

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1895 Session of  
1993

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SEMMELE, KENNEY, COLAFELLA AND DENT, JUNE 23, 1993

REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,  
JUNE 23, 1993

AN ACT

1 Providing for the voluntary cleanup of abandoned industrial  
2 sites; further defining the cleanup responsibilities of  
3 innocent prospective purchasers; and further providing for  
4 grants to defray costs of comprehensive site assessments by  
5 prospective purchasers of abandoned industrial sites.

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

8 Section 101. Short title.

9 This act shall be known and may be cited as the Industrial  
10 Land Reuse Act.

11 Section 102. Declaration of policy.

12 The General Assembly finds and declares as follows:

13 (1) The redevelopment of abandoned industrial sites  
14 should be encouraged as a sound land use management policy to  
15 prevent the needless development of prime farmland, open  
16 space and natural and recreation areas and to prevent urban  
17 sprawl.

18 (2) The redevelopment of abandoned industrial sites

1 should be encouraged so that these sites can be returned to  
2 bring useful, tax-producing properties to protect existing  
3 jobs and provide new job opportunities.

4 (3) Persons interested in redeveloping abandoned  
5 industrial sites should have a method of determining what  
6 their legal liabilities and cleanup responsibilities will be  
7 as they plan the reuse of abandoned sites.

8 (4) Incentives should be put in place to encourage  
9 prospective purchasers to voluntarily develop and implement  
10 cleanup plans of abandoned industrial sites without the use  
11 of taxpayer funds or the need for adversarial enforcement  
12 actions by the Department of Environmental Resources.

13 (5) The Department of Environmental Resources now  
14 routinely through its permitting policies determines when  
15 contamination will and will not pose significant risk to  
16 public health or the environment. Similar concepts should be  
17 used in establishing cleanup policies for abandoned  
18 industrial sites.

19 Section 103. Definitions.

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

23 "Abandoned industrial site." A site which once had an  
24 industrial activity on it and for which no responsible person  
25 can be pursued for a remedial response.

26 "CERCLA." The Comprehensive Environmental Response  
27 Compensation and Liability Act of 1980 (Public law 96-510, 94  
28 Stat. 2767).

29 "Department." The Department of Environmental Resources of  
30 the Commonwealth.

1 "Employment expansion." The providing of employment  
2 opportunities for a period of five years after the prospective  
3 purchaser and the Department of Environmental Resources have  
4 executed an agreement pursuant to section 104(d).

5 "Industrial activity." Commercial, manufacturing or any  
6 other activity done to further either the development,  
7 manufacturing or distribution of goods and services, including,  
8 but not limited to, research and development, warehousing,  
9 shipping, transport, remanufacturing, repair and maintenance of  
10 commercial machinery and equipment.

11 "Person." An individual, firm, corporation, association,  
12 partnership, consortium, joint venture, commercial entity,  
13 authority, nonprofit corporation, interstate body or other legal  
14 entity which is recognized by law as the subject of rights and  
15 duties. The term includes the Federal Government, State  
16 government and political subdivisions.

17 "Prospective purchaser." A person who expresses a  
18 willingness in acquiring an abandoned industrial site.

19 "Property." Real property and improvements, including:

20 (1) A facility as defined in the Comprehensive  
21 Environmental Response, Compensation and Liability Act of  
22 1980 (Public Law 96-510, 94 Stat. 2767).

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

25 (3) A tank as defined in the act of July 6, 1989  
26 (P.L.169, No.32), known as the Storage Tank and Spill  
27 Prevention Act.

28 "Regulated substance." A substance, the discharge or release  
29 or potential release of which is governed by or regulated by the  
30 act of June 22, 1937 (P.L.1987, No.394), known as The Clean

1 Streams Law, the act of July 7, 1980 (P.L.380, No.97), known as  
2 the Solid Waste Management Act, the act of October 18, 1988  
3 (P.L.756, No.108), known as the Hazardous Sites Cleanup Act and  
4 the act of July 6, 1989 (P.L.169, No.32), known as the Storage  
5 Tank and Spill Prevention Act.

