

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1895

Session of
1993

INTRODUCED BY LESCOVITZ, STETLER, HASAY, STURLA, LAUGHLIN,
COLAIZZO, WOZNIAK, MUNDY, SERAFINI, GERLACH, CESSAR, ALLEN,
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JUNE 23, 1993

AS REPORTED FROM COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,
HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 27, 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 (6) PARTIES AND PERSONS RESPONSIBLE UNDER LAW FOR
20 POLLUTION AT INDUSTRIAL SITES SHOULD PERFORM REMEDIAL
21 RESPONSES WHICH ARE FULLY CONSISTENT WITH EXISTING
22 REQUIREMENTS.

23 (7) AS AN INCENTIVE TO PROMOTE THE REDEVELOPMENT OF
24 ABANDONED INDUSTRIAL SITES, PERSONS NOT RESPONSIBLE FOR
25 PREEXISTING POLLUTION AT OR CONTAMINATION ON INDUSTRIAL SITES
26 SHOULD MEET ALTERNATIVE CLEANUP REQUIREMENTS IF THEY ACQUIRE
27 TITLE AFTER FULLY DISCLOSING THE NATURE OF CONDITIONS AT THE
28 SITE.

29 Section 103. Definitions.

30 The following words and phrases when used in this act shall

1 have the meanings given to them in this section unless the
2 context clearly indicates otherwise:

3 "Abandoned industrial site." A site which once had an
4 industrial activity on it and for which no responsible person
5 can REASONABLY be pursued for a remedial response TO CLEAN UP
6 THE SITE. <—

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

10 "Department." The Department of Environmental Resources of
11 the Commonwealth.

12 ~~"Employment expansion." The providing of employment~~ <—
13 ~~opportunities for a period of five years after the prospective~~
14 ~~purchaser and the Department of Environmental Resources have~~
15 ~~executed an agreement pursuant to section 104(d).~~

16 "Industrial activity." Commercial, manufacturing or any
17 other activity done to further either the development,
18 manufacturing or distribution of goods and services, including,
19 but not limited to, research and development, warehousing,
20 shipping, transport, remanufacturing, repair and maintenance of
21 commercial machinery and equipment.

22 "Person." An individual, firm, corporation, association,
23 partnership, consortium, joint venture, commercial entity,
24 authority, nonprofit corporation, interstate body or other legal
25 entity which is recognized by law as the subject of rights and
26 duties. The term includes the Federal Government, State
27 government and, political subdivisions AND COMMONWEALTH
28 INSTRUMENTALITIES. <—

29 "Prospective purchaser." A person who expresses a
30 willingness in acquiring TO ACQUIRE an abandoned industrial site <—

1 AND WHO HAS NO LIABILITY FOR PREEXISTING POLLUTION AT OR <—
2 CONTAMINATION ON THE SITE.

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

4 (1) A facility as defined in the Comprehensive
5 Environmental Response, Compensation and Liability Act of
6 1980 (Public Law 96-510, 94 Stat. 2767).

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

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

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

20 "Release." A release as defined in the act of October 18,
21 1988 (P.L.756, No.108), known as the Hazardous Sites Cleanup
22 Act.

23 "Remedial response." An action taken to remediate, clean up,
24 mitigate, correct, abate, eliminate, ~~prevent, study or assess~~ OR <—
25 PREVENT a release or potential release of regulated substance
26 into the environment, INCLUDING PRELIMINARY ACTIONS TO STUDY OR <—
27 ASSESS THE RELEASE, in order to protect the present or future
28 public health, safety, welfare or the environment.

29 "Remediate." To clean up, mitigate, correct, abate,
30 minimize, eliminate, ~~prevent, study or assess~~ OR PREVENT a <—

1 release of a regulated substance into the environment in order
2 to protect the present or future public health, safety, welfare
3 or the environment, INCLUDING PRELIMINARY ACTIONS TO STUDY OR
4 ASSESS THE RELEASE. <—

5 "Responsible person." This term shall have the same meaning
6 as given to it in the act of October 18, 1988 (P.L.756, No.108),
7 known as the Hazardous Sites Cleanup Act, and shall include a
8 person subject to enforcement actions under the act of July 6,
9 1989 (P.L.169, No.32), known as the Storage Tank and Spill
10 Prevention Act, the act of June 22, 1937 (P.L.1987, No.394),
11 known as The Clean Streams Law, and the act of July 7, 1980
12 (P.L.380, No.97), known as the Solid Waste Management Act.

