIMINARY PROVISIONS

12 Section 101. Short title.

13 This act shall be known and may be cited as the Industrial  
14 and Commercial Land Recycling Act.

15 Section 102. Declaration of policy.

16 The General Assembly finds and declares as follows:

17 (1) The reuse and redevelopment of existing industrial  
18 and commercial land should be encouraged as a sound land use  
19 management policy to prevent the needless development of  
20 prime farmland, open space, natural and recreation areas and  
21 to prevent urban sprawl.

22 (2) Hundreds of abandoned and underutilized industrial  
23 and commercial sites should be returned to being useful, tax-  
24 producing properties to protect existing employment  
25 opportunities and to provide new opportunities.

26 (3) Persons interested in redeveloping existing  
27 industrial sites must have a method of determining with  
28 certainty what their legal liabilities and cleanup  
29 responsibilities will be when they plan the reuse of existing  
30 sites. Financial institutions which invest in the reuse of

existing sites and the subsequent owners or lease holders must also be given this same degree of certainty.

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

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

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

#### Section 103. Definitions.

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

"ASTM." American Society for Testing and Materials.

"CERCLA." The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510, 94 Stat. 2767).

"Department." The Department of Environmental Resources of

1 the Commonwealth.

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

5 "Hazardous substance." The term shall have the same meaning  
6 as given to it in the act of October 18, 1988 (P.L.756, No.108),  
7 known as the Hazardous Sites Cleanup Act, and shall include a  
8 regulated substance under the act of July 6, 1989 (P.L.169,  
9 No.32), known as the Storage Tank and Spill Prevention Act, and  
10 pollution regulated under the act of June 22, 1937 (P.L.1987,  
11 No.394), known as The Clean Streams Law, the act of January 8,  
12 1960 (1959 P.L.2119, No.787), known as the Air Pollution Control  
13 Act, and the act of July 7, 1980 (P.L.380, No.97), known as the  
14 Solid Waste Management Act.

15 "Industrial activity." Commercial, manufacturing or any  
16 other activity done to further either the development,  
17 manufacturing or distribution of goods and services, including,  
18 but not limited to, administration of business activities,  
19 research and development, warehousing, shipping, transport,  
20 remanufacturing, stockpiling, storage, solid waste management,  
21 repair and maintenance of raw materials, intermediate and final  
22 products and solid waste created during such activities,  
23 commercial machinery and equipment.

24 "Local economic development agency." Any industrial and  
25 commercial development authority created under the act of August  
26 23, 1967 (P.L.251, No.102), known as the Industrial and  
27 Commercial Development Authority Law, any industrial development  
28 agency as that term is defined in the act of May 17, 1956 (1955  
29 P.L.1609, No.537), known as the Pennsylvania Industrial  
30 Development Authority Act, any redevelopment authority created

1 under the act of May 24, 1945 (P.L.991, No.385), known as the  
2 Urban Redevelopment Law, any area loan organization as that term  
3 is defined in the act of July 2, 1984 (P.L.545, No.109), known  
4 as the Capital Loan Fund Act, and any other municipal authority  
5 which acquires title or an interest in property.

6 "Person." An individual, firm, corporation, association,  
7 partnership, consortium, joint venture, commercial entity,  
8 authority, nonprofit corporation, interstate body or other legal  
9 entity which is recognized by law as the subject of rights and  
10 duties. The term includes the Federal Government, State  
11 government and political subdivisions.

12 "Remediate." Clean up, mitigate, correct, abate, minimize,  
13 eliminate, prevent, study or assess a release of a regulated  
14 substance into the environment in order to protect the present  
15 or future public health, safety and welfare or the environment.

16 "Responsible person." The term shall have the same meaning  
17 as given to it in the act of October 18, 1988 (P.L.756, No.108),  
18 known as the Hazardous Sites Cleanup Act, and shall include a  
19 person subject to enforcement actions under the act of July 6,  
20 1989 (P.L.169, No.32), known as the Storage Tank and Spill  
21 Prevention Act, the act of June 22, 1937 (P.L.1987, No.394),  
22 known as The Clean Streams Law, the act of January 8, 1960 (1959  
23 P.L.2119, No.787), known as the Air Pollution Control Act, and  
24 the act of July 7, 1980 (P.L.380, No.97), known as the Solid  
25 Waste Management Act.

26 Section 104. Powers and duties.

27 (a) Board.--The Environmental Quality Board shall have the  
28 power and its duty shall be to adopt any regulations needed to  
29 implement the provisions of this act. Any regulations needed to  
30 implement this act shall be proposed by the department no later

1 than six months after the effective date of this act and shall  
2 be finalized no later than 18 months after the effective date of  
3 this act.

4 (b) Department.--The department shall have the power and its  
5 duty shall be to implement the letter and intent of this act.