6 "Release." A release as defined in the act of October 18,  
7 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup  
8 Act.

9 "Remedial response." An action taken to remediate, clean up,  
10 mitigate, correct, abate, eliminate, prevent, study or assess a  
11 release or potential release of regulated substance into the  
12 environment in order to protect the present or future public  
13 health, safety, welfare or the environment.

14 "Remediate." To clean up, mitigate, correct, abate,  
15 minimize, eliminate, prevent, study or assess a release of a  
16 regulated substance into the environment in order to protect the  
17 present or future public health, safety, welfare or the  
18 environment.

19 "Responsible person." This term shall have the same meaning  
20 as given to it in the act of October 18, 1988 (P.L.756, No.108),  
21 known as the Hazardous Sites Cleanup Act, and shall include a  
22 person subject to enforcement actions under the act of July 6,  
23 1989 (P.L.169, No.32), known as the Storage Tank and Spill  
24 Prevention Act, the act of June 22, 1937 (P.L.1987, No.394),  
25 known as The Clean Streams Law, and the act of July 7, 1980  
26 (P.L.380, No.97), known as the Solid Waste Management Act.

27 Section 104. Scope.

28 This act applies to a person who:

29 (1) intends to be a prospective purchaser of an  
30 abandoned industrial site;

(2) did not, by act or omission, cause or contribute to any contamination or to the release or threatened release of a hazardous substance on the identified abandoned industrial site; and

(3) will reuse or redevelop the property for industrial activities to create employment expansion.

Section 105. Comprehensive site assessment.

(a) Comprehensive site assessment.--The prospective purchaser shall perform a comprehensive site assessment which has been approved by the department to establish the baseline of existing contamination on the site.

(b) Public review.--The proposed comprehensive site assessment shall be subject to a 30-day public review and comment period. Notice of the availability of the completed assessment shall be published in the Pennsylvania Bulletin and a newspaper of general circulation serving the area in which the identified property is located. The department may hold a public hearing on the assessment if requested. The department shall consult with the Department of Commerce on the adequacy of the employment opportunities created or retained on the identified property.

(c) Department review.--Within 120 days after the completed comprehensive site assessment is accepted for review, the department shall determine whether the assessment adequately identifies the environmental hazards and risks posed by the abandoned industrial site.

(d) Agreement.--The department and the prospective purchaser shall enter into an agreement based on the comprehensive site assessment which outlines cleanup liabilities for the abandoned industrial site.

1 Section 106. Cleanup liability.

2 (a) Immediate threats.--After purchase of the abandoned  
3 industrial site, the prospective purchaser shall be responsible  
4 to remedy any immediate, direct to imminent threats to the  
5 public health or environment, including, but not limited to,  
6 drummed waste, enclosed lagoons and impoundments and wastes in  
7 aboveground and belowground storage tanks.

8 (b) Identified contamination.--After purchase of the  
9 abandoned industrial site, the prospective purchaser shall not  
10 be held liable to remediate any contamination identified in the  
11 comprehensive site assessment. This subsection, however, will  
12 not relieve the prospective purchaser of liability for  
13 preexisting problems not identified in the comprehensive site  
14 assessment.

15 (c) New liability.--Nothing in this act shall relieve the  
16 prospective purchaser after purchase of any cleanup liability  
17 for contamination later caused by the prospective purchaser.

18 (d) Remediation alternatives.--

19 (1) Remediation alternatives are to be based on the  
20 actual risk to human health and the environment posed by  
21 contaminants on the property considering the following  
22 factors:

23 (i) the intended and allowable use or subsequent  
24 uses of the abandoned industrial site;

25 (ii) the ability of the contaminants to move in a  
26 form and manner which would result in exposure to humans  
27 and the surrounding environment at levels considered to  
28 be a significant health risk; and

29 (iii) consideration of the potential environmental  
30 risks of proposed cleanup alternatives and their economic

1 and technical feasibility and reliability.

