

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 650 Session of 1993

INTRODUCED BY STEWART, BRIGHTBILL, MUSTO, BELAN, SHAFFER, STOUT, FISHER, WENGER, RHOADES, PECORA, SALVATORE, HART, LAVALLE, STINSON AND ROBBINS, MARCH 9, 1993

SENATOR STEWART, COMMUNITY AND ECONOMIC DEVELOPMENT, AS AMENDED, MARCH 15, 1994

AN ACT

1 ~~Providing a limitation on liability of certain economic~~ <—
2 ~~development agencies for the cleanup of releases of regulated~~
3 ~~substances not caused by the agencies.~~
4 LIMITING ENVIRONMENTAL LIABILITY FOR ECONOMIC DEVELOPMENT <—
5 AGENCIES, FINANCIERS AND FIDUCIARIES.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Economic
10 Development Agency AND LENDER Environmental Liability Protection <—
11 Act.

12 Section 2. Declaration of policy.

13 The General Assembly finds and declares as follows:

14 (1) The Commonwealth has provided grant and loan funds
15 to a variety of economic development agencies, all for the
16 purpose of assisting these agencies in their efforts to
17 promote the general welfare of this Commonwealth by
18 encouraging economic development and industrial redevelopment

1 throughout this Commonwealth.

2 (2) Economic development agencies acquire title to
3 industrial property for financing purposes only and lease or
4 sell the same to industrial occupants who have sole
5 possession of the facilities for an amount of rent or
6 installment payments pursuant to an installment sale contract
7 which is determined solely on a basis of meeting the costs of
8 the financing and other costs associated with ownership
9 unrelated to profit.

10 (3) Economic development agencies acquire possession of
11 these industrial sites from time to time when the industrial
12 occupant defaults under its obligations to the agencies under
13 its lease or installment sales agreements.

14 (4) Economic development agencies also acquire
15 industrial property either for the purpose of financing or
16 redevelopment but without a motive for profit or to occupy
17 the property for their own industrial operations.

18 (5) Economic development agencies are reluctant to
19 acquire title to or other interests in property whether for
20 financing or redevelopment purposes or to secure repayment of
21 obligations unless the economic development agencies are
22 protected from liability for environmental contamination on
23 those sites they seek to assist to develop.

24 (6) The taking of legal title and any foreclosure or
25 retaking of possession of property by an industrial
26 development agency, area loan organization or industrial and
27 commercial development authority is pursuant to the following
28 acts:

29 (i) The act of May 17, 1956 (1955 P.L.1609, No.537),
30 known as the Pennsylvania Industrial Development

1 Authority Act, which expressly requires that the
2 Pennsylvania Industrial Development Authority loan money
3 to industrial development agencies secured by not less
4 than a second mortgage lien.

5 (ii) The act of August 23, 1967 (P.L.251, No.102),
6 known as the Industrial and Commercial Development
7 Authority Law, which provides for issuance of debt by
8 industrial and commercial development authorities and
9 authorizes these authorities to take title to real
10 property as security for the indebtedness.

11 (iii) The act of July 2, 1984 (P.L.545, No.109),
12 known as the Capital Loan Fund Act, which requires that
13 its loans be made to area loan organizations with
14 adequate collateral.

15 (7) THE MAXIMUM LEVEL OF ECONOMIC DEVELOPMENT AND ←
16 BUSINESS OPPORTUNITY AND EMPLOYMENT AND THE ELIMINATION OR
17 PREVENTION OF ABANDONED INDUSTRIAL AND COMMERCIAL PROPERTY
18 CAN BEST BE PROVIDED BY THE PROMOTION, ATTRACTION,
19 STIMULATION, REHABILITATION AND REVITALIZATION OF ALL TYPES
20 OF INDUSTRY, COMMERCE, MANUFACTURING AND BUSINESS DEVELOPMENT
21 WITHIN THIS COMMONWEALTH.

22 (8) TO CONTINUE AND FURTHER THE STIMULATION OF BUSINESS
23 OPPORTUNITIES AND ECONOMIC DEVELOPMENT WITHIN THIS
24 COMMONWEALTH AND THEREBY CAUSE THE REUSE AND REHABILITATION
25 OF INDUSTRIAL AND COMMERCIAL PROPERTY, IT IS NECESSARY TO
26 ENSURE VARIOUS MEANS OF FINANCING TO PROMOTE ECONOMIC GROWTH
27 AND THE AVAILABILITY OF FIDUCIARY SERVICES TO PERSONS WITHIN
28 THIS COMMONWEALTH.

29 (9) LENDERS ARE RELUCTANT TO PROVIDE FUNDING FOR
30 BUSINESS OPPORTUNITIES AND ECONOMIC DEVELOPMENT, AND

1 FIDUCIARIES ARE RELUCTANT TO PROVIDE SERVICES TO PERSONS WITH
2 ENVIRONMENTAL PROBLEMS, BECAUSE OF CATASTROPHIC RISKS OF
3 ENVIRONMENTAL LIABILITY AND REMEDIATION COSTS UNDER
4 ENVIRONMENTAL LAWS RELATING TO RELEASES AND CONTAMINATION
5 WHICH WERE NOT CAUSED BY LENDERS AND FIDUCIARIES.

6 (10) WHEN BORROWERS DEFAULT ON LOANS, LENDERS ARE
7 RELUCTANT TO FORECLOSE UPON COMMERCIAL PROPERTY WITH
8 ENVIRONMENTAL PROBLEMS BECAUSE LENDERS MAY BE FORCED TO
9 ASSUME COSTLY ENVIRONMENTAL LIABILITIES; THUS, COMMERCIAL
10 PROPERTY IS BEING ABANDONED IN THIS COMMONWEALTH AND NEW
11 BUSINESSES ARE UNABLE TO OBTAIN FINANCING TO PURCHASE SUCH
12 PROPERTIES.

13 (11) FAMILY BUSINESSES ARE UNABLE TO ESTABLISH TRUSTS TO
14 CONVEY THEIR BUSINESS INTERESTS TO THE NEXT GENERATION AND
15 OTHER BUSINESSES ARE UNABLE TO RECEIVE RETIREMENT, INVESTMENT
16 AND OTHER TRUST SERVICES FROM FIDUCIARIES, WHEN FIDUCIARIES,
17 IN THEIR PERSONAL OR INDIVIDUAL CAPACITIES, MAY BE HELD
18 LIABLE FOR ENVIRONMENTAL CONTAMINATION CAUSED BY OTHER
19 PERSONS MERELY BY VIRTUE OF OWNING PROPERTY IN THEIR TRUSTEE
20 CAPACITIES AND PROVIDING FIDUCIARY SERVICES.

21 (12) IN ORDER TO CONTINUE TO STIMULATE GROWTH AND
22 CONTINUE THE USE OR REUSE OF INDUSTRIAL AND COMMERCIAL
23 PROPERTY, IT IS NECESSARY TO PROVIDE PROTECTION, TO LENDERS,
24 FIDUCIARIES AND ECONOMIC DEVELOPMENT AGENCIES, FROM
25 ENVIRONMENTAL LIABILITY AND REMEDIATION COSTS UNDER
26 ENVIRONMENTAL LAWS FOR RELEASES AND CONTAMINATION CAUSED BY
27 OTHERS.

28 (13) ENVIRONMENTAL LIABILITY FOR LENDERS, FIDUCIARIES
29 AND ECONOMIC DEVELOPMENT AGENCIES SHALL BE LIMITED IN SCOPE
30 AS SPECIFICALLY PROVIDED IN THIS ACT, AND THIS ACT SHALL BE

1 INTERPRETED AS BROADLY AS POSSIBLE IN ORDER TO PREEMPT ANY
2 LAWS, REGULATIONS OR ORDINANCES IMPOSING ENVIRONMENTAL
3 LIABILITY ON SUCH PERSONS IN ORDER TO PROMOTE ECONOMIC
4 DEVELOPMENT.

