



PENNSYLVANIA BANKERS ASSOCIATION

Celebrating 100 Years of Service

**TESTIMONY ON BEHALF OF THE
PENNSYLVANIA BANKERS ASSOCIATION
REGARDING SENATE BILLS 1,11,& 12**

before the
House Environmental Resources and Energy Committee
Hearing held March 16, 1995
Hershey, Pennsylvania

Presenter:

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and Lending Division Head
Johnstown Bank and Trust Company

and

Member, PBA Environmental Liability
Task Force

Good afternoon. My name is Vince Kristobak and I am here today at the request of the Committee's Chairman to discuss environmental liability legislation currently before you following unanimous passage by the Senate earlier this month.

I appreciate the opportunity to be here as the representative of the Pennsylvania Bankers Association's Environmental Liability Task Force which has worked with the sponsors of Senate Bill 11. The banking industry deeply appreciates the opportunity to provide some background on this bill in particular.

The Pennsylvania Bankers Association represents banks in Pennsylvania from the smallest to the largest. PBA's members hold 99% of the commercial banking assets in the Commonwealth of Pennsylvania.

I have been in banking for 16 years. Fifteen of those years were spent in commercial lending. I work for a community bank in Johnstown, Pennsylvania. However, the concerns about environmental issues which I will discuss are shared by bankers all over Pennsylvania -- by institutions with \$25 million in assets to those with over \$40 billion.

Let me assure you that the Pennsylvania Bankers Association's concerns about environmental enforcement go beyond the doors of our own institutions and those of our customers. We strongly believe that environmental enforcement is an important role of government. We further believe that each business and individual has a responsibility to be a good steward of the environment. In fact, banks do a great service by requiring their customers to meet the requirements of environmental laws and statutes. **However,**

banks should not suffer enforcement liability or civil suit due to actions which they did not take or control.

Since the mid-1980's, commercial lenders and fiduciaries have become increasingly concerned about their exposure to liability under state and federal environmental laws. Court decisions holding lenders and fiduciaries liable for cleaning up damage caused by their borrowers or trust and estate clients wreaked havoc in our industry and had an extremely chilling effect on the availability of loans to businesses large and small, and in the availability of fiduciary and estate services to those who require them.

Prior to 1985, financial institutions did not evaluate their own institutional environmental risks, or the risks faced by their borrowers or trust clients -- unless the environmental risks were material concerns. Now, as a result of legislative changes and court decisions, financial institutions are threatened with ever-increasing liability for environmental problems caused by borrowers, trustors, owners or tenants of real property.

It seems so clear that a lender or fiduciary which merely provided needed financing or services to a borrower or other entity should not be responsible for damage it did not cause, but that is not how some courts saw it. Judges broadened the "joint and several" liability provisions of statutes and narrowly construed statutory exemptions intended to protect banks, and instead pulled them into the liability scheme even if their only connection to the contaminated site was a loan or trust relationship with the owner or operator. Just a few weeks ago, a Mississippi court ruled that Citizens State Bank is

liable in a clean-up merely because it loaned the actual polluter money to operate. Although this case was rendered outside the Commonwealth, it has to have a chilling effect on lending throughout the country. A newspaper article about the case is appended to my written testimony.

At least 250 financial institutions have been embroiled in litigation filed by the Environmental Protection Agency (EPA) or state agencies. Even more financial institutions are named as "potentially responsible parties" (PRPs). Appended to my written testimony is a list of banks which have been named as PRPs or are involved in litigation over remediation liability. Pennsylvania financial institutions are on that list. Over 33% of financial institutions responding to the 1991 Survey of the Mortgage Bankers Association said that they have experienced losses or defaults as a result of environmental issues associated with credit transactions. At least 54% of the respondents failed to close loans due to environmental issues.

Hundreds of other financial institutions are experiencing losses or are being threatened with liability and are settling disputes or refusing to foreclose upon real property in order to avoid time-consuming and expensive litigation and site remediation. In addition, even more financial institutions are refusing to enter into credit transactions. This is the most damaging result of the current liability scheme, in my view. Community banks are refusing to lend wherever an environmental issue might be found simply because they cannot risk the bank's capital if responsibility is ultimately assigned to the bank for damage caused by someone else.

The reason this threat of liability has such a chilling effect is that it could far exceed the value of a lender's collateral or of an estate's net worth. You can easily see that this threat of catastrophic liability put a halt to many kinds of business lending across the country and in Pennsylvania. Similarly, banks with trust powers became very strict about the types of trusts and estates they would administer. These restrictions have affected economic development. Usable factory and business sites lie fallow simply because no lender dares risk unlimited liability for prior environmental contamination.