6 Section 105. General scope.

7 The provisions of this act shall not apply to properties  
8 listed or proposed on the National Priorities List established  
9 under CERCLA or the State Priorities List established under the  
10 act of October 18, 1988 (P.L.756, No.108), known as the  
11 Hazardous Sites Cleanup Act, except those properties which may  
12 be owned by local economic development agencies on the effective  
13 date of this act.

### 14 CHAPTER 3

#### 15 INNOCENT LANDOWNER CLEANUPS

16 Section 301. Scope.

17 (a) Applicability.--This chapter applies to a person who:

18 (1) either intends to own, has expressed an option to  
19 buy or other formal agreement, or who now owns a parcel of  
20 real property used for industrial activities;

21 (2) did not, by act or omission, cause or contribute to  
22 any contamination or to the release or threatened release of  
23 a hazardous substance on the identified real property; and

24 (3) will reuse or redevelop the property for industrial  
25 activities or other compatible uses, such as open space or  
26 greenways, to retain or expand employment or who is now using  
27 the property for industrial activities which will create or  
28 retain employment opportunities. For purposes of this  
29 chapter, "employment retention or creation" shall mean  
30 employment at a level or levels specified for the property

beginning at the time of certification under section 302(e)  
and extending over the next five years.

(b) Site preparation.--Notwithstanding any other provision  
of this section, the department may approve voluntary cleanup  
plans to prepare a property for development of industrial  
activities or compatible uses as part of an organized economic  
development activity endorsed by a local economic development  
agency.

Section 302. Voluntary cleanup plans.

(a) General.--Innocent landowners meeting the requirements  
of section 301 may submit a voluntary cleanup plan to the  
department for review and approval based on a workplan  
previously approved by the department. The department shall  
review and make a decision on whether the plan meets the  
requirements of this section within no more than 120 days.

(b) Contents.--A voluntary cleanup plan shall include:

(1) A baseline environmental study of the property which  
describes the contamination, if any, on the property and the  
actual risk it poses to public health and the environment.

(2) Proposals, if needed, to remediate any contamination  
or condition which has or could lead to a release or  
threatened release which poses an immediate, direct or  
imminent actual risk to public health and the environment,  
considering the present or future use of the property, a  
timetable for implementing the measures and for monitoring  
the site and any cleanup measures after they have been  
completed.

(3) Proposals, if needed, to eliminate significant  
actual risks to public health and the environment considering  
the present and future use of the property, a timetable for



1 implementing the measures and for monitoring the site and any  
2 cleanup measures after they have been completed.

3 (4) Describe any proposed deed or operating restrictions  
4 on the present or future use of the property designed to  
5 prevent contamination or protect the integrity of cleanup  
6 measures installed on the site.

7 (5) The level of employment that will be created or  
8 retained when the plan is completed.

9 (c) Remediation alternatives.--

10 (1) Remediation alternatives shall be based on the  
11 actual risk to human health and the environment posed by  
12 contaminants on the property considering these factors:

13 (i) The intended and allowable use or subsequent  
14 uses of the property.

15 (ii) The ability of the contaminants to move in a  
16 form and manner which would result in exposure to humans  
17 and the surrounding environment at levels considered to  
18 be a significant health risk.

19 (iii) Consideration of the potential environment  
20 risks of proposed cleanup alternatives and their economic  
21 and technical feasibility and reliability.

22 (2) Remediation alternatives are not required to provide  
23 for the removal or remediation of the conditions or  
24 contaminants causing a release or threatened release on the  
25 identified property if:

26 (i) The plan demonstrates contaminants pose no  
27 significant risk to employees, public health and the  
28 environment or the remediation actions proposed in the  
29 plan and the subsequent uses of the property will  
30 eliminate significant risks to employees, public health

1 and the environment.

2 (ii) Activities required to undertake the proposed  
3 reuse or redevelopment of the property are in a manner  
4 which will protect public health and the environment.

5 (iii) Any reuse or redevelopment of the property is  
6 not likely to aggravate or contribute to contamination of  
7 the air, land or water or to a release or threatened  
8 release that may not require removal or remediation and  
9 which is not likely to interfere with or substantially  
10 increase the cost of any response actions which may be  
11 needed to address any remaining contamination.

12 (iv) The owner of the property agrees to cooperate  
13 with the department or other persons acting at the  
14 direction of the department in taking response actions  
15 which may be necessary to address any contamination or  
16 release or threatened releases not identified in the  
17 voluntary cleanup plan or required to be removed or  
18 remediated at a later date.

19 (d) Public review.--A proposed voluntary cleanup plan shall  
20 be subject to a 30-day public review and comment period. Notice  
21 of the proposed plan shall be published in the Pennsylvania  
22 Bulletin and a newspaper of general circulation serving the area  
23 in which the identified property is located. The department may  
24 hold a public hearing on the plan if one is requested. The  
25 department shall consult with the Department of Commerce on the  
26 adequacy of the employment opportunities to be created or  
27 retained on the identified property.