5 Section 3. Definitions.

6 The following words and phrases when used in this act shall
7 have the meanings given to them in this section unless the
8 context clearly indicates otherwise:

9 "BOARD." THE ENVIRONMENTAL HEARING BOARD OF THE
10 COMMONWEALTH. ←

11 "BORROWER." A PERSON WHOSE PROPERTY IS ENCUMBERED BY A
12 SECURITY INTEREST. THE TERM INCLUDES A DEBTOR, A LESSOR OR AN
13 OBLIGOR.

14 "CONSERVANCY." A CHARITABLE CORPORATION, CHARITABLE
15 ASSOCIATION OR CHARITABLE TRUST REGISTERED WITH THE BUREAU OF
16 CHARITABLE ORGANIZATIONS AND EXEMPT FROM TAXATION PURSUANT TO
17 SECTION 501(C)(3) OF THE INTERNAL REVENUE CODE OF 1986 (PUBLIC
18 LAW 99-514, 26 U.S.C. § 501(C)(3)) OR OTHER FEDERAL OR
19 COMMONWEALTH STATUTES OR REGULATIONS, THE PURPOSE OR POWERS OF
20 WHICH INCLUDE RETAINING OR PROTECTING NATURAL, SCENIC,
21 AGRICULTURAL OR OPEN-SPACE VALUES OF REAL PROPERTY; ASSURING THE
22 AVAILABILITY OF REAL PROPERTY FOR AGRICULTURAL, FOREST,
23 RECREATIONAL OR OPEN-SPACE USE; PROTECTING NATURAL RESOURCES AND
24 WILDLIFE; MAINTAINING OR ENHANCING LAND, AIR OR WATER QUALITY;
25 OR PRESERVING THE HISTORICAL, ARCHITECTURAL, ARCHAEOLOGICAL OR
26 CULTURAL ASPECTS OF REAL PROPERTY.

27 "Department." The Department of Environmental Resources of
28 the Commonwealth.

29 "Economic development agencies." The term includes:

30 (1) Any redevelopment authority created under the act of

1 May 24, 1945 (P.L.991, No.385), known as the Urban
2 Redevelopment Law.

3 (2) Any industrial development agency as that term is
4 defined in the act of May 17, 1956 (1955 P.L.1609, No.537),
5 known as the Pennsylvania Industrial Development Authority
6 Act.

7 (3) Any industrial and commercial development authority
8 created under the act of August 23, 1967 (P.L.251, No.102),
9 known as the Industrial and Commercial Development Authority
10 Law.

11 (4) Any area loan organization as that term is defined
12 in the act of July 2, 1984 (P.L.545, No.109), known as the
13 Capital Loan Fund Act.

14 (5) Any other Commonwealth or municipal authority which
15 acquires title or an interest in property.

16 ~~"Foreclosure." The term includes:~~ <—

17 ~~(1) Any purchase at foreclosure sale.~~

18 ~~(2) Acquisition by or assignment of title in lieu of~~
19 ~~foreclosure.~~

20 ~~(3) Termination of a lease or installment sale agreement~~
21 ~~or other action permitting possession by an economic~~
22 ~~development agency.~~

23 ~~(4) Any other formal or informal means by which the~~
24 ~~economic development agency obtains title to or possession of~~
25 ~~the secured property.~~

26 (6) MUNICIPALITIES OR MUNICIPAL INDUSTRIAL DEVELOPMENT <—
27 OR COMMUNITY DEVELOPMENT DEPARTMENTS ORGANIZED BY ORDINANCE
28 UNDER A HOME RULE CHARTER WHICH BUY AND SELL LAND FOR
29 COMMUNITY DEVELOPMENT PURPOSES.

30 (7) TOURIST PROMOTION AGENCIES OR THEIR LOCAL COMMUNITY-

1 BASED NONPROFIT SPONSOR WHICH ENGAGE IN THE ACQUISITION OF
2 FORMER INDUSTRIAL SITES AS PART OF AN "INDUSTRIAL HERITAGE"
3 OR SIMILAR PROGRAM.

4 (8) CONSERVANCIES ENGAGED IN THE RENEWAL OR RECLAMATION
5 OF AN INDUSTRIAL SITE.

6 "EMERGENCY EVENT." A SUDDEN OCCURRENCE OR CONDITION OF SUCH
7 SEVERITY OR MAGNITUDE THAT IT THREATENS IMMEDIATE AND
8 IRREPARABLE HARM TO THE ENVIRONMENT OR PUBLIC HEALTH, AND AN
9 IMMEDIATE EMERGENCY RESPONSE MEASURE IS NECESSARY FOR ITS
10 STABILIZATION OR CONTROL.

11 "EMERGENCY RESPONSE MEASURE." THE NOTIFICATION OF THE
12 APPLICABLE COUNTY EMERGENCY MANAGEMENT AGENCY OR THE
13 PENNSYLVANIA EMERGENCY MANAGEMENT AGENCY AND THE DEPARTMENT OF
14 ENVIRONMENTAL RESOURCES AND SUCH MINIMUM STEPS AS MAY BE
15 REASONABLY NECESSARY ACCORDING TO THE EQUITIES OF THE SITUATION
16 TO ATTEMPT TO STABILIZE AND CONTROL THE EMERGENCY EVENT AND TO
17 MITIGATE FURTHER DAMAGES.

18 "ENVIRONMENTAL ACTS." COLLECTIVELY AND SEPARATELY, THE ACT
19 OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN STREAMS
20 LAW, THE ACT OF JANUARY 8, 1960 (1959 P.L.2119, NO.787), KNOWN
21 AS THE AIR POLLUTION CONTROL ACT, THE ACT OF JULY 7, 1980
22 (P.L.380, NO.97), KNOWN AS THE SOLID WASTE MANAGEMENT ACT, THE
23 ACT OF OCTOBER 5, 1984 (P.L.734, NO.159), KNOWN AS THE WORKER
24 AND COMMUNITY RIGHT-TO-KNOW ACT, THE ACT OF JULY 13, 1988
25 (P.L.525, NO.93), REFERRED TO AS THE INFECTIOUS AND
26 CHEMOTHERAPEUTIC WASTE LAW, THE ACT OF OCTOBER 18, 1988
27 (P.L.756, NO.108), KNOWN AS THE HAZARDOUS SITES CLEANUP ACT, THE
28 ACT OF JULY 6, 1989 (P.L.169, NO.32), KNOWN AS THE STORAGE TANK
29 AND SPILL PREVENTION ACT, THE ACT OF DECEMBER 7, 1990 (P.L.639,
30 NO.165), KNOWN AS THE HAZARDOUS MATERIAL EMERGENCY PLANNING AND

1 RESPONSE ACT, AND THE ACT OF JUNE 11, 1992 (P.L.303, NO.52),
2 KNOWN AS THE OIL SPILL RESPONDER LIABILITY ACT, AND ALL SUCH
3 ACTS AS THEY MAY BE AMENDED FROM TIME TO TIME, AND ANY FEDERAL,
4 STATE OR LOCAL LAW, STATUTE, REGULATION, RULE, ORDINANCE, COURT
5 OR ADMINISTRATIVE ORDER OR DECREE, INTERPRETATION OR GUIDANCE,
6 NOW OR HEREAFTER IN EXISTENCE PERTAINING TO EMPLOYEES,
7 OCCUPATIONAL HEALTH AND SAFETY, PUBLIC HEALTH OR SAFETY, NATURAL
8 RESOURCES OR THE ENVIRONMENT.

9 "ENVIRONMENTAL DUE DILIGENCE." INVESTIGATIVE TECHNIQUES,
10 INCLUDING, BUT NOT LIMITED TO, VISUAL PROPERTY INSPECTIONS,
11 ELECTRONIC ENVIRONMENTAL DATA BASE SEARCHES, REVIEW OF OWNERSHIP
12 AND USE HISTORY OF THE PROPERTY, ENVIRONMENTAL QUESTIONNAIRES,
13 TRANSACTION SCREENS, ENVIRONMENTAL ASSESSMENTS OR AUDITS.