13 "SITE ASSESSMENT." THE SITE ASSESSMENT SUBMITTED BY A <—
14 PROSPECTIVE PURCHASER TO ESTABLISH THE BASELINE LEVEL OF
15 EXISTING CONTAMINATION ON A SITE. THE ASSESSMENT SHALL, AT A
16 MINIMUM, IDENTIFY THE LOCATION OF CONTAMINATION, THE QUANTITY OR
17 LEVEL OF CONTAMINATION, THE TYPE OF CONTAMINATION, THE PROBABLE
18 SOURCE OF CONTAMINATION AND THE RISK OR THREAT ASSOCIATED WITH
19 THE CONTAMINATION AS DESCRIBED IN SECTION 106. THE ASSESSMENT
20 SHALL ALSO INCLUDE A DESCRIPTION OF THE USE WHICH THE
21 PROSPECTIVE PURCHASER INTENDS TO MAKE OF THE SITE.

22 Section 104. Scope.

23 This act applies to a person who:

24 (1) ~~intends to be~~ IS a prospective purchaser of an <—
25 abandoned industrial site;

26 (2) did not, by act or omission, cause or contribute to
27 any contamination or to the release or threatened release of
28 a hazardous substance on OR FROM the identified abandoned <—
29 industrial site; and

30 (3) will reuse or redevelop the property for industrial

1 activities to create employment expansion.

2 Section 105. Comprehensive site assessment.

3 ~~(a) Comprehensive site assessment. The prospective~~ <—
4 ~~purchaser shall perform a comprehensive site assessment which~~
5 ~~has been approved by the department to establish the baseline of~~
6 ~~existing contamination on the site.~~

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

17 (A) COMPREHENSIVE SITE ASSESSMENT.--THE PROSPECTIVE <—
18 PURCHASER WHO WISHES TO TAKE ADVANTAGE OF THE LIMITATION OF
19 LIABILITY UNDER THIS ACT SHALL SUBMIT A PROPOSED COMPREHENSIVE
20 SITE ASSESSMENT TO THE DEPARTMENT FOR REVIEW AND COMMENT TO
21 ESTABLISH THE BASELINE OF EXISTING CONTAMINATION ON THE SITE. IF
22 THE PROSPECTIVE PURCHASER ELECTS TO PROCEED UPON RECEIPT OF THE
23 DEPARTMENT'S COMMENTS, THE PROSPECTIVE PURCHASER SHALL PERFORM
24 THE COMPREHENSIVE SITE ASSESSMENT CONSISTENT WITH THE
25 DEPARTMENT'S COMMENTS.

26 ~~(c)~~ (B) Department review.--Within 120 days after the A <—
27 completed comprehensive site assessment is accepted for review,
28 the department shall determine whether the assessment adequately
29 identifies the environmental hazards and risks posed by the
30 abandoned industrial site.

1 ~~(d) Agreement. The department and the prospective purchaser~~ <—
2 ~~shall enter into an agreement based on the comprehensive site~~
3 ~~assessment which outlines cleanup liabilities for the abandoned~~
4 ~~industrial site.~~

5 ~~Section 106. Cleanup liability.~~

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

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

19 ~~(c) New liability. Nothing in this act shall relieve the~~
20 ~~prospective purchaser after purchase of any cleanup liability~~
21 ~~for contamination later caused by the prospective purchaser.~~

22 ~~(d) Remediation alternatives.—~~

23 ~~(1) Remediation alternatives are to be based on the~~
24 ~~actual risk to human health and the environment posed by~~
25 ~~contaminants on the property considering the following~~
26 ~~factors:~~

27 ~~(i) the intended and allowable use or subsequent~~
28 ~~uses of the abandoned industrial site;~~

29 ~~(ii) the ability of the contaminants to move in a~~
30 ~~form and manner which would result in exposure to humans~~

~~and the surrounding environment at levels considered to be a significant health risk; and~~

~~(iii) consideration of the potential environmental risks of proposed cleanup alternatives and their economic and technical feasibility and reliability.~~

