



SIERRA CLUB
PENNSYLVANIA
ENVIRONMENTAL LOBBY



JEFF SCHMIDT
Governmental Liaison

Suite 404
600 North Second Street
P.O. Box 663
Harrisburg, PA 17108
(717) 232-0101

**TESTIMONY OF JEFF SCHMIDT
ON BEHALF OF THE
SIERRA CLUB PENNSYLVANIA CHAPTER
ON SB 1, THE LAND RECYCLING AND ENVIRONMENTAL
REMEDICATION STANDARDS ACT
BEFORE THE HOUSE ENVIRONMENTAL RESOURCES AND
ENERGY COMMITTEE**

March 16, 1995

Thank you for allowing us to testify today. The Sierra Club Pennsylvania Chapter is on the record as supporting reasonable incentives to foster the clean up and reuse of industrial sites. You may wonder why we would urge you to oppose SB 1, when it's supporters say they support the reuse of industrial sites.

SB 1 is an example of a good idea gone sour, of a concept that has been perverted as it has wound its way through the legislative labyrinth. Because it deals with a subject that can, at times, be highly technical, it can be intimidating to those who do not believe they have the time to sort out complex issues.

SB 1, has been characterized as a bill that will help preserve "greenfields", or open space, by channeling industrial development to previously contaminated sites, "brownfields". That may have been the case when predecessor bills to SB 1 were introduced in previous General Assemblies, but it is not true today.

A DRAMATIC WEAKENING OF EXISTING LAW FOR THOSE WHO HAVE IN THE PAST, ARE TODAY, AND WILL IN THE FUTURE CONTAMINATED SITES THROUGHOUT PENNSYLVANIA.

EXAMPLE: The bill encourages disuse of sites by removing people from sites instead of pollution. Section 304 allows the use of fences and deed restrictions to attain a clean up standard; instead of treatment, removal, or mobilization of waste. If you want to reuse a site you would want to prohibit fencing and deed restriction to attain clean up, not authorize it.

EXAMPLE: SB 1 revokes existing authority to consider "environmental" as opposed to only "human health" goals in clean up. This is a significant change in Pennsylvania law. Often, a clean up protective of

human health will not be protective of ecosystems or animals such as grazing cattle, deer, or fish. Under federal law, clean up must be protective of both "human health and the environment".

EXAMPLE: This bill will establish clean up levels for groundwater used for drinking water that are less stringent than existing Pennsylvania law and federal law. SB 1 makes clean up of groundwater used for drinking meet "maximum contaminant level" (MCL) under the Safe Drinking Water Act. Existing Pennsylvania law makes legal liability for groundwater "background". Federal law makes non-zero maximum contaminant level goal (MCLG), which is a more protective requirement, the clean up standard for non-carcinogens, while this bill makes MCLs the standard for all pollutants. MCLGs are usually more protective than MCLs.

EXAMPLE: The bill removes the current ability of citizen neighbors of contaminated sites to undertake lawsuits to protect themselves from inadequate clean ups. The reopener provisions of Section 501 give all responsible parties releases regardless of the success of the clean up. The bill should require a clean up that is as technically and economically feasible as possible.

The bill should require opportunities for meaningful public involvement in the choice of clean up options not just "public notice". This could eliminate litigation entirely.

EXAMPLE: SB 1 does nothing to require or encourage clean ups over leaving waste in place. Even where treatment or removal is relatively inexpensive, the bill does not require it if capping the waste will reduce exposure. While using a cap will significantly reduce the possible future uses, the public and DER have no way to influence this choice. Permanent solutions are given no more weight than "sweeping it under the rug".

EXAMPLE: The risk of cancer from SB 1's requirements is two orders of magnitude greater than had been allowed by DER previously. SB 1 would establish a 10^{-4} cancer risk "floor" while 10^{-6} has been the previous risk level. DER has previously allowed "institutional controls" to used to increase protection from 10^{-4} to 10^{-6} , but would require actual clean up to get at least to 10^{-4} first.

EXAMPLE: The "point of compliance" in SB 1 allows vast areas of groundwater to remain contaminated even if the aquifer is major source of drinking water. Federal law assumes the point of compliance is everywhere in the contaminated plume. SB 1, however establishes the point of compliance

as the property boundary.

EXAMPLE: The process to establish acceptable clean up standards errs on the side of those who cause contamination, not on the side of public health or the environment. Because of current scientific uncertainty over the impacts of toxic substances, government should take a conservative approach.

By requiring "peer-reviewed" science, a block to action is created where there is scientific cause for concern, but uncertainty about consequences. We suggest incorporating the "Precautionary Principle", previously adopted in 1992 at the United Nations Earth Summit. As it relates to hazardous substances it would read:

" Where sites contaminated with hazardous substances create threats to human health or the environment, lack of full scientific certainty shall not be used as a reason for not taking cost-effective clean up action."