14 "FIDUCIARY." ANY PERSON WHICH IS CONSIDERED A FIDUCIARY
15 UNDER SECTION 3(21) OF THE EMPLOYEE RETIREMENT INCOME SECURITY
16 ACT OF 1974 (PUBLIC LAW 93-406, 88 STAT. 829) OR WHO ACTS AS
17 TRUSTEE, EXECUTOR, ADMINISTRATOR, CUSTODIAN, GUARDIAN OF
18 ESTATES, CONSERVATOR, COMMITTEE OF ESTATES OF PERSONS WHO ARE
19 DISABLED, PERSONAL REPRESENTATIVE, RECEIVER, AGENT, NOMINEE,
20 REGISTRAR OF STOCKS AND BONDS, ASSIGNEE OR IN ANY OTHER CAPACITY
21 FOR THE BENEFIT OF ANOTHER PERSON.

22 "FORECLOSURE." THE DATE UPON WHICH TITLE VESTS IN PROPERTY
23 THROUGH REALIZING UPON A SECURITY INTEREST, INCLUDING, BUT NOT
24 LIMITED TO, ANY OWNERSHIP OF PROPERTY RECOGNIZED UNDER
25 APPLICABLE LAW AS VESTING THE HOLDER OF THE SECURITY INTEREST
26 WITH SOME INDICIA OF TITLE, LEGAL OR EQUITABLE TITLE OBTAINED AT
27 OR IN LIEU OF FORECLOSURE, SHERIFF SALES, BANKRUPTCY
28 DISTRIBUTIONS AND THEIR EQUIVALENTS.

29 "FUND." COLLECTIVELY AND SEPARATELY, ANY SPECIAL FUND OF
30 COMMONWEALTH MONEYS ADMINISTERED BY THE COMMONWEALTH OR THE

1 DEPARTMENT OF ENVIRONMENTAL RESOURCES, INCLUDING, BUT NOT
2 LIMITED TO, THE HAZARDOUS SITES CLEANUP FUND AND THE UNDERGROUND
3 STORAGE TANK INDEMNIFICATION FUND, AS WELL AS ANY OTHER FUND OF
4 COMMONWEALTH MONEYS NOW OR HEREAFTER IN EXISTENCE CREATED FOR
5 THE FUNDING OR REIMBURSEMENT OF COSTS AND DAMAGES SUCH AS
6 RESPONSE COSTS, EMERGENCY RESPONSE MEASURES AND THEIR EQUIVALENT
7 RELATING TO NATURAL RESOURCES OR THE ENVIRONMENT.

8 "GUARANTOR." THE TERM INCLUDES GUARANTORS AND SURETIES OF
9 SECURITY INTERESTS, SECURITIES AND OTHER OBLIGATIONS, ISSUERS OF
10 LETTERS OF CREDIT AND OTHER CREDIT ENHANCEMENTS, TITLE INSURERS
11 AND ENTITIES WHICH DIRECTLY OR INDIRECTLY ACQUIRE INDICIA OF
12 OWNERSHIP IN THE COURSE OF PROTECTING A SECURITY INTEREST OR
13 ACTING AS SUCH GUARANTORS, SURETIES, ISSUERS OF LETTERS OF
14 CREDIT OR OTHER CREDIT ENHANCEMENTS OR TITLE INSURERS. THE TERM
15 INCLUDES GUARANTIES, SURETY BONDS, TITLE INSURANCE POLICIES,
16 LETTERS OF CREDIT AND OTHER CREDIT ENHANCEMENTS, AND OTHER
17 AGREEMENTS WITH A GUARANTOR RELATING TO THE OBLIGATIONS
18 DESCRIBED IN THIS DEFINITION. THE TERM DIRECTLY OR INDIRECTLY
19 INCLUDES ANY INTEREST IN PROPERTY, SECURITY INTEREST, INDICIA OF
20 OWNERSHIP TITLE OR RIGHT TO TITLE HELD OR ACQUIRED BY A
21 FIDUCIARY OR SIMILAR ENTITY FOR THE BENEFIT OF A HOLDER OF A
22 SECURITY INTEREST.

23 "HOLDER OF A SECURITY INTEREST." A PERSON WHO HOLDS INDICIA
24 OF OWNERSHIP IN PROPERTY PRIMARILY TO PROTECT A SECURITY
25 INTEREST. THE TERM INCLUDES THE FOLLOWING:

26 (1) THE INITIAL HOLDER AND ANY SUBSEQUENT HOLDER OF THE
27 SECURITY INTEREST ON THE SECONDARY MARKET.

28 (2) GUARANTOR, LEASE FINANCIER OR ANY SUCCESSOR WHERE
29 THE LESSOR DOES NOT INITIALLY SELECT OR ORDINARILY CONTROL
30 THE DAILY OPERATION OR MAINTENANCE OF THE PROPERTY.

1 (3) ANY PERSON WHO HOLDS INDICIA OF OWNERSHIP PRIMARILY
2 TO PROTECT A SECURITY INTEREST.

3 (4) A RECEIVER OR OTHER PERSON WHO ACTS ON BEHALF OR FOR
4 THE BENEFIT OF A HOLDER OF A SECURITY INTEREST.

5 "INDICIA OF OWNERSHIP." ANY LEGAL OR EQUITABLE INTEREST IN
6 PROPERTY ACQUIRED DIRECTLY OR INDIRECTLY:

7 (1) FOR THE PURPOSE OF SECURING PAYMENT OF A LOAN OR
8 INDEBTEDNESS, A RIGHT OF REIMBURSEMENT OR SUBROGATION UNDER A
9 GUARANTY OR THE PERFORMANCE OF ANOTHER OBLIGATION;

10 (2) EVIDENCING OWNERSHIP UNDER A LEASE FINANCING
11 TRANSACTION WHERE THE LESSOR DOES NOT INITIALLY SELECT OR
12 ORDINARILY CONTROL THE DAILY OPERATION OR MAINTENANCE OF THE
13 PROPERTY; OR

14 (3) IN THE COURSE OF CREATING, PROTECTING OR ENFORCING A
15 SECURITY INTEREST OR RIGHT OF REIMBURSEMENT OF SUBROGATION
16 UNDER A GUARANTY.

17 THE TERM INCLUDES EVIDENCE OF INTEREST IN MORTGAGES, DEEDS OF
18 TRUST, LIENS, SURETY BONDS, GUARANTIES, LEASE FINANCING
19 TRANSACTIONS WHERE THE LESSOR DOES NOT INITIALLY SELECT OR
20 ORDINARILY CONTROL THE DAILY OPERATION OR MAINTENANCE OF THE
21 PROPERTY, OTHER FORMS OF ENCUMBRANCES AGAINST PROPERTY
22 RECOGNIZED UNDER APPLICABLE LAW AS VESTING THE HOLDER OF THE
23 SECURITY INTEREST WITH SOME INDICIA OF TITLE.

24 "Industrial activity." Commercial, manufacturing, MINING or ←
25 any other activity done to further either the development,
26 manufacturing or distribution of goods and services, including,
27 but not limited to, research and development, warehousing,
28 shipping, transport, remanufacturing, repair and maintenance of
29 commercial machinery and equipment.

30 "Industrial site." A site which now has or once had an

1 industrial activity on it.

2 "LENDER." ANY PERSON REGULATED OR SUPERVISED BY ANY FEDERAL <—
3 OR STATE REGULATORY AGENCY AND ANY OF ITS AFFILIATES OR
4 SUBSIDIARIES, SUCCESSORS OR ASSIGNS, INCLUDING ITS OFFICERS,
5 DIRECTORS, EMPLOYEES, REPRESENTATIVES OR AGENTS, AND ANY FEDERAL
6 OR STATE BANKING OR LENDING AGENCY OR ITS SUCCESSORS, INCLUDING,
7 BUT NOT LIMITED TO, RESOLUTION TRUST CORPORATION, FEDERAL
8 DEPOSIT INSURANCE CORPORATION, FEDERAL RESERVE BANK, BOARD OF
9 GOVERNORS OF THE FEDERAL RESERVE SYSTEM, FEDERAL HOME LOAN BANK,
10 NATIONAL CREDIT UNION ADMINISTRATOR BOARD, OFFICE OF THE
11 COMPTROLLER OF THE CURRENCY, OFFICE OF THRIFT SUPERVISION, FARM
12 CREDIT ADMINISTRATION AND SMALL BUSINESS ADMINISTRATION OR
13 SIMILARLY CHARTERED FEDERAL INSTRUMENTALITY. THE TERM ALSO
14 INCLUDES THE INITIAL LENDER AND ANY SUBSEQUENT HOLDER OF A
15 SECURITY INTEREST OR NOTE, GUARANTOR, LEASE FINANCIER OR ANY
16 SUCCESSOR OR A RECEIVER OR OTHER PERSON WHO ACTS ON BEHALF OR
17 FOR THE BENEFIT OF A HOLDER OF A SECURITY INTEREST. THE TERM
18 INCLUDES AN ECONOMIC DEVELOPMENT AGENCY.