28 (e) Certifications.--The department shall provide a formal  
29 written certification that the voluntary cleanup plan has been  
30 completed to the satisfaction of the department within no more

1 than 30 days of a request by the property owner. The person  
2 submitting the voluntary cleanup plan shall certify that it will  
3 retain the same or expand employment opportunities of a specific  
4 number for at least five years after certification.

5 (f) Deed restriction.--If required by the department, a  
6 restriction shall be placed on the deed for the property covered  
7 by a voluntary cleanup plan which restricts the use of the  
8 property to industrial activities as specified in the voluntary  
9 cleanup plan or to protect the integrity of cleanup measures.

10 The deed restriction shall be placed on the property at the time  
11 the department issues its certification under subsection (e).

12 Section 303. Protection from liability.

13 (a) Protection.--Any person acting in accordance with an  
14 approved voluntary cleanup plan shall not be considered a  
15 responsible person, including in legal actions involving a  
16 contribution action or a citizen suit, for any contamination  
17 included in or not identified in the plan for the subject  
18 property, if the person undertakes and the department certifies  
19 the voluntary cleanup plan has been completed and any actions  
20 needed to remove or remediate contamination or releases or  
21 threatened releases of hazardous substances on the identified  
22 property as required by the voluntary cleanup plan have been  
23 implemented. The liability protection provided by this section  
24 applies to the following persons:

25 (1) The owner of the identified property, if the owner  
26 is not responsible for any contamination or release or  
27 threatened release identified in the approved voluntary  
28 cleanup plan.

29 (2) A person providing financing for the identified  
30 property and to the person who undertakes and completes the

activities required under the voluntary cleanup plan.

(3) A person who develops or occupies the identified property as a result of a lease or rent agreement.

(4) A successor or assigned of any person to whom the liability protection applies, provided the successor or assigned is not a person responsible for contamination on the property

(b) Exclusions.--The protection from liability provided by this section does not apply to a property owner who, after the voluntary cleanup plan is certified as complete under section 302(e) does any of the following:

(1) Aggravates or contributes to a release or threatened release identified but not remediated under an approved voluntary cleanup plan on the identified property.

(2) Obtains approval of a voluntary cleanup plan on the identified property by fraud or misrepresentation or by knowingly failing to disclose material information that would have made the person responsible for a release or threatened release.

(3) Fails to fulfill the certification requirement under section 302(e) to create or retain employment, unless the reasons for not fulfilling the employment commitments meets one of the criteria established under 13 Pa. Code § 303.62 (relating to criteria).

(c) Past penalties.--Property owners who submit a voluntary cleanup plan shall not be responsible for paying any fines or penalties levied against any person responsible for contamination on the property.

Section 304. Cleanup guarantee.

(a) Guarantee.--Any person with an approved voluntary

1 cleanup plan shall submit to the department a cleanup guarantee  
2 fee upon certification that the plan has been completed. The  
3 guarantee shall be in the amount of 25% of the cost of preparing  
4 and implementing the voluntary cleanup plan. The guarantee is to  
5 be held in the Industrial Land Recycling Fund for a period of  
6 two years.

7 (b) Form.--The cleanup guarantee fee can be in a form  
8 acceptable to the department, which shall include collateral  
9 bonds, cash or other marketable securities, certificates of  
10 deposit, letters of credit or other acceptable financial  
11 guarantees. The department may also accept phased deposits of  
12 collateral to meet this requirement.

13 (c) Use.--The cleanup guarantee fee is to be earmarked  
14 specifically for the use of the department in the event the  
15 cleanup measures approved by the department in a voluntary  
16 cleanup plan fail to contain or prevent a release or do not  
17 result in reducing the risks presented by the site.

18 (d) Disposition.--The cleanup guarantee fee will be returned  
19 to the person implementing the voluntary cleanup plan at the end  
20 of two years if the property owner satisfies any monitoring or  
21 other postcertification requirements described in the voluntary  
22 cleanup plan and if the measures taken to deal with the  
23 contamination required by the plan performed as expected. Any  
24 successor to the property owner shall maintain the guarantee for  
25 the remainder of the two-year period. The cleanup guarantee fee  
26 shall be forfeited if the property owner is excluded from  
27 liability protection under section 303(b).

28 Section 305. Voluntary Cleanup Loan Program.

29 (a) Establishment.--There is hereby established a separate  
30 account in the State Treasury to be known as the Voluntary

1 Cleanup Loan Fund which shall be a special fund administered by  
2 the Department of Commerce. Within 60 days of the effective date  
3 of this act, the Department of Commerce shall finalize  
4 guidelines and issue application forms to administer this fund.