The effect of this problem on small business cannot be overstated. Small businesses face fewer sources of credit. If their community banks cannot take the environmental risk, a community's small businesses are left with few choices. Even larger financial institutions who have environmental expertise on staff cannot bear unquantifiable risks. Eighty-eight percent of banks surveyed by the American Bankers Association in 1990 reported that they have changed their lending policies in order to avoid environmental liability. Seventy-three percent of responding banks said that there are types of credit transactions which they will not enter due to environmental concerns, according to a 1991 survey by the Independent Bankers Association of America.

I'll cite some real life cases for you. Over 150 potentially responsible parties (PRPs - those charged with potential environmental liability) sued the State Street Bank and Trust Company of Boston. After years of costly litigation, the bank finally prevailed. Miners Bank of Butte, Montana was named as a PRP because it made a \$275,000 loan which was 90% guaranteed by the Small Business Administration. All the bank did was survey the site and prepare a deed for that portion of the land which the bank's consultant

assured it was not contaminated. Miners Bank was faced with **over half a billion dollars** in remediation liability just because it did a survey and prepared a deed! The bank only had \$600,000 in unrestricted capital!

One of the Maryland National Bank and Trust Company's borrowers defaulted on a \$335,000 loan secured by real property. The bank foreclosed and owned the site for four years. Despite the fact that there was no evidence that the bank caused the environmental contamination on the site, it lost the \$335,000 on the loan and was required to expend \$550,000 more to clean up the property.

Valley National Bank, now a subsidiary of Bank One, was sued years after it exercised an option to purchase land under a trust which it administered and closed. The land was later found to have been contaminated, and Valley National Bank was sought out to pay remediation costs. During Valley National Bank's trust administration, the tenant's activities at the site complied with environmental laws.

In light of these and other horror stories, most commercial real estate lenders now require environmental assessments which small business borrowers pay for in addition to the regular costs of a business loan application. One in five environmental assessments in a credit transaction uncovers some type of problem, according to the November 1989 study of the Mortgage Bankers Association.

When the PBA first formed its Environmental Liability Task Force, our first action was to develop a legislative policy statement regarding this issue. A copy is appended to my

testimony.

Senate Bill 11 and this entire package of legislation would do a great deal to help keep businesses operating in Pennsylvania, workers employed, encourage the continued use of Pennsylvania's industrial sites, and stem the tide of development of our remaining "green fields."

The banking industry's national trade association, the American Bankers Association, has been pushing hard for a satisfactory solution to this problem at the federal level over the past several years in both the regulatory and legislative arenas. A "Dear Colleague" letter circulated in Congress recently in support of H.R. 200, the Federal "Lender and Fiduciary Fairness in Liability Act." Reps. Fred Upton (R-MI) and W.J. (Billy) Tauzin (D-LA) noted in the letter that, "Fear of liability is chilling lending and investment in previously owned sites and killing communities in the process. No one gains from this phenomenon and virtually everyone loses." Amending the federal statute to clarify lenders and fiduciaries' exposure to environmental liability is only part of the task, however. A patchwork of state environmental laws has grown up over the years which poses similar, and perhaps more frequent, problems for lenders and fiduciaries.

Senate Bill 11 is an excellent example of how to clean up Pennsylvania's environmental liability "patchwork" and state clearly, once and for all, that lenders and fiduciaries are not liable for environmental damage they did not cause.

Senate Bill 11 would bring rationality to Pennsylvania's environmental liability scheme.

It would leave lenders and fiduciaries liable for whatever damage they might cause (though that possibility is very remote given the nature of the banking and trust business) and encourage them to make financing and trust services available to environmentally responsible businesses and business owners and operators.

The sponsors and supporters of Senate Bill 11 should be applauded for their efforts on behalf of economic development in this Commonwealth. The bill is rational, fair and clear. I urge your strong support.

I will be willing to answer any questions you may have.

Miss. Bankers Fight Court Ruling That Lender's Liable for Cleanup

By CHRISTOPHER RHOADS

Bankers in Mississippi are in an uproar over a decision in a lender liability case that, if sustained, would hold banks responsible for sharing in environmental cleanup costs incurred by a borrower.

The decision, which involves the \$140 million-asset Citizens State Bank in Magee, was last week appealed to the Mississippi Supreme Court.

On the legislative front, bankers in the state have rallied behind a bill that would protect lenders from being held liable in such circumstances. The bill was recently passed by the Senate and should be voted on by the House this week.