19 "Occupant." A party which occupies or has the right to
20 occupy property owned by an economic development agency by any
21 instrument, including, but not limited to, a lease, mortgage,
22 installment sale contract, disposition agreement or trust
23 agreement.

24 ~~"Property." Real property and improvements, including:~~ <—

25 ~~(1) A "facility" as defined in the Comprehensive~~
26 ~~Environmental Response, Compensation, and Liability Act of~~
27 ~~1980 (Public Law 96-510, 94 Stat. 2767).~~

28 ~~(2) A "site" as defined in the act of October 18, 1988~~
29 ~~(P.L. 756, No. 108), known as the Hazardous Sites Cleanup Act.~~

30 ~~(3) A "tank" as defined in the act of July 6, 1989~~

1 ~~(P.L.169, No.32), known as the Storage Tank and Spill~~
2 ~~Prevention Act.~~

3 "PERSON." AN INDIVIDUAL, PARTNERSHIP, CORPORATION, BUSINESS <—
4 TRUST, JOINT-STOCK FUND, ESTATE TRUST, BANKING ASSOCIATION,
5 GOVERNMENTAL, ADMINISTRATIVE OR REGULATORY AGENCY, INSTITUTION
6 OR ANY OTHER TYPE OF LEGAL ENTITY WHATSOEVER.

7 "PROPERTY." ALL TYPES OF REAL AND PERSONAL AND TANGIBLE AND
8 INTANGIBLE PROPERTY.

9 "Redevelopment." Undertakings and activities made under the
10 act of May 24, 1945 (P.L.991, No.385), known as the Urban
11 Redevelopment Law, including, but not limited to, planning,
12 acquisition, site preparation, demolition, rehabilitation,
13 renovation, conservation, reuse, renewal, improvement,
14 clearance, sale and lease of real property and improvements
15 thereon.

16 ~~"Regulated substance." A substance, the discharge or release <—~~
17 ~~or potential release of which is governed or regulated by the~~
18 ~~act of June 22, 1937 (P.L.1987, No.394), known as The Clean~~
19 ~~Streams Law, the act of July 7, 1980 (P.L.380, No.97), known as~~
20 ~~the Solid Waste Management Act, the act of October 18, 1988~~
21 ~~(P.L.756, No.108), known as the Hazardous Sites Cleanup Act, and~~
22 ~~the act of July 6, 1989 (P.L.169, No.32), known as the Storage~~
23 ~~Tank and Spill Prevention Act.~~

24 ~~"Release." A release as defined in the act of October 18,~~
25 ~~1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup~~
26 ~~Act.~~

27 ~~"Remedial response." An action taken to remediate, clean up,~~
28 ~~mitigate, correct, abate, eliminate, prevent, study or assess a~~
29 ~~release or potential release of a regulated substance into the~~
30 ~~environment in order to protect the present or future public~~

1 ~~health, safety, welfare or the environment.~~

2 ~~"Remediate." To clean up, mitigate, correct, abate,~~
3 ~~minimize, eliminate, prevent, study or assess a release of a~~
4 ~~regulated substance into the environment in order to protect the~~
5 ~~present or future public health, safety, welfare or the~~
6 ~~environment.~~

7 ~~Section 4. Conditions for economic development agency~~
8 ~~eligibility.~~

9 ~~An economic development agency, in order to be eligible for~~
10 ~~the limitation of liability for releases provided in this act,~~
11 ~~shall satisfy each of the following conditions:~~

12 ~~(1) The economic development agency must have legal,~~
13 ~~equitable or beneficial ownership of property or an interest~~
14 ~~therein, including, but not limited to, a mortgage or other~~
15 ~~lien, and have acquired the ownership of property or interest~~
16 ~~therein for the purpose of developing or redeveloping the~~
17 ~~property or to finance an economic development or~~
18 ~~redevelopment activity thereon.~~

19 ~~(2) The property must be or have been used for~~
20 ~~industrial activities.~~

21 ~~(3) The economic development agency has acquired an~~
22 ~~interest in or possession of the property under its or their~~
23 ~~lawful authority.~~

24 ~~Section 5. Limitation to liability for remediation of releases~~
25 ~~of regulated substances.~~

26 ~~(a) Action by department. An economic development agency~~
27 ~~eligible under section 4 shall not be liable in an action by the~~
28 ~~department as a responsible person, owner, operator or occupier~~
29 ~~for remediating a release or a potential release of regulated~~
30 ~~substances on the property, if the economic development agency~~

1 ~~demonstrates that each of the following are true:~~

2 ~~(1) The economic development agency at no time~~
3 ~~participated in management with respect to the property.~~

4 ~~(2) The economic development agency exercised reasonable~~
5 ~~maintenance of the property whenever it had possession of the~~
6 ~~property.~~

7 ~~(b) Agency liability. An economic development agency~~
8 ~~operating under its lawful authority whose participation in~~
9 ~~management with respect to a property is limited to those~~
10 ~~activities normally associated with the development,~~
11 ~~redevelopment and management of property, including, but not~~
12 ~~limited to, site clearance and preparation, demolition of~~
13 ~~existing structures, construction and installation improvements~~
14 ~~or infrastructure and maintenance, shall be liable only to the~~
15 ~~extent its actions or inactions have caused, worsened, or~~
16 ~~increased a release or threat of a potential release and only~~
17 ~~for the release or threat of release caused, worsened or~~
18 ~~increased by the economic development agency.~~

19 ~~(c) Other obligations. Nothing in this act shall be~~
20 ~~construed to relieve an economic development agency from all~~
21 ~~other obligations it may have as an operator, owner, occupier or~~
22 ~~responsible person under applicable environmental law,~~
23 ~~including, but not limited to, requirements regarding~~
24 ~~registration, maintenance, reporting and monitoring.~~

25 ~~(d) Contribution action. An economic development agency~~
26 ~~which is eligible under section 4 with respect to a property and~~
27 ~~which did not or does not participate in management shall not be~~
28 ~~liable in a contribution action brought by responsible parties~~
29 ~~for a release or potential release.~~

30 ~~(e) Workout activities. An economic development agency~~

1 ~~which engages in workout activities prior to foreclosure or~~
2 ~~retaking of possession will remain within the exemption from~~
3 ~~liability under this section so long as the agency is not~~
4 ~~participating in management. Workout activities include those~~
5 ~~actions which are designed to prevent, cure or mitigate a~~
6 ~~default by an occupant or obligor or those actions which are~~
7 ~~designed to preserve, protect or prevent the diminution in value~~
8 ~~of the property or other security. These actions include, but~~
9 ~~are not limited to:~~

10 ~~(1) Restructuring or renegotiating the terms of the~~
11 ~~security interest.~~

12 ~~(2) Requiring payment of additional or, as the case may~~
13 ~~be, less rent or interest.~~

14 ~~(3) Exercising forbearance either with respect to a~~
15 ~~monetary or nonmonetary obligation.~~

16 ~~(4) Requiring or exercising rights with respect to or~~
17 ~~pursuant to an assignment of accounts or other collateral~~
18 ~~assignment.~~

19 ~~(5) Requiring or exercising rights pursuant to an escrow~~
20 ~~agreement.~~

21 ~~(6) Providing general or specific financial advice,~~
22 ~~suggestions or counseling.~~

23 ~~(7) Exercising any rights or remedies the economic~~
24 ~~development agency is entitled to by law, or under any of its~~
25 ~~agreements, leases, notes or other instruments entered into~~
26 ~~between it and the occupant.~~