5 (b) Purpose.--The Voluntary Cleanup Loan Fund is to help  
6 provide funding to persons undertaking an environmental study of  
7 a site as part of a voluntary cleanup plan and for implementing  
8 an approved voluntary cleanup plan. The funding shall be in the  
9 form of low-interest loans and grants for up to 75% of the costs  
10 incurred for completing an environmental study and for  
11 implementing a voluntary cleanup plan for the following  
12 categories of applicants:

13 (1) Local economic development agencies shall be  
14 eligible for grants and for low-interest loans at a rate not  
15 to exceed 2% for the purpose of completing environmental  
16 studies and implementing voluntary cleanup plans.

17 (2) Low-interest loans shall be available at a rate not  
18 to exceed 2% for the purpose of completing environmental  
19 studies and implementing voluntary cleanup plans by other  
20 applicants.

21 (c) Funds.--In addition to any funds appropriated by the  
22 General Assembly, at least \$5,000,000 shall be transferred on  
23 July 1 of each year from the Hazardous Sites Cleanup Fund  
24 established by the act of October 18, 1988 (P.L.756, No.108),  
25 known as the Hazardous Sites Cleanup Act, to the Voluntary  
26 Cleanup Loan Fund for the purpose of implementing the program  
27 established in this section. Moneys received by the Department  
28 of Commerce as repayment of outstanding loans shall be deposited  
29 in the fund. Any interest earned by moneys in the fund shall  
30 remain in the fund. The first transfer of funds from the

1 Hazardous Sites Cleanup Fund required by this subsection shall  
2 occur within 60 days of the effective date of this act.

3 (d) Annual report.--The Department of Commerce shall on  
4 October 1 of each year report to the General Assembly on the  
5 grants, loans, expenditures and commitments made from the fund.

## 6 CHAPTER 5

### 7 RESPONSIBLE OWNER CLEANUPS

8 Section 501. Scope.

9 (a) Responsible owners.--This chapter applies to owners of  
10 property on which industrial activities are or have taken place  
11 who are considered responsible persons, but who, on a voluntary  
12 basis, cooperate with the department to identify, develop,  
13 implement and complete a responsible owner cleanup plan and who  
14 create or retain employment opportunities on the property or  
15 develop other compatible uses such as open space or greenways.

16 (b) Voluntary actions.--For the purposes of this chapter,  
17 "voluntary basis" shall mean the responsible owner brought the  
18 possible contamination on the property to the attention of the  
19 department. The responsible owner must certify to the department  
20 the contamination was not the result of willful actions or gross  
21 negligence by that person which resulted in the illegal disposal  
22 of waste and pollution of the land, air or waters of this  
23 Commonwealth.

24 (c) Employment opportunities.--For purposes of this chapter,  
25 "employment expansion or retention" shall mean employment at a  
26 level or levels specified for the property at the time of  
27 certification under section 502(e) and extending over the next  
28 five years.

29 (d) Site preparation.--Notwithstanding any other provision  
30 of this section, the department may approve responsible owner

1 cleanup plans to prepare a property for development of  
2 industrial activities or compatible uses as part of an organized  
3 economic development activity endorsed by a local economic  
4 development agency.

5 Section 502. Responsible owner cleanup plan.

6 (a) General.--Responsible property owners meeting the  
7 requirements of section 501 may submit a responsible owner  
8 cleanup plan to the department for review and approval based on  
9 a workplan previously approved by the department. The department  
10 shall review and make a decision on whether the plan meets the  
11 requirements of this section within no more than 120 days.

12 (b) Contents.--A responsible owner cleanup plan shall  
13 include:

14 (1) A baseline environmental study of the property which  
15 describes the contamination, if any, on the property and the  
16 actual risk it poses to public health and the environment.

17 (2) Proposals, if needed, to remediate any contamination  
18 or condition which has or could lead to a release or  
19 threatened release which poses an immediate, direct or  
20 imminent actual risk to public health and the environment,  
21 considering the present and future use of the property, a  
22 timetable for implementing the measures and for monitoring  
23 the site and any cleanup measures after they have been  
24 completed.

25 (3) Proposals, if needed, to eliminate significant  
26 actual risks to public health and the environment considering  
27 the present and future use of the property, a timetable for  
28 implementing the measures and for monitoring the site and any  
29 cleanup measures after they have been completed.

30 (4) A description of any proposed deed or operating



1 restrictions on the present or future use of the property  
2 designed to prevent contamination or protect the integrity of  
3 cleanup measures installed on the site.

4 (5) The level of employment that will be created or  
5 retained when the plan is completed.

6 (c) Remediation alternatives.--

7 (1) Remediation alternatives are to be based on the  
8 actual risk to human health and the environment posed by  
9 contaminants on the property considering these factors:

10 (i) The intended and allowable use or subsequent  
11 uses of the property.

12 (ii) The ability of the contaminants to move in a  
13 form and manner which would result in exposure to humans  
14 and the surrounding environment at levels considered to  
15 be a significant health risk.