As more and more studies are done on the effects of hazardous substances, the findings have generally resulted in the tightening of exposure standards. It is arrogant for us today to think that a 10-4 exposure might not need to be tightened in the future. If we let those responsible for this contamination walk, that shifts the burden to future taxpayers to undertake future clean ups that might be necessary.

DO WE WANT TO PROTECT "GREENFIELDS"?

SB 1 makes no effort to differentiate between past contamination that may have occurred when different, weaker laws regulating hazardous substances were in place, and sites that may be contaminated in the future. This is probably the most misunderstood impact of this law. By saying SB 1 will protect "greenfields" by channeling development to older, contaminated industrial sites, proponents are clearly guilty of false advertising. SB 1 is a wholesale weakening of clean up requirements across the board, now and in the future.

By maintaining more protective clean up standards for "greenfields", we provide a disincentive to their development. This would truly channel more development to the old industrial sites.

We are very disappointed that DER Secretary Jim Seif has broken his pledge to the Citizens Advisory Council to DER to plug this loophole. We fear the new Administration's true environmental colors are becoming more apparent and they are more brown than they are green.

In summary, we urge the Committee to look past the slogans and misleading statements about SB 1 protecting "greenfields" by encouraging the reuse of "brownfields". With a number of amendments, this bill could actually serve to achieve that goal. In its current form, SB 1 could very easily work against the very purpose its promoters purport to support.

We would be glad to make suggestions as to amendments to get SB 1 on track. Without such amendments, the Sierra Club urges you to oppose this bill.

Thank you.

Pittsburgh Post-Gazette

Founded 1786

Paul Block, publisher, 1927-1941

Paul Block Jr., co-publisher, 1942-1987

William Block, co-publisher, 1942-1989; chairman, 1990 -

John Robinson Block

William Block Jr.

Co-publisher and editor-in-chief

Co-publisher and president

John G. Craig, Jr., editor and vice-president

Madelyn Ross, managing editor

Michael McGough, editorial page editor.

Robert B. Higdon, vice-president and general manager

A patch of brown

Recycle old mill sites without degrading greenfields

It seems that everyone in Pennsylvania agrees on the importance of easing restrictions on the redevelopment of old, unused industrial sites. No wonder, since it's in everyone's interest.

For businesses it opens the possibility of economical development and the end to eternal liability for undefined cleanup costs. For residents it means jobs and municipal revitalization. For elected officials it means expanded tax bases. And for environmentalists it means saving space that would otherwise be developed.

It's a win-win-win-win proposition, which is why legislation directed at setting achievable standards for industrial-site cleanup, and severing liability once those standards are met, flew through the Pennsylvania Senate recently without a dissenting vote.

Unfortunately, there is more to the bill than advertised by its title — "Land Recycling and Environmental Remediation Act." It is not just about recycling unused or abandoned mill sites, known as "brownfields." It is about changing the way this state responds to all future development and environmental degradation as well.

The bill, sponsored by Sen. David Brightbill of Lebanon, would allow owners of contaminated land to clean up their properties to achieve a health standard consistent with the current and expected future use of the land. Thus a parcel destined to be a parking lot need not be cleaned to the same degree that a playground would.

That makes sense, particularly for industrial sites that suffered decades of contamination during an era of minimal environmental regulation. It was unrealistic to expect to restore all or most of those sites to anything approaching pristine condition. And certifying the end to liability for past pollution once a less-than-ideal standard is met is key to the recycling promised in the bill's title.

But the bill goes further than that. It sets the same reduced standards for all clean-

ups, including not only already contaminated land but future development of what are now "greenfields."

Where is the logic in treating currently pristine and undeveloped sites with the same lowered environmental expectations? With the array of environmental laws and regulations, new industrial development shouldn't lead to the same degree of contamination that an earlier industrial age did. Cleanups of newly developed greenfield sites should meet a higher standard, allowing for a wider range of future uses.

The Ridge administration, which supports the Senate bill, argues that separate standards are not necessary to protect health and are inherently unfair.

On the first point, we agree that health may well be protected under the Senate bill, but only by severely, and unnecessarily, limiting future land use. The owner of a developed greenfield site should not be allowed to determine for future generations that this former woodland will forevermore be used only for industrial purposes. But the Senate bill allows just such a determination by requiring only a limited cleanup.

As for fairness, it's a nonissue. Development today is different than it was 50 years ago and there is nothing wrong with treating it differently. It may well be true that setting a higher cleanup standard for greenfields will discourage development in pristine areas and further encourage recycling of brownfields. If so, what's the problem?

Although the state and federal governments have moved in the last few years to relax requirements for brownfield cleanups and to limit liability, legislation is still needed. These decisions shouldn't be left to the whims of bureaucrats.

We urge the House to pass such a bill, but one that remedies the serious problems with the Senate initiative. Clearing the way for brownfield redevelopment need not come at the expense of high environmental standards for the rest of the state.