27 ~~(f) Foreclosure. An economic development agency which~~
28 ~~forecloses on or assumes possession of a property will remain~~
29 ~~within the exemption from liability under this section so long~~
30 ~~as the agency is not participating in management and is~~

1 ~~exercising reasonable maintenance.~~

2 ~~Section 6. Participation in management of property.~~

3 ~~(a) General rule. An economic development agency shall be~~
4 ~~deemed to have participated in management within the meaning of~~
5 ~~this act if the economic development agency:~~

6 ~~(1) exercises decisionmaking control over the~~
7 ~~environmental compliance of a property or over the~~
8 ~~environmental compliance of an occupant on the property; or~~

9 ~~(2) exercises decisionmaking control over operational~~
10 ~~aspects of the property or an occupant, other than financial~~
11 ~~or administrative decisions that must be made as part of the~~
12 ~~economic development agency's lawful authority.~~

13 ~~(b) Exception. An agency will not be considered to be~~
14 ~~participating in the management of the property or the occupant~~
15 ~~solely on the basis that it provided or is providing financing~~
16 ~~or policing the financing of a property or an occupant.~~

17 ~~Section 7. Actions that are not participation in management.~~

18 ~~(a) List of actions. No act or omission prior to the time~~
19 ~~that an economic development agency acquires legal or equitable~~
20 ~~title or some other indications of ownership primarily to secure~~
21 ~~an interest in property as collateral for an obligation shall~~
22 ~~constitute participation in management within the meaning of~~
23 ~~this act. The actions or omissions to act referred to in this~~
24 ~~section include, but are not limited to, the following measures~~
25 ~~which do not constitute participation in management:~~

26 ~~(1) Requiring a prospective occupant or other party to~~
27 ~~undertake an environmental inspection of a site.~~

28 ~~(2) Requiring a prospective occupant or other party to~~
29 ~~remediate releases or potential releases on the property or~~
30 ~~to otherwise come into compliance, whether before or after~~

1 ~~the time that ownership is acquired by the economic~~
2 ~~development agency, with any applicable law or regulation.~~

3 ~~(3) Requiring a prospective occupant or other party to~~
4 ~~undertake or refrain from undertaking any action which is~~
5 ~~intended to protect the economic development agency's~~
6 ~~interest in the property.~~

7 ~~(b) Protection of security interest. Actions or omissions~~
8 ~~to act which are consistent with holding property primarily to~~
9 ~~protect a security interest shall not constitute participation~~
10 ~~in management for purposes of this act. The authority for an~~
11 ~~economic development agency to take the actions may, but need~~
12 ~~not be, contained in:~~

13 ~~(1) The contractual or other loan, lease or sale~~
14 ~~documents.~~

15 ~~(2) The laws, regulations, statements of policy,~~
16 ~~guidelines or other directives that govern the conduct of the~~
17 ~~economic development agency or any other lawful authority~~
18 ~~which would specify the requirements for financial,~~
19 ~~environmental, economic development, redevelopment or any~~
20 ~~other covenants, warranties, representations, promises or~~
21 ~~conditions from the borrower, lessee, installment sale~~
22 ~~purchaser or other occupant or beneficial owner of the~~
23 ~~property.~~

24 ~~(c) Actions to police property. Actions or omissions by an~~
25 ~~economic development agency which are intended to police the~~
26 ~~occupant's activities prior to foreclosure or similar action~~
27 ~~providing repossession of the property to the economic~~
28 ~~development agency shall not constitute participation in~~
29 ~~management. These actions include, but are not limited to, the~~
30 ~~following:~~

1 ~~economic development agency and any of its successors and~~
2 ~~assigns shall permit access to Federal and Commonwealth agencies~~
3 ~~and other parties acting under the direction of these agencies~~
4 ~~to evaluate, perform or maintain a remedial response.~~

5 ~~(c) Performance, operation and maintenance of remedial~~
6 ~~response. An economic development agency or any of its~~
7 ~~successors and assigns shall perform, operate and maintain~~
8 ~~remedial responses pursuant to State laws as directed by the~~
9 ~~department.~~

10 ~~Section 10. Loss of exemption.~~

11 ~~An economic development agency that fails to comply with~~
12 ~~section 9 or that no longer satisfies the requirements to be~~
13 ~~eligible for the limitation of liability as established by this~~
14 ~~act shall be liable under all applicable environmental statutes,~~
15 ~~including, but not limited to, the act of June 22, 1937~~
16 ~~(P.L.1987, No.394), known as The Clean Streams Law, the act of~~
17 ~~July 7, 1980 (P.L.380, No.97), known as the Solid Waste~~
18 ~~Management Act, the act of October 18, 1988 (P.L.756, No.108),~~
19 ~~known as the Hazardous Sites Cleanup Act, and the act of July 6,~~
20 ~~1989 (P.L.169, No.32), known as the Storage Tank and Spill~~
21 ~~Prevention Act.~~

22 ~~Section 11. Applicability.~~

23 ~~This act applies to all actions, suits or claims against~~
24 ~~economic development agencies not yet finally resolved by any~~
25 ~~court having either the action, suit or claim pending before it~~
26 ~~or an appeal from a lower court regardless of when the release~~
27 ~~or interest in the subject property occurred.~~

28 ~~Section 12. Effective date.~~

29 ~~This act shall take effect immediately.~~

30 "REGULATED SUBSTANCE." ANY ELEMENT, COMPOUND OR MATERIAL

<—

1 WHICH IS SUBJECT TO REGULATION UNDER THE ENVIRONMENTAL ACTS OR
2 ANY ELEMENT, COMPOUND OR MATERIAL DEFINED AS A CONTAMINANT,
3 POLLUTION, WASTE, OR EQUIVALENT UNDER THE ENVIRONMENTAL ACTS.

4 "RELEASE." ANY SPILL, RUPTURE, EMISSION, DISCHARGE, OTHER
5 ACTION, OCCURRENCE OR ANY OTHER TERM DEFINED AS A "RELEASE" OR
6 OTHER OPERATIVE WORD UNDER THE ENVIRONMENTAL ACTS.

7 "REPORTABLE EVENT." ANY RELEASE, THREAT OF RELEASE OR ACTION
8 WHICH MUST BE REPORTED TO THE DEPARTMENT OF ENVIRONMENTAL
9 RESOURCES OR ANY OTHER GOVERNMENTAL AGENCY, INCLUDING, BUT NOT
10 LIMITED TO, NOTICES OF AMOUNTS EQUAL TO OR GREATER THAN
11 REPORTABLE RELEASED QUANTITIES OF REGULATED SUBSTANCES, ANY
12 AMOUNTS EQUAL TO OR GREATER THAN A DISCHARGE OR ANY PERMIT
13 VIOLATIONS OR OTHER VIOLATIONS WHICH MAY REQUIRE REPORTS OR
14 NOTIFICATIONS TO GOVERNMENT AGENCIES UNDER THE ENVIRONMENTAL
15 ACTS.

16 "RESPONSE ACTION." AN ACTION, INCLUDING, BUT NOT LIMITED TO,
17 A RESPONSE OR INTERIM RESPONSE, REMEDIAL RESPONSE OR REMEDY OR
18 CORRECTIVE ACTION, CLOSURE, OR ANY OTHER ACTION UNDER THE
19 ENVIRONMENTAL ACTS, SUCH AS TESTING, INSPECTIONS, SAMPLING,
20 INSTALLATIONS, CORRECTIVE ACTION, REMOVALS, CLOSURE, RESPONSE
21 COSTS, ASSESSMENTS, CLAIMS, DAMAGES, ACTIONS, FINES AND
22 PENALTIES.