16 (iii) Consideration of the potential environmental  
17 risks of proposed cleanup alternatives and their economic  
18 and technical feasibility and reliability.

19 (2) Remediation alternatives are not required to provide  
20 for the removal or remediation of the conditions or  
21 contaminants causing a release or threatened release on the  
22 identified property if:

23 (i) The plan demonstrates contaminants pose no  
24 significant risk to employees, public health and the  
25 environment or the remediation actions proposed in the  
26 plan and subsequent uses of the property will eliminate  
27 significant risks to employees, public health and the  
28 environment.

29 (ii) Activities required to undertake the proposed  
30 reuse or redevelopment of the property are in a manner

1 which will protect public health and the environment.

2 (iii) Any reuse or redevelopment of the property is  
3 not likely to aggravate or contribute to contamination of  
4 the air, land or water or to a release or threatened  
5 release that may not require removal or remediation and  
6 which is not likely to interfere with or substantially  
7 increase the cost of any response actions which may be  
8 needed to address any remaining contamination.

9 (iv) The owner of the property agrees to cooperate  
10 with the department in taking response actions which may  
11 be necessary to address any contamination or releases or  
12 threatened releases not identified in the responsible  
13 owner cleanup plan or required to be removed or  
14 remediated at a later date.

15 (d) Public review.--A proposed responsible owner cleanup  
16 plan shall be subject to a 30-day public review and comment  
17 period. Notice of the proposed plan shall be published in the  
18 Pennsylvania Bulletin and a newspaper of general circulation  
19 serving the area in which the identified property is located.  
20 The department may hold a public hearing on the plan if one is  
21 requested. The department shall consult with the Department of  
22 Commerce on the adequacy of the employment opportunities created  
23 or retained on the identified property.

24 (e) Certifications.--The department shall provide a formal  
25 written certification whether or not the responsible owner  
26 cleanup plan has been completed to the satisfaction of the  
27 department within no more than 30 days of a request by the  
28 property owner. The property owner shall certify that it will  
29 provide the same or expanded employment opportunities of a  
30 specific number for at least five years after certification.

1 (f) Deed restriction.--If required by the department, a  
2 restriction shall be placed on the deed for the property covered  
3 by a responsible owner cleanup plan which restricts the use of  
4 the property to industrial activities as specified in the  
5 responsible owner cleanup plan or to protect the integrity of  
6 cleanup measures. The deed restriction shall be placed on the  
7 property at the time the department issues its certification  
8 under subsection (e).

9 Section 503. Protection from liability.

10 (a) Protection.--Any person acting in accordance with an  
11 approved responsible owner cleanup plan shall not be considered  
12 a responsible person, including in legal actions involving a  
13 contribution action or a citizen suit, for any contamination  
14 included in the plan for the subject property, if the department  
15 certifies the responsible owner cleanup plan has been completed  
16 and any actions needed to remove or remediate contamination or  
17 releases or threatened releases of hazardous substances on the  
18 identified property as required by the responsible owner cleanup  
19 plan have been implemented. The liability protection provided by  
20 this section applies to the following persons:

21 (1) A person providing financing for the identified  
22 property and to the person who undertakes and completes the  
23 activities required under the responsible owner cleanup plan.

24 (2) A person who develops or occupies the identified  
25 property as a result of a lease or rent agreement.

26 (3) A successor or assigned of any person to whom the  
27 liability protection applies, provided the successor or  
28 assigned is not a person responsible for contamination on the  
29 property.

30 (b) Exclusions.--The protection from liability provided by

1 this section does not apply to a property owner who:

2 (1) Aggravates or contributes to a release or threatened  
3 release identified but not remediated under an approved  
4 responsible owner cleanup plan on the identified property.

5 (2) Obtains approval of a responsible owner cleanup plan  
6 on the identified property by fraud or misrepresentation or  
7 by knowingly failing to disclose material information on a  
8 release or threatened release.

9 (3) Does not fulfill the certification requirement under  
10 section 502(e) to create or retain employment opportunities  
11 unless the reason for not fulfilling the employment  
12 commitment meets one of the criteria established in 13 Pa.  
13 Code § 303.62 (relating to criteria).

14 Section 504. Cleanup guarantee.

15 (a) Guarantee.--Any person with an approved responsible  
16 owner cleanup plan shall submit to the department a cleanup  
17 guarantee fee upon certification that the plan has been  
18 completed. The guarantee shall be in the amount of 25% of the  
19 cost of preparing and implementing the responsible owner cleanup  
20 plan. The guarantee is to be held in the Industrial Land  
21 Recycling Fund for a period of two years.

22 (b) Form.--The cleanup guarantee fee can be in a form  
23 acceptable to the department, which shall include collateral  
24 bonds, cash or other marketable securities, certificates of  
25 deposit, letters of credit or other acceptable guarantees. The  
26 department may also accept phased deposits of collateral to meet  
27 this requirement.