2 (2) Remediation alternatives are not to be required to  
3 provide for the removal or remediation of the conditions or  
4 contaminants causing a release or threatened release on the  
5 identified property if:

6 (i) contaminants pose no significant risk to  
7 employees, public health and the environment or the  
8 remediation actions proposed in the assessment and  
9 subsequent uses of the industrial site will eliminate  
10 significant risks to employees, public health and the  
11 environment; or

12 (ii) activities required to undertake the proposed  
13 reuse or redevelopment of the industrial site are in a  
14 manner which will protect public health and the  
15 environment; or

16 (iii) any reuse or redevelopment of the industrial  
17 site is not likely to aggravate or contribute to the  
18 contamination of the air, land or water or to a release  
19 or threatened release that may not require removal or  
20 remediation and which is not likely to interfere with or  
21 substantially increase the cost of any response actions  
22 which may be needed to address any remaining  
23 contamination.

24 (e) Past penalties.--A prospective purchaser of an abandoned  
25 industrial site under this act shall not be responsible for  
26 paying any fines or penalties levied against any person  
27 responsible for contamination on the abandoned industrial sites  
28 prior to the agreement with the department.

29 Section 106. Prospective purchaser's responsibilities.

30 (a) Prevention.--The prospective purchaser shall take the

1 steps necessary to prevent any existing contamination on the  
2 industrial site from becoming worse as the result of the  
3 purchaser's activities.

4 (b) Noninterference.--The prospective purchaser shall not  
5 interfere with any subsequent remedial response by the  
6 department or others to deal with the contamination identified  
7 in the comprehensive site assessment.

8 (c) Deed restriction.--If necessary, a restriction shall be  
9 placed on the deed for the property covered by this act which  
10 restricts the use of the property to industrial activities and  
11 compatible uses which will protect the integrity of any cleanup  
12 measures implemented on the property or prevent contaminated  
13 portions of the property from being disturbed.

#### 14 Section 107. Transferability.

15 The agreement or cleanup liabilities entered into by the  
16 department and the prospective purchaser pursuant to this act is  
17 transferable without review by the department in its entirety to  
18 any and all subsequent owners of the property who did not, by  
19 act or omission, cause or contribute to any contamination or to  
20 the release or threatened release of hazardous substance on the  
21 industrial site.

#### 22 Section 108. Liability of other parties.

23 The lender which provides financing for the abandoned  
24 industrial site and to the prospective purchaser shall not be  
25 liable in an action by the department as a responsible person  
26 for cleaning up contamination on an industrial site covered by  
27 an agreement developed in accordance with this act provided that  
28 the person providing financing does not participate in  
29 management with respect to the industrial site. For purposes of  
30 this section, participation in management means:



1           (1) the exercising of decision making control over the  
2       environmental compliance of the industrial site or the  
3       occupant of the industrial site; or

4           (2) the exercising of decision making control over  
5       operational aspects of the property or an occupant, other  
6       than financial or administrative decisions that must be made  
7       as part of the lender's lawful authority.

8       Section 109. Funding.

9       Prospective purchasers redeveloping abandoned industrial  
10      sites shall be eligible for grants under the Industrial Reuse  
11      Fund to perform comprehensive site assessments required of the  
12      prospective purchaser under this act. This program shall be  
13      administered by the Department of Commerce which shall adopt  
14      guidelines to govern this program.

15      Section 110. Transfer of funds.

16      One million dollars is hereby appropriated from the Hazardous  
17      Sites Cleanup Fund to the Department of Commerce for the purpose  
18      of implementing section 109.

19      Section 111. Powers and authority of department.

20      The department has the authority to adopt any necessary  
21      regulations to implement this act.

22      Section 112. Effective date.

23      This act shall take effect in 60 days.