23 "SECURITY INTEREST." AN INTEREST IN PROPERTY CREATED OR
24 ESTABLISHED FOR THE PURPOSE OF SECURING A LOAN, RIGHT OF
25 REIMBURSEMENT OR SUBROGATION UNDER A GUARANTY OR OTHER
26 OBLIGATION OR CONSTITUTING A LEASE FINANCING TRANSACTION. THE
27 TERM INCLUDES SECURITY INTERESTS CREATED UNDER 13 PA.C.S.
28 (RELATING TO COMMERCIAL CODE), MORTGAGES, DEEDS OF TRUST, LIENS,
29 LEASE FINANCING TRANSACTIONS IN WHICH THE LESSOR DOES NOT
30 INITIALLY SELECT OR ORDINARILY CONTROL THE DAILY OPERATION OR

1 MAINTENANCE OF THE PROPERTY, TRUST RECEIPT TRANSACTIONS AND
2 THEIR EQUIVALENTS. SECURITY INTEREST MAY ALSO ARISE FROM
3 TRANSACTIONS SUCH AS SALES AND LEASEBACKS, CONDITIONAL SALES,
4 INSTALLMENT SALES, CERTAIN ASSIGNMENTS, FACTORING AGREEMENTS,
5 ACCOUNTS RECEIVABLE, FINANCING ARRANGEMENTS AND CONSIGNMENTS, IF
6 THE TRANSACTION CREATES OR ESTABLISHES AN INTEREST IN PROPERTY
7 FOR THE PURPOSE OF SECURING A LOAN, RIGHT OF REIMBURSEMENT OR
8 SUBROGATION UNDER A GUARANTY OR OTHER OBLIGATION. THE TERM ALSO
9 INCLUDES A CONFESSION OF JUDGMENT OR MONEY JUDGMENT WHEREBY A
10 LENDER COMMENCES AN EXECUTION ON SUCH JUDGMENTS WITH A WRIT OF
11 EXECUTION AND THEREBY CAUSES PROPERTY TO BE LEVIED AND ATTACHED.

12 SECTION 4. LIMITATION OF ECONOMIC DEVELOPMENT AGENCY

13 ENVIRONMENTAL LIABILITY.

14 AN ECONOMIC DEVELOPMENT AGENCY THAT HOLDS AN INDICIA OF
15 OWNERSHIP IN PROPERTY AS A SECURITY INTEREST FOR THE PURPOSE OF
16 DEVELOPING OR REDEVELOPING THE PROPERTY OR TO FINANCE AN
17 ECONOMIC DEVELOPMENT OR REDEVELOPMENT ACTIVITY SHALL NOT BE
18 LIABLE UNDER THE ENVIRONMENTAL ACTS TO THE DEPARTMENT OR TO ANY
19 OTHER PERSON IN ACCORDANCE WITH THE FOLLOWING:

20 (1) AN ECONOMIC DEVELOPMENT AGENCY SHALL NOT BE LIABLE
21 IN AN ACTION BY THE DEPARTMENT, AS A RESPONSIBLE PERSON,
22 OWNER, OPERATOR OR OCCUPIER, FOR REMEDIATING A RELEASE IF THE
23 ECONOMIC DEVELOPMENT AGENCY DEMONSTRATES ANY OF THE
24 FOLLOWING:

25 (I) THE ECONOMIC DEVELOPMENT AGENCY EXERCISED
26 REASONABLE MAINTENANCE OF THE PROPERTY WHEN IT HAD
27 POSSESSION OF THE PROPERTY.

28 (II) THE ECONOMIC DEVELOPMENT AGENCY, INCLUDING ITS
29 EMPLOYEES AND AGENTS, DID NOT CAUSE OR EXACERBATE A
30 RELEASE OF REGULATED SUBSTANCES ON OR FROM THE PROPERTY.

1 (III) THE PROPERTY IS AN INDUSTRIAL SITE.

2 (2) AN ECONOMIC DEVELOPMENT AGENCY WHICH FORECLOSES ON
3 OR ASSUMES POSSESSION OF A PROPERTY SHALL REMAIN WITHIN THE
4 EXEMPTION FROM LIABILITY UNDER THIS SECTION.

5 (3) AN ECONOMIC DEVELOPMENT AGENCY THAT CONDUCTS A
6 REMEDIAL ACTION IN ACCORDANCE WITH A WRITTEN AGREEMENT WITH
7 THE DEPARTMENT SHALL NOT BE LIABLE, AS A RESPONSIBLE PARTY,
8 OWNER, OPERATOR OR OCCUPIER, IN ANY ACTION BY THE DEPARTMENT
9 FOR A RELEASE OR POTENTIAL RELEASE OF ANY REGULATED
10 SUBSTANCE.

11 (4) THERE IS COOPERATION WITH GOVERNMENTAL AGENCIES
12 PERFORMING A REMEDIAL ACTION, AS FOLLOWS:

13 (I) AN ECONOMIC DEVELOPMENT AGENCY AND ANY OF ITS
14 SUCCESSORS AND ASSIGNS MAY TAKE NO ACTION THAT WOULD
15 DISTURB OR BE INCONSISTENT WITH REMEDIAL RESPONSE THAT IS
16 PROPOSED, APPROVED OR IMPLEMENTED BY THE FEDERAL
17 ENVIRONMENTAL PROTECTION AGENCY.

18 (II) AN ECONOMIC DEVELOPMENT AGENCY AND ANY OF ITS
19 SUCCESSORS AND ASSIGNS SHALL PERMIT ACCESS TO FEDERAL AND
20 COMMONWEALTH AGENCIES AND OTHER PARTIES ACTING UNDER THE
21 DIRECTION OF THESE AGENCIES TO EVALUATE, PERFORM OR
22 MAINTAIN A REMEDIAL ACTION.

23 (III) AN ECONOMIC DEVELOPMENT AGENCY OR ANY OF ITS
24 SUCCESSORS AND ASSIGNS SHALL PERFORM, OPERATE AND
25 MAINTAIN REMEDIAL ACTIONS PURSUANT TO STATE LAWS AS
26 DIRECTED BY THE DEPARTMENT.

27 SECTION 5. LIMITATION OF LENDER ENVIRONMENTAL LIABILITY.

28 (A) SCOPE OF LENDER LIABILITY.--A LENDER WHO PROVIDES
29 FINANCIAL SERVICES OR HOLDS INDICIA OF OWNERSHIP IN PROPERTY AS
30 A SECURITY INTEREST SHALL NOT BE LIABLE UNDER THE ENVIRONMENTAL

1 ACTS TO THE DEPARTMENT OR TO ANY OTHER PERSON BY VIRTUE OF FACT
2 THAT THE LENDER PROVIDES FINANCIAL SERVICES OR HOLDS INDICIA OF
3 OWNERSHIP PRIMARILY TO PROTECT ITS SECURITY INTEREST IN THE
4 PROPERTY, UNLESS:

5 (1) THE LENDER, ITS EMPLOYEES OR AGENTS CAUSE OR
6 EXACERBATE A RELEASE OF REGULATED SUBSTANCES ON OR FROM THE
7 PROPERTY; OR

8 (2) THE LENDER, ITS EMPLOYEES OR AGENTS KNOWINGLY AND
9 WILLFULLY COMPELLED THE BORROWER TO:

10 (I) DO AN ACTION WHICH CAUSED AN IMMEDIATE RELEASE
11 OF REGULATED SUBSTANCES; OR

12 (II) VIOLATE AN ENVIRONMENTAL ACT.

13 (B) LIMITATION OF LENDER LIABILITY.--LIABILITY PURSUANT TO
14 THIS ACT SHALL BE LIMITED TO THE COST FOR A RESPONSE ACTION
15 WHICH MAY BE DIRECTLY ATTRIBUTABLE TO THE LENDER'S ACTIVITIES AS
16 SPECIFIED IN SUBSECTION (A). NO LENDER SHALL BE LIABLE FOR ANY
17 DAMAGES, INCLUDING ANY RESPONSE ACTION, IF SUCH DAMAGES ARISE
18 SOLELY FROM A RELEASE OF REGULATED SUBSTANCES WHICH OCCURRED
19 PRIOR TO OR COMMENCES BEFORE AND CONTINUES AFTER FORECLOSURE,
20 PROVIDED, HOWEVER, THAT THE LENDER SHALL BE RESPONSIBLE FOR THAT
21 PORTION OF DAMAGES WHICH ARE DIRECTLY ATTRIBUTED TO THE LENDER'S
22 EXACERBATION OF A RELEASE. A RELEASE OF REGULATED SUBSTANCES
23 DISCOVERED IN THE COURSE OF CONDUCTING ENVIRONMENTAL DUE
24 DILIGENCE SHALL BE PRESUMED TO BE A PRIOR OR CONTINUING RELEASE
25 ON THE PROPERTY.