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

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

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

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

~~(c) Past penalties. A prospective purchaser of an abandoned industrial site under this act shall not be responsible for paying any fines or penalties levied against any person~~

1 ~~responsible for contamination on the abandoned industrial sites~~
2 ~~prior to the agreement with the department.~~

3 ~~Section 106. Prospective purchaser's responsibilities.~~

4 ~~(a) Prevention. The prospective purchaser shall take the~~
5 ~~steps necessary to prevent any existing contamination on the~~
6 ~~industrial site from becoming worse as the result of the~~
7 ~~purchaser's activities.~~

8 (C) AGREEMENT.--THE DEPARTMENT SHALL OFFER TO THE <—
9 PROSPECTIVE PURCHASER A CONSENT ORDER AND AGREEMENT BASED ON THE
10 RESULTS OF THE COMPREHENSIVE SITE ASSESSMENT WHICH ESTABLISHES
11 CLEANUP LIABILITIES AND OBLIGATIONS FOR THE ABANDONED INDUSTRIAL
12 SITE. THE DEPARTMENT SHALL PROVIDE PUBLIC NOTICE OF THE CONSENT
13 ORDER AND AGREEMENT IN THE PENNSYLVANIA BULLETIN. THE
14 PROSPECTIVE PURCHASER SHALL PROVIDE NOTICE OF THE CONSENT ORDER
15 AND AGREEMENT IN A NEWSPAPER OF GENERAL CIRCULATION THAT SERVES
16 THE AREA IN WHICH THE ABANDONED INDUSTRIAL SITE IS LOCATED. THE
17 CONSENT ORDER AND AGREEMENT SHALL ESTABLISH THE INTENDED USE OF
18 THE PROPERTY THAT WAS PRELIMINARILY DESCRIBED IN THE
19 COMPREHENSIVE SITE ASSESSMENT. THE DESCRIPTION OF THE INTENDED
20 USE SHALL IDENTIFY THE PORTION OF THE SITE THAT WILL BE USED AND
21 THE NATURE OF THE ACTIVITY THAT THE PROSPECTIVE PURCHASER
22 PROPOSES FOR THE SITE.

23 SECTION 106. CLEANUP LIABILITY.

24 (A) CONTAINERIZED WASTES.--ONCE THE PROSPECTIVE PURCHASER
25 HAS ACQUIRED LEGAL TITLE TO THE ABANDONED INDUSTRIAL SITE, THE
26 PURCHASER WILL BE RESPONSIBLE TO REMEDIATE, REMOVE AND PROPERLY
27 DISPOSE OF OR MANAGE, CONSISTENT WITH APPLICABLE REQUIREMENTS,
28 ANY CONTAINERIZED WASTES EXISTING ONSITE AT THE TIME OF
29 PURCHASE, INCLUDING DRUMMED WASTE, LAGOONS AND IMPOUNDMENTS AND
30 WASTES IN ABOVEGROUND AND UNDERGROUND TANKS. WASTES THAT ARE

1 DISPOSED OR MANAGED ONSITE WILL REMAIN SUBJECT TO APPLICABLE
2 REQUIREMENTS.

3 (B) OFFSITE MIGRATION.--ONCE THE PROSPECTIVE PURCHASER HAS
4 ACQUIRED LEGAL TITLE TO THE ABANDONED INDUSTRIAL SITE, THE
5 PURCHASER WILL BE RESPONSIBLE TO TAKE ALL NECESSARY STEPS TO
6 PREVENT MIGRATION OF REGULATED SUBSTANCES BEYOND THE PROPERTY
7 BOUNDARY.

8 (C) IMMEDIATE THREATS.--ONCE THE PROSPECTIVE PURCHASER HAS
9 ACQUIRED LEGAL TITLE TO THE ABANDONED INDUSTRIAL SITE, THE
10 PURCHASER SHALL BE RESPONSIBLE TO REMEDY ANY IMMEDIATE, DIRECT
11 OR IMMINENT THREATS TO THE PUBLIC HEALTH OR ENVIRONMENT.