"This is our No. 1 priority issue," said Mac Deaver, executive director of the Mississippi Bankers Association. "We're trying to short-circuit the court action by getting a state statute passed that shows this decision was way off base."

A state judge ruled in February 1994 that Citizens is partially responsible for the cleanup costs associated with the failed Gulf Coast Sulfur Co., because it

Lender Liability Case	
1988	Citizens makes a \$200,000 loan to a sulfur company that subsequently goes bankrupt.
1989	The sulfur on site catches fire, adding to the cleanup costs.
1993	A railroad company, which owns the site, sues Citizens for partial cleanup costs.
1994	A court rules that Citizens must pay \$6,000 in cleanup costs. The railroad appealed the decision last week.

loaned the company \$200,000. Since the loan enabled the company to operate, the bank should be partially responsible for the consequences, the judge reasoned.

Not long after the loan was issued in 1988, the company, which was operating on land leased from a railroad company, went bankrupt. The bank and the railroad company subsequently found a buyer. But on the very day the deal was struck, in 1989, a pile of sulfur on the site caught fire, thereby

scuttling the agreement and scaring off other potential buyers. Clean-up costs mounted to about \$160,000, bank officials said. Four years later the railroad, now known as Kansas Southern, sued in an attempt to get Citizens to pay \$60,000 of the cleanup costs.

To the dismay of bankers throughout the state, the court ruled that Citizens should pay 10%, or \$6,000, of what Missouri-based Kansas Southern asked.

"We were amazed that it [the court] assessed any of the costs," said Ocean Busby, chairman of Citizens. "It set such a bad precedent."

The railroad company, however, was not satisfied. Last week it appealed the lower court's decision to the state supreme court, arguing that the bank should pay more.

"There was not a heck of a lot of money involved here," said B. Clint Gardner, director of government relations for the Mississippi Bankers Association. "But this was just a ridiculous ruling, if you take it to the extremes. With their [the court's] reasoning, a bank could lend money to buy a car, and then if it gets in a wreck, the bank could be sued." □

POTENTIALLY RESPONSIBLE PARTIES
IN SUPERFUND SITES

Researched By: Denise K. Chamberlain
Associate Counsel
Mellon Bank, N.A.
Researched: April 27, 1994
LEXIS Database: Environmental, Sites
LEXIS Search bank | or trust | or economic

BANK NAME:	SITE NAME:	STATE:	NOTICE EPA ID#LITIGA- TION DOCKET #:	DATE:	OTHER:
1 Troy National Bank	AIDEX Corp.	Iowa	IAD042581256	1984	•NPL
2 Meridian Bank	AIW Frank	Pennsylvania	PAD004351003	1990	•NPL
3 Sun Bank of Ocala	Annie Creek Mine Tailings	South Dakota	SPD987666013	1992	
4 Norwest Bank Kalispell, N.A.	Beaver Wood Products	Montana	MTD021998877	1991	
5 Colorado National Bank of Denver	Broderick Wood Products	Colorado	COD000110254	1992	•NPL •Trust
6 First Interstate Bank	Broderick Wood Products	Colorado	COD000110254	1992	•NPL •Trust
7 Aurora National Bank	Aurora National Bank	Illinois	ILD010236230	1984	•NPL •Trust
8 First National Bank	Cannon Engineering Corp.- Bridgewater	Massachusetts	MAD079510780	1986	•NPL
9 Taunton Savings Bank	Cedartown Municipal Landfill	Georgia	GAD980495402	1989	•NPL
10 Amsouth Bank Corp. Nat. Res. Dept.	Delano Landfill	Illinois	ILD980497788	1990	•Trust
11 First National Bank & Trust Co. of Rockford	Fisher-Cato Chem	Indiana	IND074315886	1985	•NPL •Trust
12 First Source Bank					

