TESTIMONY OF

E.I. DUPONT DE NEMOURS & COMPANY, INC.

ON SENATE BILL 1/PRINTERS #676

LAND RECYCLING AND ENVIRONMENTAL STANDARDS ACT

PRESENTED TO THE HOUSE ENVIRONMENTAL RESOURCES & ENERGY COMMITTEE

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Good afternoon, I am Dr. Ronald J. Buchanan, Jr. of DuPont Environmental Remediation Services here to testify on behalf of E.I. DuPont de Nemours & Co. At the outset, we would like to thank this committee for affording us the opportunity to provide our perspectives on and strong support of this comprehensive legislation.

In brief, my testimony will cover the following major points:

- Use of Site-Specific, Risk Based Approaches
- An Appropriate,Clear Endpoint to Remediation Obligations
- Consideration of Current and Future Land Use
- Predictability
- Efficient and Voluntary Implementation

I note for the record that DuPont has several industrial operations within Pennsylvania located at Dunbar, Philadelphia, Boothwyn, Towanda, and Fishing Creek and employees over 1,500 people. Additionally, I am a long standing resident of the Commonwealth.

Use of Site-specific, Risk-based Approaches

The use of site-specific, risk-based approaches to remediation is critical to provide a balanced regulation and enhance Pennsylvania's economically competitive position. Such risk-based approaches are a necessary component of a holistic regulatory program that provides both predictability and flexibility for the Department of Environmental Resources (DER) and the regulated community.

Several states (e.g. Massachusetts and Texas) have recently proposed or enacted regulations that provide both predictability and flexibility in remediation programs. Massachusetts has recently promulgated revisions to its Massachusetts Contingency Plan (MCP). The MCP provides three methods to assess risks and identify conditions of "no significant risk." These methods include

- Method 1, which provides statewide, generic standards for soil and groundwater for different land uses (i.e., residential and nonresidential).
- Method 2, which provides some flexibility to adjust the Method 1 standards (e.g., the use of site-specific model parameters to assess potential impacts to groundwater).
- Method 3, which allows for site-specific, risk-based assessments and remediation goals.

In Texas, the recently promulgated Risk Reduction Rule parallels the Massachusetts approach. It allows the party responsible for the remediation to implement one or a combination of three risk reduction standards that address the cleanup of soil, groundwater, surface water, and air.

Other states implementing approaches that include both predictability (statewide, generic standards with consideration of current and future land use) and flexibility (site-specific, risk-based approaches) as regulation, rule, or guidance include Indiana, Michigan, Oregon, Tennessee, and Washington. Recent legislation enacted in New Jersey (Industrial Site Recovery Act) and proposed in Ohio (Real Estate Reuse Act) mandates that such a dual purpose regulatory program be implemented. In new Jersey, the legislation was motivated by a proposed remediation regulation that was widely viewed as putting New Jersey at a competitive disadvantage economically because of its overly stringent and inflexible approach.

An Appropriate, Clear Endpoint to Remediation Obligations

In order to develop an effective strategy, a responsible party must be able to define in advance when the remediation obligations have been fully satisfied. The assurance that successfully implementing remediation activities to a definable and attainable endpoint is crucial to promoting voluntary site cleanup. Remediation costs are often simply too high to justify undertaking remediation without some knowledge that further efforts will not be required except in exceptional situations. Without clearly defined endpoints, a party cannot make an informed business decision regarding the reuse of the property. Even worse, without some finality, the Department risks motivating litigation more than remediation.

In addition, lack of an endpoint will restrict the transfer of property and deter site reuse, resulting in an increase in abandoned industrial facilities. Also, when a responsible party remediates a site to an attainable statewide standard, the responsible party would have no further remediation obligations unless the risk falls outside the range prescribed by the legislation or a previously unknown condition is found.

Consideration of Current and Future Land Use

The current lack of statutory or regulatory incentives encourage Pennsylvania businesses to build on "greenfields" and discourage the cleanup and recycling of property impacted by past industrial activity due to the uncertainty of remediation requirements. This problem continues today and results in abandoned industrial properties essentially isolated from the economy and the tax base by fears of uncertainty on the part of potential developers and lenders. In all cases, the determination of appropriate remediation goals should consider both current and reasonably foreseeable land use. By providing clear and balanced approaches, the DER can encourage property reuse while protecting human health and the environment, protecting natural areas from destruction via development, and creating new jobs for Pennsylvania.

In 1993 testimony before the U.S. House of Representatives Subcommittee on Transportation and Hazardous Materials, Mr. Robert M. Sussman, the Former Deputy Administrator of the Environmental Protection Agency (EPA), addressed the issue of land use under the Superfund program. In the testimony, the EPA acknowledged that land use is "...a very important consideration in determining the cleanup standards to be met, the extent of remediation appropriate for such sites because of its effects on the types of exposure at a site and the frequency at which such exposures are likely to occur, and also the costs of cleaning up." To promote more explicit consideration of future land use instead of automatically defaulting to residential land use in remedial decision making in the Superfund program, the EPA is embarking on several administrative changes as outlined in Mr. Sussman's testimony below.

- "...issuing guidance that would call for site managers to consult actively with the public and local authorities in determining realistic future land use scenarios as early in the process as possible."

- Developing a definitive policy which states "...that, generally, the current land use at a site should be assumed to be the future land use unless there is persuasive information that shows that current land use is likely to change."

Establishing specific requirements for investigating and cleaning contaminated properties will provide a critical tool necessary to expand site remediation in Pennsylvania. Remediating contaminated properties furthers the interest of Pennsylvania businesses to be good citizens, to have access to safe and plentiful groundwater resources, and to reduce or eliminate actual risk to human health and the environment.

Predictability - The promulgation of statutes and regulations which establish definite standards for cleaning contaminated sites will provide a measure of predictability, a quality which Pennsylvania needs to restore economic vitality and to create jobs in the Commonwealth. Predictable standards will help to pierce the cloud of uncertainty associated with contaminated property by enabling responsible parties to evaluate remedial strategies and costs. Establishing specific, predictable standards will thus facilitate business decision making, encourage lending and economic development, and promote the availability of insurance coverage.

Efficient and Voluntary Implementation - The present absence of voluntary cleanup scenarios and remediation standards prevents businesses from undertaking voluntary cleanup programs for two reasons. First, a business contemplating a voluntary cleanup cannot be sure that a selected remediation approach will satisfy the current uncertain requirements. Second, a business cannot demonstrate to essential third parties, buyers and lenders, that a selected remediation approach will eliminate or reduce the potential environmental risk associated with the site.

Pennsylvania businesses are motivated to undertake voluntary cleanup efforts to restore the economic value of contaminated property, to develop contaminated property, and to obtain financing for projects on such sites. Businesses and individuals will act on these motivations if state statutes and regulations establish remediation standards which are sufficiently definite and attainable to ensure that a cleanup effort will satisfy such requirements in an economically feasible manner.

In summary it is our belief that each of these points are thoroughly developed and adequately addressed in the current legislation before us.