

Testimony of  
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Before the  
House Environmental Resources & Energy Committee  
on  
  
“Senate Bills 1, 11 & 12-- Encouraging  
the Cleanup and Reuse of Contaminated Sites”  
  
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Good morning.

This is the first of what I hope are many opportunities I will have to appear before the House Environmental Resources and Energy Committee to talk about important environmental issues facing Pennsylvania.

With me today are David Hess, executive deputy secretary for policy and communications, and Terry Bossert, chief counsel for DER.

I would like to thank Chairman Reber, and the other members of the Committee, for giving me the opportunity today to talk about legislation we need to eliminate the barriers to the cleanup and reuse of contaminated sites.

Pennsylvania has a long and rich industrial heritage. It is a heritage, however, that has scarred the natural landscape of our state with old mine pits and highwalls, streams that run orange and particulate air pollution that we frequently dusted from our cars in Pittsburgh when I was growing up.

Part of that heritage is also thousands of sites on thousands of acres of land in legal and environmental limbo because of contaminants in the ground.

To deal with these problems, we passed a series of environmental laws beginning in the 1930s to require permits for new water discharges, bonding and reclamation for new mines and emission limits on sources of air pollution. In the 1970s, we intensified our efforts by establishing in this nation an elaborate and very successful end-of-the-pipe regulatory structure for the protection of human health and natural resources. It was expensive, and sometimes controversial, but I hope most Pennsylvanians agree with its results. An important measure of its success is how well environmental protection has been internalized in the thinking and conduct of our corporate and community life. Compliance with these laws is now the norm and not the exception.

While these laws worked well to steadily improve the quality of our environment, none dealt directly with setting cleanup standards. But the interpretation of these laws today as applied to the cleanup of contaminated soil and groundwater has resulted in DER and EPA setting inescapable requirements to do impossible things--

- DER pushed cleanups to a standard of cleanliness that only existed before human activity, a job that was prohibitively expensive and remains technologically impossible.

- No one escaped the legal liability for further cleanup, even after they made sites safe.
- Banks, economic development agencies and local governments at first became entangled and then, perhaps wisely, refused to get involved in the redevelopment of contaminated sites, fearing environmental liabilities.
- Property owners adopted a "don't look, don't tell" attitude with contaminated sites. If they shut down and fenced off sites and didn't look for contamination, they might not have to deal with it or DER.
- Even when owners wanted to do the "right thing" and clean up a site, DER often put them through the bureaucratic wringer and many times took years to approve cleanup plans.

These policies had clear consequences, however unintended --

- They created an impenetrable barrier to reusing contaminated sites, causing thousands of sites to be abandoned and remain a threat to neighborhoods
- Opportunities for jobs and housing were lost as development proposals fell under the weight of unrealistic cleanup policies
- Farmland and open space was lost as new development fled from contaminated sites, even those with simple problems, and
- Taxpayers were two-time losers, first being asked to fund the cleanup of contaminated sites, then to pay for new infrastructure -- highways, sewers and water systems -- to support greenfield development. Shareholders, ratepayers and customers were also losers.

I am glad to say just about everyone has now recognized we have to bring some common sense and good science to bear on cleanup policies. Indeed, a number of other states are already ahead of us in that regard. Ohio, Colorado, Connecticut, Nebraska and Tennessee have all enacted laws in the last year to encourage voluntary cleanups and site reuse.

In Pennsylvania, over the last four years, I was pleased to watch the bipartisan effort get underway first in the Senate and then in the House to develop legislation to eliminate the barriers to the cleanup and reuse of contaminated sites. The Department of Environmental Resources, with its greenfields policy, eventually joined the dialogue.

The results of that extensive public debate are the bills that are the subject of your hearing today.

This effort was important to me personally and a number of other practitioners who believed in doing cleanups and were disappointed in what we saw at DER. Terry Bossert and I both represented people who were trying to do the "right thing" and found themselves victims of outdated cleanup policies and attitudes.

We believe Senate Bills 1, 11 and 12 represent a comprehensive approach to dealing with the environmental liability issues that now often prevent the cleanup and reuse of contaminated sites.

These bills are part of a new type of environmental program that focuses on getting the environmental result we want -- that is site cleanups -- while at the same time providing significant economic benefits to our communities -- putting people back to work. It's a "two-for" in my book -- two benefits from one program.

Senate Bill 1, sponsored by Sen. "Chip" Brightbill, establishes a realistic framework for setting cleanup standards based on health and environmental risks, sets up a clear process to regularize DER approval of cleanup plans with deadlines for action, ends the now never-ending cleanup liability for sites once they are made safe, and provides opportunities for public review and input into setting cleanup standards. Special liability incentives are included for encouraging the safe and productive reuse of abandoned sites and areas in enterprise zones.

Senate Bill 11, sponsored by Sen. William Stewart, provides lenders, economic development agencies, municipalities and conservancies protection from environmental cleanup liabilities if they did not cause the pollution on a site.

