

**TESTIMONY OF
SENATOR DAVID J. BRIGHTBILL
REGARDING SENATE BILLS 1, 11, & 12
BEFORE THE
HOUSE OF REPRESENTATIVES,
ENVIRONMENTAL RESOURCES AND
ENERGY COMMITTEE
MARCH 16, 1995**

Chairman Reber, members of the Committee, thank you for the opportunity to appear before you and testify regarding Senate Bills 1, 11, and 12 -- the package of bills designed to encourage the reuse of abandoned industrial sites.

These bills are the product of a four year bipartisan effort in the Senate. During those four years, control of the Senate changed hands a few times, but progress on these bills continued regardless of whether Senator Raphael Musto or I chaired the Environmental Resources Committee. The Committee held six public hearings around the Commonwealth on this issue, and several roundtable discussions were sponsored by the Pennsylvania Environmental Council. Over 2,000 people commented on the legislation.

In my real job as solicitor for the Lebanon County Redevelopment Authority, I gained first-hand experience with the problem of abandoned

industrial sites. I learned from that experience that the lack of realistic cleanup standards discourages recycling of industrial sites.

Senate Bill 1 aims to encourage the reuse of abandoned industrial sites by removing the major obstacle to reuse -- the lack of clear, achievable cleanup standards. In the past, the Department of Environmental Resources often followed a policy of insisting that any cleanup of contamination restore the site to a pristine condition completely unaffected by human activity. This policy -- which was not based upon any law or regulation -- was well-intentioned, but counter-productive. In reality, cleanups could not restore pristine conditions, and the staggering cost which accompanied attempts to do so had the unintended consequence of scaring off potential purchasers of sites where contamination might be present. The result was that the sites remained both vacant and contaminated, and industries built on greenfields.

Senate Bill 1 creates three cleanup standards -- background, statewide health, and site-specific. Under the background standard, contamination is cleaned-up to background levels. Under the statewide health standard, sites must be cleaned-up to a degree that will satisfy the risk levels set out in other environmental laws. Under the site-specific standard, a health risk

assessment is conducted based upon the specific circumstances present at the site. Controls such as deed restrictions and fencing may be used as part of a site-specific cleanup plan, but DER may reject any plan that relies solely upon such controls.

The chief remaining issue regarding Senate Bill 1 is whether the cleanup standards in the bill should apply to all sites regardless of when the contamination occurred (as the bill presently states), or whether those standards should be restricted to sites of past contamination. The Pennsylvania Environmental Council, while generally supportive of the bill, has argued that the standards should only apply to past contamination. The reasoning underlying this argument is that different cleanup standards for past and future contamination are necessary both to encourage reuse of sites of past contamination, and to discourage people from polluting in the future.

The cleanup standards in Senate Bill 1 are designed to protect public health, yet still be realistic and achievable. In creating these standards, we never intended to require only minimal, bare-bones cleanups as a trade-off for reuse of existing sites; we intended to fill the void left by DER's past failure to develop comprehensive, realistic standards applicable to all sites. Failing to apply these cleanup standards to sites of future contamination will simply

mean that such sites will be subject to the same problem that plagued sites contaminated in the past -- the lack of clear cleanup standards.

Withholding application of the cleanup standards to sites of future contamination is not necessary to discourage pollution, because Senate Bill 1, Section 501 (c), expressly preserves DER's authority under existing environmental laws to fine and have imprisoned those who recklessly pollute the land, air, and water of the Commonwealth. Attached to this testimony is a table that summarizes the penalty provisions of the Pennsylvania Clean Streams Law, the Solid Waste Management Act, and the Air Pollution Control Act. These laws authorize DER to impose civil penalties of up to \$25,000 per day per violation (even more for illegal disposal of hazardous waste); it is difficult for me to believe that these laws will not provide a sufficient incentive to deter pollution.

Finally, creating a "double standard" under which sites of past and future contamination are subject to different cleanup rules would raise concerns regarding environmental justice. Residents in urban areas, where most abandoned industrial sites are located, could argue that their areas are not being afforded the same treatment as suburban and rural areas. This

concern will not exist if we create a level playing field by applying cleanup standards to sites of both past and future contamination.

Senate Bill 11, sponsored by Senator Stewart, protects economic development agencies and other lenders from liability for contamination they did not cause. This bill addressed a problem caused by environmental laws which base liability upon land ownership -- such laws have had the unintended consequence of discouraging lenders from providing financing for the purchase and reuse of industrial sites. The bill remedies this problem by declaring that lenders are only responsible for contamination they cause at a site.

Senate Bill 12, sponsored by Senator Belan, provides up to \$1 million per year in seed money to help economic development agencies conduct environmental assessments in distressed communities.

Under Governor Ridge and DER Secretary Seif, the Ridge administration has already begun to tackle this problem, as evidenced by the agreement DER signed with the parties involved in the Avtex site in Meadville. However, these bills are still necessary to create clear cleanup standards, which is why the Governor and Secretary Seif have endorsed the

bills. With the passage of Senate Bills 1, 11, and 12, DER will be empowered to make further progress in combating the problem of abandoned industrial sites.

Thank you for the opportunity to give my point of view.

Penalty Provisions of Existing Environmental Laws

LAW	Solid Waste Management Act (35 P.S. § 6018.101 et seq.)	Clean Streams Law (35 P.S. § 691.1 et seq.)	Air Pollution Control Act (35 P.S. § 4001 et seq.)
PURPOSE	Punish/prevent unpermitted disposal of solid waste in the Commonwealth	Punish/prevent unpermitted discharge of pollutants to waters of the Commonwealth	Punish/prevent unpermitted discharges of air pollutants
CIVIL PENALTIES	Up to \$25,000 per day per violation (35 P.S. § 6018.605)	Up to \$10,000 per day per violation (35 P.S. § 691.605)	Up to \$25,000 per day per violation (35 P.S. § 4009.1)
CRIMINAL PENALTIES	<ul style="list-style-type: none"> • Fine of up to \$25,000 per day and imprisonment for up to one year • For illegal disposal of hazardous waste, fine of up to \$100,000 per day and imprisonment for 2-10 years. • For intentional or reckless disposal of hazardous waste, fine of up to \$500,000 per day and imprisonment for 2-20 years. (35 P.S. § 6018.606) 	<ul style="list-style-type: none"> • Fine of up to \$25,000 per day for first offense if conduct negligent or willful. • Imprisonment for up to one year (35 P.S. § 691.606) 	None