12 (D) DESCRIPTION OF IMMEDIATE THREATS.--FOR PURPOSES OF
13 SUBSECTION (C), IMMEDIATE, DIRECT OR IMMINENT THREATS TO THE
14 PUBLIC HEALTH AND ENVIRONMENT ARE THOSE CONDITIONS WHICH POSE
15 EITHER:

16 (1) A SIGNIFICANT RISK, EITHER ACUTE OR CHRONIC, TO THE
17 HEALTH OF EMPLOYEES OR ANY OTHER PERSON LIKELY TO BE EXPOSED
18 TO THE RISK AT THE SITE BASED UPON THE INTENDED SITE USE
19 DESCRIBED BY THE PROSPECTIVE BUYER IN ITS COMPREHENSIVE SITE
20 ASSESSMENT AND DESCRIBED BY THE CONSENT ORDER AND AGREEMENT.
21 A BUYER MAY NOT ACTUALLY USE THE PROPERTY IN A MANNER WHICH
22 DIFFERS FROM THE INTENDED USE IDENTIFIED IN THE CONSENT ORDER
23 AND AGREEMENT CONTEMPLATED BY SECTION 105(C) UNLESS THE
24 DEPARTMENT AND BUYER AGREE TO A MODIFICATION OF THE CONSENT
25 ORDER AND AGREEMENT. A CONDITION SHALL BE CONSIDERED TO BE A
26 DIRECT, IMMEDIATE OR IMMINENT THREAT IF IT POSES A
27 SIGNIFICANT RISK UNLESS THE CONDITION IS ABATED OR ADDRESSED
28 BY REMEDIAL MEASURES; OR

29 (2) A SIGNIFICANT RISK TO DEGRADE EITHER GROUNDWATERS OR
30 SURFACE WATERS USED FOR DRINKING WATER SUPPLIES, OR A RISK TO

1 DEGRADE WATERS DESIGNATED FOR SPECIAL PROTECTION UNDER THE
2 ACT OF JUNE 22, 1937 (P.L.1987, NO.394), KNOWN AS THE CLEAN
3 STREAMS LAW. A CONDITION SHALL BE CONSIDERED TO BE A DIRECT,
4 IMMEDIATE OR IMMINENT THREAT IF IT POSES A SIGNIFICANT RISK,
5 UNLESS THE CONDITION IS ABATED OR ADDRESSED BY REMEDIAL
6 MEASURES.

7 (E) REMEDIAL RESPONSE.--A REMEDIAL RESPONSE PURSUANT TO
8 SUBSECTION (C) SHALL ELIMINATE SIGNIFICANT RISKS AND PREVENT
9 DEGRADATION OF GROUNDWATERS AND SURFACE WATERS USED FOR DRINKING
10 WATER SUPPLIES AND DEGRADATION OF SPECIAL PROTECTION WATERS.

11 (F) SELECTION OF REMEDIAL RESPONSE.--

12 (1) SELECTION OF A REMEDIAL RESPONSE PURSUANT TO
13 SUBSECTION (C) SHALL INCLUDE CONSIDERATION OF THE FOLLOWING
14 FACTORS:

15 (I) THE INTENDED AND ALLOWABLE USE OF THE ABANDONED
16 INDUSTRIAL SITE;

17 (II) THE ABILITY OF THE CONTAMINANTS TO MOVE IN A
18 FORM AND MANNER WHICH WOULD RESULT IN EXPOSURE TO HUMANS
19 AND THE SURROUNDING ENVIRONMENT AT LEVELS CONSIDERED TO
20 BE A SIGNIFICANT HEALTH RISK AS DESCRIBED IN SUBSECTION
21 (D)(1);

22 (III) CONSIDERATION OF THE POTENTIAL ENVIRONMENTAL
23 RISKS OF PROPOSED ALTERNATIVE REMEDIAL RESPONSES AND
24 THEIR ECONOMIC AND TECHNICAL FEASIBILITY AND RELIABILITY;

25 (IV) WHEN A DIRECT, IMMEDIATE OR IMMINENT THREAT IS
26 POSED; AND

27 (V) WHETHER INSTITUTIONAL OR ENGINEERING CONTROLS
28 ELIMINATE OR PARTIALLY ELIMINATE THE DIRECT, IMMEDIATE OR
29 IMMINENT THREAT OR OTHERWISE CONTAIN OR PREVENT
30 MIGRATION.