13	First National Bank	Fort Hartford Coal Stone Quarry	Kentucky	KYD980844625	1988	•NPL
14	Seattle-First National Bank	Harbor Island-Lead	Washington	WAD980722839	1987	•NPL
15	First National Mgmt. Corp.	Hardage/Criner	Oklahoma	OKD000400693	1984	•NPL
16	Northeastern Bank of PA	Hebelka Auto Salvage Yard	Pennsylvania	PAD980829329	1989	•NPL
17	First Federal Savings and Loan Assoc./IA	Interchem Inc.	Iowa	IAD007495328	1990	•NPL
18	Sioux Valley Savings & Loan/IA	Interchem Inc.	Iowa	IAD007495328	1990	•FDIC Conservator
19	Bank of California	Kalana Specialty	South Carolina	SCD094995503		•NPL
20	United Federal Savings & Loan	Keefe Environmental Services	New Hampshire	NHD092059112	1982	•NPL
21	1st National Bank of Goodland, Kansas	Limon Elevator	Colorado	COD983767393		
22	Colonial First National Bank	Lone Pine Landfill	New Jersey	NJD980505424	1988	•NPL
23	K.B. Reynolds Health Trust 1st Union Nat'l. Bank	Maxey Flats Nuclear Disposal	Kentucky	KYD980729107	1987	•NPL
24	First Valley Bank	McAdoo Associates	Pennsylvania	PAD980712616	1982	•NPL
25	First State Bank of Plainview	Midland Products	Arkansas	ARD980745665		•NPL
26	Plainview-OLA Econ. Develop. Trust, Inc.	Midland Products	Arkansas	ARD980745665		•NPL
27	Inter Continental Bank	Missouri Electric Works	Missouri	MOD980965982	1990	•NPL
28	International Bank of Miami	Missouri Electric Works	Missouri	MOD980965982	1990	•NPL
29	Miners Bank of Montana	Montana Pole and Treating	Montana	MTD006236635	1990	•NPL
30	Mainland Bank & Trust	Montco, Inc.	Texas	TXD9808629851	1983	•NPL

31	Philadelphia National Bank	MW Manufacturing	Pennsylvania	PAD980691372	1992	•NPL
32	First Omni Bank, Natl. Assoc.	NCR Corp, Millsboro	Delaware	DED043958388	1986	•NPL
33	Bank of California	North American Environmental	Utah	UTD980962591	1992	
34	Norwest Bank North Dakota	Old Minot Landfill	North Dakota	NDD980959548	1990	•NPL
35	Illinois Natl Bank/Rockford	Pagel's Pit	Illinois	ILD980606685	1985	•NPL
36	Rocky Mtn Bank Note	Petrochem Recycling Corp/ EKOTEK	Utah	UTD093119196	1992	•NPL
37	Taunton Savings Bank	Plymouth Harbor/ Cannon Engineering Corp	Massachusetts	MAD980525232	1986	•NPL
38	Wachovia Bank & Trust	Potter's Septic Tank Service	North Carolina	NCD075562074	1984	
39	First Interstate Bank of Denver	Sand Creek Industrial	Colorado	COD980717953	1985	•NPL •Trustec
40	Bank of Oklahoma	Sand Springs Petrochemical Complex	Oklahoma	OKD980748446	1988	•NPL
41	First Interstate Bank of California	Selma Treating Company	California	CAD029452141		•NPL
42	State Street Bank & Trust Co	Silresim Chemical Corp	Massachusetts	MAD000192393	1983	•NPL
43	Union National Bank	Silresim Chemical Corp	Massachusetts	MAD000192393	1983	•NPL
44	Bank for Savings	Solvents Recovery Service	Connecticut	CTD009717604	1992	•NPL
45	Bank of Vermont	Solvents Recovery Service	Connecticut	CTD009717604	1992	•NPL
46	Taunton Savings Bank	Sylvester's	New Hampshire	NHD099363541	1986	•NPL
47	Taunton Savings Bank	Tinkham Garage	New Hampshire	NHD062004569	1986	•NPL
48	Land Trust No. 1379	Tri-County L.F. Waste Mgt. IL	Illinois	ILD048306138	1987	•NPL
49	Olympus Bank	Wasatch Chemical Co.(Lot 6)	Utah	UTD000716399	1991	•NPL