28 (c) Use.--The cleanup guarantee fee is to be earmarked  
29 specifically for the use of the department in the event the  
30 cleanup measures approved by the department in a responsible

owner cleanup plan fail to contain or prevent a release or do not result in reducing the risks presented by the site.

(d) Disposition.--The cleanup guarantee fee will be returned to the property owner at the end of two years if the property owner satisfies any monitoring or other postcertification requirements described in the responsible owner cleanup plan and if the measures taken to deal with contamination required by the plan to perform as expected. Any successor to the property owner shall maintain the guarantee for the time remaining during the two-year guarantee period. The cleanup guarantee fee shall be forfeited if the property owner is excluded from liability protection under section 503(b).

## CHAPTER 7

### ABANDONED INDUSTRIAL LAND REDEVELOPMENT

#### Section 701. Scope.

This chapter applies to a person who:

(1) Intends to own a parcel of real property used for industrial activities where there is no financially viable responsible person to clean up contamination on the property.

(2) Did not, by act or omission, cause or contribute to any contamination or to the release or threatened release of a hazardous substance on the identified real property.

(3) Will reuse or redevelop the property for industrial activities or compatible uses, such as open space or greenways, to create or expand employment opportunities. For purposes of this chapter, "employment expansion" shall mean providing employment opportunities for a period of five years after the agreement is signed under section 702(d).

#### Section 702. Environmental study.

(a) Baseline study.--The prospective purchaser or property

1 owner shall conduct a baseline environmental study on the  
2 identified property based on a workplan approved by the  
3 department to establish a baseline of existing contamination on  
4 the site. The study shall also include the level of employment  
5 that will be created or retained.

6 (b) Public review.--The proposed environmental study shall  
7 be subject to a 30-day public review and comment period. Notice  
8 of the availability of the completed study shall be published in  
9 the Pennsylvania Bulletin and a newspaper of general circulation  
10 serving the area in which the identified property is located.  
11 The department may hold a public hearing on the study if one is  
12 requested. The department shall consult with the Department of  
13 Commerce on the adequacy of the employment opportunities created  
14 or retained on the identified property.

15 (c) Department review.--Within 120 days after the completed  
16 environmental study is accepted for review, the department shall  
17 determine whether the study adequately identifies the  
18 environmental hazards and risks posed by the site.

19 (d) Agreement.--The department and the prospective purchaser  
20 or property owner shall enter into an agreement based on the  
21 environmental study which outlines cleanup liabilities for the  
22 identified property.

### 23 Section 703. Cleanup liability.

24 (a) Immediate threats.--The prospective purchaser after  
25 purchase or property owner shall be responsible for remediation  
26 of any immediate, direct or imminent threats to public health or  
27 the environment, such as drummed waste, which would prevent the  
28 property from being occupied for its intended purpose.

29 (b) Identified contamination.--The prospective purchaser  
30 after purchase or property owner shall not be held responsible

1 for the remediation of any contamination identified in the  
2 completed environmental study accepted by the department, other  
3 than the contamination identified in subsection (a).

4 (c) New liability.--Nothing in this act shall relieve the  
5 prospective purchaser after purchase or property owner of any  
6 cleanup liability for contamination later caused by the  
7 prospective purchaser or property owner.

8 (d) Remediation alternatives.--

9 (1) Remediation alternatives are to be based on the  
10 actual risk to human health and the environment posed by  
11 contaminants on the property considering these factors:

12 (i) The intended and allowable use or subsequent  
13 uses of the property.

14 (ii) The ability of the contaminants to move in a  
15 form and manner which would result in exposure to humans  
16 and the surrounding environment at levels considered to  
17 be a significant health risk.

18 (iii) The consideration of the potential  
19 environmental risks of proposed cleanup alternatives and  
20 their economic and technical feasibility and reliability.

21 (2) Remediation alternatives are not required to provide  
22 for the removal or remediation of the conditions or  
23 contaminants causing a release or threatened release on the  
24 identified property if:

25 (i) Contaminants pose no significant risk to  
26 employees, public health and the environment or the  
27 remediation actions proposed in the plan and subsequent  
28 uses of the property will eliminate significant risks to  
29 employees, public health and the environment.

30 (ii) Activities required to undertake the proposed

1 reuse or redevelopment of the property are in a manner  
2 which will protect public health and the environment.

3 (iii) Any reuse or redevelopment of the property is  
4 not likely to aggravate or contribute to contamination of  
5 the air, land or water or to a release or threatened  
6 release that may not require removal or remediation and  
7 which is not likely to interfere with or substantially  
8 increase the cost of any response actions which may be  
9 needed to address any remaining contamination.

10 (e) Liability of other parties.--A person providing  
11 financing for the identified property and to the prospective  
12 purchaser or property owner or a person who develops or occupies  
13 the identified property as a result of a lease or rent agreement  
14 shall not be considered a responsible person for cleaning up  
15 contamination on property covered by an agreement developed  
16 under this chapter.