26 (C) EMERGENCY EVENT AFTER FORECLOSURE.--IF AN EMERGENCY
27 EVENT OCCURS AFTER FORECLOSURE AND, IF UPON THE BASIS OF
28 INFORMATION AVAILABLE TO THE LENDER AT THE TIME OF THAT
29 EMERGENCY EVENT, THERE IS A CLEAR AND CONVINCING BASIS TO
30 BELIEVE THAT PROMPT ACTION IS NECESSARY, THEN THE LENDER SHALL

1 UNDERTAKE AN EMERGENCY RESPONSE MEASURE WITHOUT THE LOSS OF THE
2 PROTECTION AFFORDED BY THIS ACT. A LENDER WHICH UNDERTAKES AN
3 EMERGENCY RESPONSE MEASURE MUST USE REASONABLE CARE AND ENDEAVOR
4 TO COMPLETE THE EMERGENCY RESPONSE MEASURE SO AS TO STABILIZE
5 THE EMERGENCY EVENT. NO LENDER SHALL BE LIABLE FOR ANY DAMAGES
6 RESULTING FROM AN EMERGENCY EVENT OR EMERGENCY RESPONSE MEASURE
7 OR ANY OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, COSTS FOR
8 RESPONSE ACTIONS AT THE PROPERTY, ADJOINING AREAS AND LOCATIONS
9 TO WHICH HAZARDOUS SUBSTANCES ARE TRANSPORTED FOR HANDLING,
10 TREATMENT, STORAGE AND DISPOSAL, EXCEPT FOR DAMAGES DUE TO THE
11 LENDER'S ACTS OR OMISSIONS WHICH CONSTITUTE GROSS NEGLIGENCE OR
12 WILLFUL MISCONDUCT. LIABILITY PURSUANT TO THIS SUBSECTION SHALL
13 BE LIMITED TO THE LESSER AMOUNT OF:

- 14 (1) THE REMAINING VALUE OF THE AFFECTED PROPERTY;
15 (2) THE PRINCIPAL AMOUNT OF THE LOAN SECURED BY THE
16 AFFECTED PROPERTY; OR
17 (3) THE EXTENT OF THE DAMAGES THAT RESULT DUE TO THE
18 LENDER'S ACTS OR OMISSIONS WHICH CONSTITUTE GROSS NEGLIGENCE
19 OR WILLFUL MISCONDUCT IN UNDERTAKING THE EMERGENCY RESPONSE
20 MEASURE.

21 IT SHALL BE A REBUTTABLE PRESUMPTION OF LAW THAT A LENDER WHO
22 HAS TAKEN STEPS TO CONDUCT AN EMERGENCY RESPONSE MEASURE HAS
23 ACTED PROPERLY AND IS ENTITLED TO PROTECTION FROM LIABILITY AND
24 REIMBURSEMENT AS PROVIDED IN THIS ACT; AND PROVIDED FURTHER THAT
25 AN OCCURRENCE OR CONDITION CONSTITUTING A REPORTABLE EVENT UNDER
26 THE ENVIRONMENTAL ACTS ALONE SHALL NOT BE CONSIDERED BY REASON
27 OF SUCH STATUS AS A REPORTABLE EVENT TO BE AN EMERGENCY EVENT.

28 (D) NOTIFICATION REQUIREMENTS.--NOTIFICATION FOR AN
29 EMERGENCY RESPONSE MEASURE UNDER THIS SECTION SHALL INCLUDE THE
30 FOLLOWING TO THE EXTENT KNOWN BY THE LENDER AT THE TIME OF SUCH

1 NOTIFICATION:

2 (1) THE NAME AND TELEPHONE NUMBER OF THE PERSON MAKING
3 THE NOTIFICATION.

4 (2) THE NAME AND TELEPHONE NUMBER OF THE PERSON EMPLOYED
5 BY THE LENDER WHO HAS THE AUTHORITY TO TAKE OR COORDINATE THE
6 EMERGENCY RESPONSE MEASURE.

7 (3) THE TIME, LOCATION AND DURATION OF THE RELEASE.

8 (4) THE CHEMICAL NAME OR IDENTITY OF ANY SUBSTANCE
9 INVOLVED IN THE RELEASE.

10 (5) THE MEDIUM OR MEDIA INTO WHICH THE RELEASE OCCURRED.

11 (6) AN ESTIMATE OF THE QUANTITY OF THE SUBSTANCE THAT
12 WAS RELEASED INTO THE ENVIRONMENT.

13 (7) SUCH STEPS TAKEN TO ATTEMPT TO STABILIZE AND CONTROL
14 THE EMERGENCY EVENT AND MITIGATE DAMAGES.

15 (8) ANY ADDITIONAL INFORMATION THAT SUCH PERSON DEEMS
16 APPROPRIATE UNDER THE CIRCUMSTANCES.

17 (E) EMERGENCY RESPONSE MEASURE COSTS.--A LENDER WHO
18 UNDERTAKES AN EMERGENCY RESPONSE MEASURE MAY BE REIMBURSED FOR
19 ITS COSTS, INCLUDING, BUT NOT LIMITED TO, LEGAL FEES, FROM THE
20 FUND BY FILING AN ACTION WITH THE BOARD WITHIN 60 DAYS AFTER
21 COMPLETION OF THE EMERGENCY RESPONSE MEASURE IN ACCORDANCE WITH
22 SECTION 505(F) OF THE ACT OF OCTOBER 18, 1988 (P.L.756, NO.108),
23 KNOWN AS THE HAZARDOUS SITES CLEANUP ACT. TO RECOVER COSTS, THE
24 ACTION MUST INCLUDE A WRITTEN SUMMARY OF THE ACTS TAKEN FOR THE
25 EMERGENCY RESPONSE MEASURE AND DOCUMENTATION OF THE COSTS.
26 NOTWITHSTANDING THE FOREGOING, A LENDER WHO UNDERTAKES AN
27 EMERGENCY RESPONSE MEASURE MAY ALSO RECOVER ITS COSTS AND
28 DAMAGES, INCLUDING LEGAL FEES, OR SEEK CONTRIBUTION FROM A
29 RESPONSIBLE PERSON IN A LEGAL ACTION BROUGHT BEFORE A COURT OF
30 COMPETENT JURISDICTION. IN THE EVENT THAT A LENDER RECOVERS

1 DUPLICATIVE COSTS AND DAMAGES IN A LEGAL ACTION AGAINST A
2 RESPONSIBLE PERSON AFTER BEING REIMBURSED FOR ITS COSTS BY THE
3 BOARD, THE LENDER SHALL PROMPTLY RETURN TO THE BOARD ANY
4 DUPLICATIVE AMOUNTS RECEIVED FROM THE FUND.

5 SECTION 6. LIMITATION OF FIDUCIARY ENVIRONMENTAL LIABILITY.

6 (A) SCOPE OF FIDUCIARY LIABILITY.--ANY PERSON WHO ACTS OR
7 HAS ACTED AS A FIDUCIARY TO ANOTHER PERSON SHALL NOT BE LIABLE
8 IN ITS PERSONAL OR INDIVIDUAL CAPACITY UNDER THE ENVIRONMENTAL
9 ACTS TO THE DEPARTMENT OR TO ANY OTHER PERSON BY VIRTUE OF THE
10 FACT THAT THE FIDUCIARY PROVIDES OR PROVIDED SUCH SERVICES
11 UNLESS:

12 (1) DURING THE TIME WHEN THE FIDUCIARY SERVICES WERE
13 ACTIVELY PROVIDED, AN EVENT OCCURRED WHICH CONSTITUTED A
14 RELEASE OF REGULATED SUBSTANCES ACCORDING TO THE
15 ENVIRONMENTAL ACTS AT THE TIME OF SUCH EVENT;

16 (2) THE FIDUCIARY HAD THE EXPRESS POWER AND AUTHORITY TO
17 CONTROL PROPERTY WHICH WAS THE CAUSE OF OR THE SITE OF SUCH
18 RELEASE AS PART OF ACTIVELY PROVIDING SERVICES; AND

19 (3) THE RELEASE WAS CAUSED BY AN ACT OR OMISSION WHICH
20 CONSTITUTED GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE
21 FIDUCIARY ACCORDING TO THE LAW OR STANDARD PRACTICES AT THE
22 TIME OF THE RELEASE.