Senate Bill 12, sponsored by Sen. Albert Belan, would establish a special fund to finance environmental assessments of sites in distressed communities.

These bills address each of the critical environmental issues that have prevented the reuse of contaminated sites-- unreasonable cleanup standards, an unresponsive process for approving cleanup plans, never-ending cleanup liability and no protection for lenders and other innocent landowners involved in recycling contaminated sites.

I am pleased to report that Governor Ridge supports these bills and will sign them into law if they reach his desk in their present form.

I can also report the Ridge Administration has not waited for these bills to become law to actively encourage land recycling projects.

Just two weeks after taking office, I traveled to Meadville in Crawford County to announce agreement on a cleanup plan for the former Avtex Fibers Site. This announcement was important for several reasons.

First, it ended a five-year stalemate between DER, the community and the past owner of the site over how it's to be cleaned up. Second, it is the first permanent cleanup of a state-listed hazardous waste site since 1988. Finally, the agreement demonstrates the partnership that can occur between government at all levels and the private sector to work on issues like this, without taxpayers footing the bill for cleanups. I wish to commend the community and the FMC Corporation for waiting five years to have their problem resolved.

The bottom line is the people of Meadville will now have a site that is safe and which will contribute economically to the community.

It also demonstrates that DER is now "open for business" when it comes to land recycling proposals.

In spite of the wide public discussion and support for Senate Bills 1, 11 and 12 by local governments, farm and labor groups, the business and financial community and environmental professionals, some groups have expressed concerns about how the bills treat new development and sites that presently do not have prospects for immediate reuse.

While admitting that Senate Bill 1 is "fundamentally sound in most respects," some suggest the bill should be amended to continue the use of pre-human or "tougher" cleanup standards for anything spilled on sites developed after the effective date of this new law. New sites, they argue, should be held to a tighter cleanup standard to deter pollution.

At first glance this sounds reasonable, until we remember that the first element of the equation that gave us this problem in the first place -- the attempt to enforce pre-human and technically impossible cleanup standards -- did not act as a deterrent to pollution. It helped cause the current crop of abandoned and unused contaminated sites we now have.

Pre-human cleanup standards don't make cleanups anymore attainable. Coupling these impossible cleanup standards with never-ending cleanup liability will doom us to repeat the same history with policies we are now trying to correct.

Modern permitting requirements for new facilities-- on old sites and new sites-- and stiff penalties for polluting have worked against the old ethic of "anything goes" far more effectively than imposing unreasonable cleanup standards. No law presently on the books is being weakened by enactment of these bills -- pollute the air and deal with the state Air Pollution Control Act, pollute in the water and deal with the Clean Streams Law, pollute the soil and deal with either the Solid Waste Management Act, the Storage Tank and Spill Prevention Act or the Hazardous Sites Cleanup Act. And don't forget reporting to the government and public under the Worker and Community Right-to-Know acts.

The clear message that has always been there and remains is whether you are on an old site or new site, the goal should be to prevent pollution before it happens. It's easy, often inexpensive, and always cheaper than cleaning up anything to any standard.

The Ridge Administration is the first to come to Harrisburg with a major commitment to pollution prevention.

In the near future we will be following through with our commitment to establish a special Office of Pollution Prevention and Compliance Assistance that will not only *preach* pollution prevention, but *teach* businesses, local governments and individuals how to do it.

Some have also suggested the cleanup standards in Senate Bill 1 not be applied to sites where there are no present plans for redevelopment. They are concerned landowners will walk away after the cleanup with the site still vacant.

The public policy choice suggested here is, I think, easy --

1. Letting a site remain contaminated and a possible threat to a community with no hope of cleanup, or
2. Cleaning the site to a level that is safe for the community while making the site attractive for future development.

I would choose the cleanup every time.

This issue, in particular, highlights another important aspect of these bills.

Senate Bills 1, 11 and 12 will result in the cleanup of contaminated sites that would not otherwise warrant any attention from the private sector or from our state-funded cleanup programs because they often do not have environmental problems serious enough, from a statewide perspective, to be considered a toxic waste site.

Many of these contaminated sites also tend to be in economically disadvantaged rural or urban communities that will often have serious concerns about the hazards on these sites. Without these bills, many communities would have little hope of addressing their concerns. I am confident that the private sector, once unfettered from the heavy hand of government, will find uses for sites and ways to cleanup and allocate costs between buyers and sellers that no regulation writer could think of.

I want to sound one small cautionary note. This three-bill package is not a panacea. It is clear that land-use decisions are driven by a wide variety of factors -- transportation access, taxes; regulatory climate, market forces, workforce quality and global economics are all part of the decision-making process in this area. What this package of bills does, however, is remove one major barrier to our communities' ability to use the assets that we have.

Again, thank you for the opportunity to testify today.

I would be happy to answer any questions you might have about my comments.