

**C I T Y O F P H I L A D E L P H I A****JOSEPH A. DWORETZKY**
CITY SOLICITOR

March 15, 1995

Robert D. Reber, Chairman
House of Representatives
House Environmental Resource and
Energy Committee
P.O. Box 202020
Main Capital Building, Room 149
Harrisburg, PA 17120-2020

**RE: Land Recycling and Environmental Remediation Standards
Act - Senate Bill No.1 (1995)**

Dear Representative Reber:

SUMMARY

The City of Philadelphia believes that Senate Bill No. 1 should be supported, but that it be amended to restrict the use of less stringent risk based clean-up standards to pre-existing industrial sites, and that if the current owner is responsible for the contamination that the owner be required to establish to a reasonable certainty that the property will continue in an industrial type capacity.

DISCUSSION

As you know, the above referenced act seeks to promote the remediation and redevelopment of contaminated industrial sites. This is a cause which the City believes is vital to future development in the Commonwealth. Unfortunately, there are two additions necessary to make the Act fully beneficial at the local level. The necessary changes are generally as follows:

1. The Act should be amended so that the less stringent, site specific clean-up standards allowed for by the Act only apply to property developed for industrial use

prior to the effective date of the Act. See proposed amendment, Exhibit No. 1; and

2. The Act should be amended such that, when an applicant for site specific clean-up standards already owns the site and is responsible for the contamination, the less stringent site specific clean-up standards and restricted use of property provisions may only be used if the owner establishes a reasonable probability that the property will be committed to such a use in the foreseeable future.

As to paragraph 1, there is certainly justification for the relaxation of the clean-up standards in already developed industrial areas that will remain industrial. However, this cannot be said for extending this concept to areas that have not yet been developed. If site specific, risk based standards are restricted to redevelopment of existing industrial areas, it creates an incentive to locate such facilities in pre-existing industrial areas. On the other hand, absent the proposed change, there are incentives for a company to locate in undeveloped areas where they could operate under the assumption that there will be a lower clean-up standard should there be an accident or a need to vacate the property. It can also be argued that at old sites contamination occurred prior to society's full awareness of how to deal with hazardous materials. But, this reasoning does not apply to new facilities that operate in this time of heightened environmental awareness and a more thoroughly environmentally regulated atmosphere.

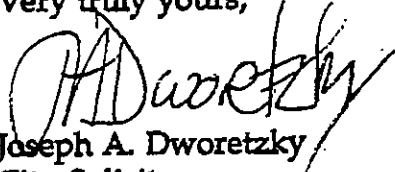
The second change is in response to a legitimate concern that the present owner of a contaminated property might simply take advantage of lower clean-up standards to move and in the process clean their property to a lower standard than is presently required and then still effectively abandon a site which is legally more contaminated than the company at present may leave it. Obviously, a company cannot guarantee to a certainty that either that company or a successor will operate the exact same activities on a site for the next hundred years, however, it is prudent to seek safeguards so that a company will not simply take advantage of government encouragement and assistance and then proceed to abandon the area any way. The City is certainly familiar with analogous situations where City assistance was rendered only to have the company still move jobs out of the City.

The City does not believe it can be stated strongly enough that the intention here must be to create incentives for companies to either remain or move in to the type of already used industrial areas which have become so prevalent. Such incentives for the re-use of old industrial sites are weakened if they also apply to pristine areas which are developed in the future. There are

already plenty of reasons for a company to seek to develop a pristine area without being given the extra incentive of knowing that if it does contaminate a new facility that the government will allow them to clean it up to a lower clean-up standard than is otherwise applicable.

Again, the City of Philadelphia supports the goals which this legislation is attempting to achieve. But the City also believes that the additions here suggested are necessary to really achieve the benefits being pursued.

Very truly yours,



Joseph A. Dworetzky
City Solicitor

cc: Representative Dwight Evans
Mark Gaige, Deputy Mayor
Bennett Levin, Commissioner, Licenses and Inspection
Robert Carfrey, Assistant Finance Director
Legislative Affairs

EXHIBIT NO. 1

The City of Philadelphia proposes the following amendment to be added to Section 106 ("Scope") of the Bill:

- (c) **Applicability - Provided, that the provisions of this Act, including the Remediation Standards and Review Procedures set forth in Chapter 3 of the Clean-up Liability Protection provisions of Chapter 5 shall only be applicable to a property on which industrial activities were conducted prior to the effective date of this Act. In any dispute regarding the eligibility of a site for the provisions of this Act, the person seeking to utilize the provisions of this Act shall have the burden of establishing that the provisions of this Section have been met.**