23 (B) LIMITATION OF FIDUCIARY LIABILITY.--LIABILITY UNDER THIS
24 ACT SHALL BE LIMITED TO ONLY THE COST FOR A RESPONSE ACTION
25 WHICH IS DIRECTLY ATTRIBUTABLE TO THE FIDUCIARY'S ACTIVITIES AS
26 SPECIFIED IN THIS SECTION. NO FIDUCIARY SHALL BE LIABLE FOR ANY
27 DAMAGES, INCLUDING ANY RESPONSE ACTION, IF SUCH DAMAGES SOLELY
28 ARISE FROM A RELEASE OF REGULATED SUBSTANCES WHICH OCCURRED
29 PRIOR TO, OR COMMENCES BEFORE AND CONTINUES AFTER THE FIDUCIARY
30 TAKES ACTION AS SPECIFIED IN SUBSECTION (A). NOTWITHSTANDING THE

1 FOREGOING, A FIDUCIARY SHALL BE RESPONSIBLE FOR THAT PORTION OF
2 DAMAGES WHICH ARE DIRECTLY ATTRIBUTABLE TO EXACERBATING A
3 RELEASE. A RELEASE OF REGULATED SUBSTANCES DISCOVERED IN THE
4 COURSE OF CONDUCTING AN ENVIRONMENTAL DUE DILIGENCE SHALL BE
5 PRESUMED TO BE A PRIOR AND CONTINUING RELEASE ON THE PROPERTY.

6 (C) ESTATE CLAIMS.--NOTHING IN THIS SECTION SHALL PREVENT
7 CLAIMS AGAINST THE FIDUCIARY IN ITS REPRESENTATIVE CAPACITY.
8 SECTION 7. DEFENSES TO LIABILITY.

9 A LENDER OR FIDUCIARY CAN AVOID LIABILITY UNDER THIS ACT BY
10 SHOWING EVIDENCE THAT A RELEASE OR THREATENED RELEASE OF
11 REGULATED SUBSTANCES FOR WHICH THE LENDER OR FIDUCIARY OTHERWISE
12 BE RESPONSIBLE WAS CAUSED BY ANY OF THE FOLLOWING:

13 (1) AN ACT OF GOD.

14 (2) AN INTERVENING ACT OF A PUBLIC AGENCY.

15 (3) MIGRATION FROM PROPERTY OWNED BY A THIRD PARTY.

16 (4) ACTIONS TAKEN OR OMITTED IN THE COURSE OF RENDERING
17 CARE, ASSISTANCE OR ADVICE IN ACCORDANCE WITH THE
18 ENVIRONMENTAL ACTS OR AT THE DIRECTION OF THE DEPARTMENT.

19 (5) AN ACT OF A THIRD PARTY WHO WAS NOT AN AGENT OR
20 EMPLOYEE OF THE LENDER OR FIDUCIARY.

21 (6) IF THE ALLEGED LIABILITY FOR A LENDER ARISES AFTER
22 FORECLOSURE AND THE LENDER EXERCISED DUE CARE WITH RESPECT TO
23 THE REGULATED SUBSTANCE AND TOOK PRECAUTIONS AGAINST
24 FORESEEABLE ACTIONS OF THIRD PARTIES AND THE CONSEQUENCES
25 ARISING THEREFROM.

26 SECTION 8. SAVINGS CLAUSE.

27 NOTHING IN THIS ACT SHALL AFFECT THE RIGHTS, IMMUNITIES OR
28 OTHER DEFENSES THAT ARE AVAILABLE UNDER OTHER APPLICABLE LAW TO
29 A LENDER OR FIDUCIARY, INCLUDING, BUT NOT LIMITED TO, RIGHTS OF
30 CONTRIBUTION AND INDEMNITY. NOTHING IN THIS ACT SHALL BE

1 CONSTRUED TO CREATE ANY LIABILITY FOR OR CREATE A PRIVATE RIGHT
2 OF ACTION AGAINST ANY LENDER OR FIDUCIARY.

3 SECTION 9. APPORTIONMENT OF LIABILITY.

4 NOTWITHSTANDING ANYTHING TO THE CONTRARY, IF TWO OR MORE
5 PERSONS ACTING INDEPENDENTLY CAUSE DISTINCT HARM OR A SINGLE
6 HARM FOR WHICH THERE IS A REASONABLE BASIS FOR DIVISION
7 ACCORDING TO THE CONTRIBUTION OF EACH, A LENDER OR FIDUCIARY
8 SHALL BE SUBJECT TO LIABILITY ONLY FOR THE PORTION OF THE TOTAL
9 LIABILITY THAT IS DIRECTLY ATTRIBUTABLE TO THE LENDER OR
10 FIDUCIARY.

11 SECTION 10. CONSTRUCTION OF ACT.

12 THE TERMS AND CONDITIONS OF THIS ACT ARE TO BE LIBERALLY
13 CONSTRUED SO AS TO BEST ACHIEVE AND EFFECTUATE THE GOALS AND
14 PURPOSES OF THIS ACT. THE BURDEN OF PROOF SHALL BE UPON THE
15 PERSON SEEKING TO HAVE A LENDER OR A FIDUCIARY HELD LIABLE FOR A
16 RESPONSE ACTION OR DAMAGES.

17 SECTION 11. SEVERABILITY.

18 THE PROVISIONS OF THIS ACT ARE SEVERABLE. IF ANY PROVISION OF
19 THIS ACT OR ITS APPLICATION TO ANY PERSON OR CIRCUMSTANCE IS
20 HELD INVALID, THE INVALIDITY SHALL NOT AFFECT OTHER PROVISIONS
21 OR APPLICATIONS OF THIS ACT WHICH CAN BE GIVEN EFFECT WITHOUT
22 THE INVALID PROVISION OR APPLICATION.

23 SECTION 12. REPEALS.

24 TO THE EXTENT THAT ANY ENVIRONMENTAL ACTS ARE INCONSISTENT
25 WITH THIS ACT, SUCH LAWS ARE DEEMED REPEALED SO THAT THE
26 PROVISIONS OF THIS ACT MAY BE ENFORCED. NO ENVIRONMENTAL LAW
27 ENACTED AFTER THIS ACT SHALL BE APPLIED RETROACTIVELY TO IMPOSE
28 LIABILITY UPON LENDERS AND FIDUCIARIES.

29 SECTION 13. APPLICABILITY.

30 THE PROVISIONS OF THIS ACT SHALL APPLY TO THE FOLLOWING:

1 (1) ALL INDICIA OF OWNERSHIP, INCLUDING THOSE PRESENTLY
2 OR SUBSEQUENTLY ACQUIRED, OR THOSE ACQUIRED PRIOR TO THE DATE
3 OF ENACTMENT THAT ARE HELD PRIMARILY TO PROTECT A SECURITY
4 INTEREST IN THE PROPERTY.

5 (2) EACH FIDUCIARY WITH RESPECT TO ANY SERVICES PROVIDED
6 BY THE FIDUCIARY, INCLUDING THOSE PRESENTLY OR SUBSEQUENTLY
7 PROVIDED, AND THOSE RENDERED PRIOR TO THE DATE OF ENACTMENT.

8 (3) ALL ADMINISTRATIVE ACTIONS, ACTIONS, SUITS OR CLAIMS
9 AGAINST LENDERS OR FIDUCIARIES NOT YET FINALLY RESOLVED BY
10 THE DEPARTMENT OR ANY COURT OR ADMINISTRATIVE HEARING BOARD
11 HAVING ANY ACTION, SUIT OR CLAIM PENDING BEFORE IT OR AN
12 APPEAL FROM A LOWER COURT.

13 SECTION 14. EFFECTIVE DATE.

14 THIS ACT SHALL TAKE EFFECT IMMEDIATELY.