17 (f) Past penalties.--A prospective purchaser or property  
18 owner submitting an environmental study under this chapter shall  
19 not be responsible for paying any fines or penalties levied  
20 against any person responsible for contamination on the  
21 identified property prior to the agreement with the department.

22 Section 704. Owner responsibilities.

23 (a) Prevention.--The prospective purchaser or property owner  
24 shall take the steps necessary to prevent any existing  
25 contamination on the site from becoming worse as the result of  
26 its activities.

27 (b) Noninterference.--The prospective purchaser or property  
28 owner shall not interfere with any subsequent remediation  
29 efforts by the department or others to deal with contamination  
30 identified in the baseline environmental study.



(c) Deed restriction.--If needed, a restriction shall be placed on the deed for the property covered by this chapter which restricts the use of the property to industrial activities and compatible uses which will protect the integrity of any cleanup measures implemented on the property or prevent contaminated portions of the property from being disturbed.

Section 705. Transferability.

The agreement on cleanup liabilities entered into by the department and the prospective purchaser or property owner under this chapter is transferable without review by the department in its entirety to any and all subsequent owners of the property who did not, by act or omission, cause or contribute to any contamination or to the release or threatened release of a hazardous substance on the identified property.

Section 706. Third parties.

No person who submits an environmental study accepted under this chapter by the department or who is granted liability protection under section 703(e) shall be subject to citizen suits or other contribution actions brought by responsible persons for a release or potential release on the identified property.

Section 707. Funding.

Prospective purchasers and property owners redeveloping abandoned property under this chapter shall be eligible for funding under the Voluntary Cleanup Loan Program established under section 305 to perform environmental studies or to implement any remediation actions required of the prospective purchaser or property owner under this chapter.

CHAPTER 9

NO-ACTION DETERMINATIONS

1 Section 901. No-action determinations.

2 Property owners may request and the department shall issue  
3 written determinations that it will take no enforcement or  
4 cleanup actions against an innocent landowner who owns real  
5 property and is otherwise not responsible for any identified  
6 contamination or a release or threatened release of a hazardous  
7 substance where either of the following occurs:

8 (1) An environmental assessment or transaction screen  
9 analysis performed by a registered environmental professional  
10 indicates no significant contamination or contamination which  
11 does not pose significant actual risk to public health and  
12 the environment.

13 (2) Where the department finds that contamination or a  
14 release or threatened release of a hazardous substance  
15 originates from a source on an adjacent or nearby real  
16 property.

17 Section 902. Assessment standards.

18 (a) Standards.--Environmental assessments as required by  
19 this chapter shall follow the Standard E.50.02.2-Standard  
20 Practice for Environmental Site Assessments: Phase I  
21 Environmental Site Assessment Process as adopted by ASTM.  
22 Property transaction screens as required by this chapter shall  
23 follow Standard E.50.02.1-Standard Practice for Environmental  
24 Sites Assessments: Transaction Screen Process as adopted by  
25 ASTM.

26 (b) Liability.--A person shall not be considered a person  
27 responsible for a release or a threatened release of a hazardous  
28 substance simply by virtue of conducting an environmental  
29 assessment or transaction screen on a property. Nothing in this  
30 section relieves a person of any liability for failure to

1 exercise due diligence in performing an environmental assessment  
2 or transaction screen.

3 Section 903. Review deadline.

4 The department shall make a decision on whether or not to  
5 issue a no-action determination no later than 90 days after a  
6 request is made, unless the department and the person requesting  
7 the determination agree to an extension of the review to a date  
8 certain.

9 Section 904. Applicability.

10 The no-action determination shall also apply to any person  
11 providing financing to the person named in the determination for  
12 the identified property and to any person developing or  
13 occupying the identified property as the result of a lease or  
14 rent agreement.

15 Section 905. Entry.

16 The property owner must allow entry to the property by the  
17 department or its representatives for the purpose of taking any  
18 remediation and response actions needed to address contamination  
19 on the adjacent site and not interfere with any response action.

20 Section 906. Transferability.

21 A no-action determination may be transferred by the property  
22 owner to successors and assigns, if the successors and assigns  
23 are not otherwise responsible for any contamination on the  
24 adjacent property. A no-action determination shall also be  
25 extended to the successors and assigns of parties identified in  
26 section 904.

27 Section 907. Third parties.

28 No person who is the subject of a no-action determination  
29 issued by the department or who is granted liability protection  
30 under section 903 shall be subject to either citizen suits or

1 other contribution actions brought by responsible persons for a  
2 release or potential release identified in the no-action  
3 determination.