50	Bank of New England The Balfour Trust	Western Sand & Gravel	Rhode Island	RID009764929	1984	•NPL
51	Centrust Savings Bank	Wilson Concepts of Florida	Florida	FLD041184383	1992	•NPL
52	Atlantic National Bank	Yellow Water Road Dump	Florida	FLD980844179	1992	•NPL
53	United American Bank & Trust Co.	29th & Mead Groundwater Contamination	Kansas	KSD007241656	1989	•NPL
54	Second Nat'l Bank	A.N.Reizloff Co. (LDI)	Litigation	05-90-0109	1990	
55	First Fidelity Bank NA	Action Corp Et Al	Litigation	02-89-0332	1989	
56	Bank One, Portsmouth, N.A.	American Greetings Corp. (Prist	Litigation	05-87-0215	1989	
57	Bank IV Kansas, N.A.	Bank IV Kansas, N.A., Taylor C	Litigation	07-92-0442	1993	
58	First State Bank of Ketchum	Bellamah Community Development	Litigation	06-89-0136	1989	
59	First Interstate Bank of Denver	Broderick Investment Company	Litigation	08-83-0806	1986	
60	Colorado National Bank	Broderick Investment Company	Litigation	08-83-0006	1986	
61	First Interstate Bank	Broderick Investment Company	Litigation	08-92-0142	1992	•Trustee
62	Cerritos Valley Bank	Cauffman, John	Litigation	09-81-001	1983	
63	Union National Bank	Ciszar, Et Al	Litigation	05-80-0041	1980	
64	First Interstate Bank of Denver	Colorado Organic Chemical Co.	Litigation	08-82-0009	1985	
65	First Interstate Bank of Denver	Colorado Organic Chemical Co.	Litigation	08-84-0014	1985	
66	Mechanics and Farmers Savings	D'Aldiano Family Trust, Et Al	Litigation	01-88-0015	1989	•Trustee
67	Bank of Clinton County, Inc.	Dale Moreau Et Al	Litigation	04-86-0075	1987	
68	United Federal Bank	Data General Corp.	Litigation	01-82-0021	1985	
69	First Michigan Bank Trustee/M.	First Michigan Bank/Windolph	Litigation	05-87-0322	1988	•Trustee

70	Girard Bank, Executor	Havertown PCP Site - Rogers ES	Litigation	03-85-0004	1985
71	Northeastern Bank of Penna.	Hebelka, Lovic M., Estate of	Litigation	03-89-1650	1991
72	Freedom Savings and Loan Assoc	In Re Cuyahoga Equipment Corp	Litigation	03-89-0086	1990
73	Marine Midland Bank, N.A.	Marine Midland Bank, N.A.	Litigation	02-89-0372	1989
74	Maryland Bank and Trust Company	Maryland Bank and Trust Company	Litigation	03-84-0013	1984
75	Merchants Bank, Inc.	Merchants Bank, Inc.	Litigation	01-91-0008	1991
76	Intercontinental Bank	Missouri Electric Works, Et Al	Litigation	07-91-0089	1992
77	Mainland Bank	Motco Site	Litigation	06-84-0022	1986
78	First Granite City Nat'l Bank	NL Industries/Taracorp Site	Litigation	05-90-0056	1991
79	Rainier National Bank	Nortran (NW Transformer SVC)	Litigation	10-83-0006	1984
80	American National Bank & Trust	Paxton Landfill Corporation	Litigation	05-84-0016	1984
81	Rainier National Bank	Savage Enterprises Inc.	Litigation	10-88-0009	1989
82	Mellon Bank (East) N.A.	Superior Industries Inc.	Litigation	03-83-0011	1984
83	American Bank & Trust Company	Superior Industries Inc.	Litigation	03-83-0011	1984

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Pennsylvania Bankers Association's Legislative Environmental Policy

The Pennsylvania Bankers Association is the representative and advocate of the commercial banking industry in Pennsylvania. Our members endorse the role of the Commonwealth of Pennsylvania to preserve and restore the environment enjoyed by everyone.

We stress that banks perform a number of important functions which serve to enhance compliance with both federal and state environmental laws as corporate citizens and in their role as financial intermediaries. Banks' environmental policies include requirements for environmental site assessments and other screening procedures prior to a decision to participate in a transaction. Banks' environmental risk management continues throughout the term of a financing transaction and includes specific environmental compliance covenants to which customers must adhere. These environmental due diligence and compliance requirements often serve to better educate our customers about environmental issues. In addition, they help protect our depositors' funds which are a source of commercial financing.

We believe that changes to Pennsylvania and federal law are necessary in order to permit banks to continue as the primary source of commercial financing. Pennsylvania has been known as a state in the "Industrial Rust Belt." As a result of years of heavy emphasis on manufacturing, we are now a state in the "Environmental Risk Belt."

We recommend the following specific legislative provisions be enacted:

1. A clear, concise secured lender exemption from liability for environmental clean up costs that extends to real estate and all other types of financing.
2. A similar exemption which permits banks to continue to make fiduciary services available.
3. A process which permits banks to assist in financing transactions which have the potential to revitalize existing sites or abandoned businesses with identifiable environmental risks.
4. A statutory recognition of the need to permit community banks to participate in commercial transactions without facing overwhelming economic risk.
5. Absolute preservation of banks' security interests in assets pledged as collateral by borrowers.
6. Greater reliability, certainty and uniformity throughout the Commonwealth in assessment and remediation standards.
7. A state licensing requirement for environmental site assessment professionals.