#### 4 CHAPTER 11

#### 5 REGISTRATION OF ENVIRONMENTAL PROFESSIONALS

#### 6 Section 1101. Registration.

7 (a) General rule.--The department may only accept baseline  
8 environmental studies, environmental assessments or transaction  
9 screen analyses required under this act that are prepared by  
10 environmental professionals registered with the department  
11 starting one year after the department establishes  
12 qualifications for registration. Both individual environmental  
13 professionals and corporations can be registered under this  
14 chapter.

15 (b) Registration period.--Registration for an environmental  
16 professional shall be valid for a period of one year and shall  
17 be renewed annually.

18 (c) Interim reviews.--Nothing in this section shall prevent  
19 the department from accepting environmental assessments or  
20 transaction screen reviews immediately on the effective date of  
21 this act if they comply with section 902.

#### 22 Section 1102. Qualifications.

23 The department shall establish qualifications for  
24 environmental professionals requesting registration. The  
25 qualifications shall include the following:

26 (1) Education, training and experience in preparing  
27 environmental studies and assessments.

28 (2) Certification or accreditation by professional  
29 groups such as the National Association of Environmental  
30 Professionals and the National Association of Safety and

1 Health Professionals.

2 (3) An evaluation of the ability to meet best  
3 professional and technical standards for preparing  
4 environmental studies and assessments.

5 Section 1103. Withholding registration.

6 The department may deny, withhold, withdraw or not renew the  
7 registration of an environmental professional if the applicant  
8 does not meet the qualifications to be registered or if the  
9 department determines the environmental studies and assessments  
10 submitted by the environmental professional do not meet best  
11 professional and technical standards.

12 Section 1104. Registration fee.

13 The initial fee for registering environmental professionals  
14 for the first time shall be \$150. The registration renewal fee  
15 shall be \$100. The department may by regulation change the  
16 initial registration and registration renewal fees.

## 17 CHAPTER 13

### 18 MISCELLANEOUS PROVISIONS

19 Section 1301. Industrial Land Recycling Fund.

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

24 (b) Purpose.--The moneys deposited in this fund shall be  
25 used by the department to remediate a release or threatened  
26 release that poses a significant risk to public health or the  
27 environment where the department has certified a voluntary  
28 cleanup plan or a responsible owner cleanup plan has been  
29 completed but has not reduced or eliminated the risk as  
30 projected. Moneys from the Hazardous Sites Cleanup Fund shall

1 also be available to the department to remediate a release or  
2 threatened release on a property covered by a completed  
3 voluntary cleanup plan or a responsible owner cleanup plan.

4 (c) Funds.--In addition to any funds appropriated by the  
5 General Assembly, Federal funds and private contributions and  
6 any fines and penalties assessed under this act and the cleanup  
7 guarantees assessed or forfeited under sections 304 and 504  
8 shall be deposited into the fund.

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

#### 12 Section 1302. Enforcement.

13 The department may issue orders to persons and municipalities  
14 it considers necessary to aid in the enforcement of the  
15 provisions of this act. An order issued under this act shall  
16 take effect upon service, unless the order specifies otherwise.  
17 An appeal to the Environmental Hearing Board shall not act as a  
18 supersedeas. The power of the department to issue an order under  
19 this act is in addition to any other remedy which may be  
20 afforded to the department under this act or any other act.

#### 21 Section 1303. Penalties.

22 (a) General authority.--The department shall utilize the  
23 civil and criminal penalties of the act of July 7, 1980  
24 (P.L.380, No.97), known as the Solid Waste Management Act, to  
25 enforce the provisions of this act.

26 (b) Fraud.--Any person who willfully commits fraud to obtain  
27 cleanup liability protection under this act shall, upon  
28 conviction, be subject to an additional penalty of \$50,000 for  
29 each separate offense or to imprisonment for a period of not  
30 more than one year for each separate offense, or both. Each day

1 shall be considered a separate offense.

2 Section 1304. Authority reserved.

3 Nothing in this act shall affect the ability or authority of  
4 the department or any person to seek any relief available under  
5 this act or any other act against any party who is not subject  
6 to the liability protection provided under this act.

7 Section 1305. Construction.

8 (a) Existing exclusions.--The protection from cleanup  
9 liability afforded under this act shall be in addition to the  
10 exclusions from being a responsible person under other existing  
11 State environmental statutes.

12 (b) Federal standards.--The provisions of this act shall not  
13 prevent the Commonwealth from enforcing specific cleanup  
14 standards required to be enforced by the Federal Government as a  
15 condition of primacy or to receive Federal funds.

16 Section 1306. Transfer of funds.

17 The complement of the department is increased by seven  
18 positions for the purpose of implementing this act. The sum of  
19 \$500,000 is hereby appropriated to the Department of  
20 Environmental Resources for fiscal year 1993-1994 from the  
21 Hazardous Sites Cleanup Fund for the purpose of implementing  
22 this act.

23 Section 1307. Effective date.

24 This act shall take effect in 60 days.