1 (2) REMEDIAL RESPONSES PURSUANT TO SUBSECTION (C) ARE
2 NOT REQUIRED TO PROVIDE FOR THE REMOVAL OR REMEDIATION OF THE
3 CONDITIONS OR CONTAMINANTS CAUSING A RELEASE OR THREATENED
4 RELEASE ON THE ABANDONED INDUSTRIAL SITE IF:

5 (I) CONTAMINANTS POSE NO SIGNIFICANT RISK AS
6 DESCRIBED IN SUBSECTIONS (D)(1) AND (2) OR THE
7 REMEDIATION ACTIONS PROPOSED IN THE ASSESSMENT AND
8 INTENDED USES OF THE INDUSTRIAL SITE WILL ELIMINATE
9 SIGNIFICANT RISKS AS DESCRIBED IN SUBSECTIONS (D)(1) AND
10 (2); OR

11 (II) ACTIVITIES REQUIRED TO ALLOW THE INTENDED REUSE
12 OR REDEVELOPMENT OF THE INDUSTRIAL SITE ARE IN A MANNER
13 WHICH WILL PROTECT PUBLIC HEALTH AND THE ENVIRONMENT AS
14 DESCRIBED IN SUBSECTIONS (D)(1) AND (2).

15 (G) NEW LIABILITY.--NOTHING IN THIS ACT SHALL RELIEVE THE
16 PROSPECTIVE PURCHASER AFTER ACQUISITION OF LEGAL TITLE TO THE
17 ABANDONED INDUSTRIAL SITE OF ANY CLEANUP LIABILITY FOR
18 CONTAMINATION LATER CAUSED BY THE PURCHASER.

19 (H) PAST PENALTIES.--A PROSPECTIVE PURCHASER OF AN ABANDONED
20 INDUSTRIAL SITE UNDER THIS ACT SHALL NOT BE RESPONSIBLE FOR
21 PAYING ANY FINES OR PENALTIES LEVIED AGAINST ANY PERSON
22 RESPONSIBLE FOR CONTAMINATION ON THE ABANDONED INDUSTRIAL SITES
23 PRIOR TO THE CONSENT ORDER AND AGREEMENT WITH THE DEPARTMENT.

24 (I) IDENTIFIED CONTAMINATION.--ONCE THE PROSPECTIVE
25 PURCHASER HAS ACQUIRED LEGAL TITLE TO THE ABANDONED INDUSTRIAL
26 SITE, THE PURCHASER SHALL NOT BE RESPONSIBLE TO REMEDIATE ANY
27 CONTAMINATION IDENTIFIED IN THE COMPREHENSIVE SITE ASSESSMENT
28 EXCEPT AS PROVIDED IN SUBSECTIONS (A) THROUGH (D). THIS
29 SUBSECTION, HOWEVER, SHALL NOT RELIEVE THE PURCHASER OF ANY
30 LIABILITY UNDER LAW FOR PREEXISTING PROBLEMS NOT IDENTIFIED IN

1 THE COMPREHENSIVE SITE ASSESSMENT.

2 SECTION 107. PROSPECTIVE PURCHASER'S RESPONSIBILITIES.

3 (A) PREVENTION.--ONCE THE PROSPECTIVE PURCHASER HAS ACQUIRED
4 LEGAL TITLE TO THE ABANDONED INDUSTRIAL SITE, THE PURCHASER
5 SHALL TAKE ALL THE STEPS NECESSARY TO PREVENT AGGRAVATING OR
6 CONTRIBUTING TO THE CONTAMINATION OF THE AIR, LAND OR WATER,
7 INCLUDING DOWNWARD MIGRATION OF CONTAMINATION, FROM ANY EXISTING
8 CONTAMINATION ON THE SITE. THE PURCHASER SHALL NOT REUSE OR
9 REDEVELOP THE SITE IN ANY WAY WHICH IS LIKELY TO INTERFERE WITH
10 OR SUBSTANTIALLY INCREASE THE COST OF ANY RESPONSE ACTIONS WHICH
11 MAY BE NEEDED TO ADDRESS ANY REMAINING CONTAMINATION. THE
12 PURCHASER SHALL NOT ACTUALLY USE THE SITE IN A MANNER THAT
13 DIFFERS FROM THE INTENDED USE ESTABLISHED IN THE CONSENT ORDER
14 AND AGREEMENT AUTHORIZED UNDER SECTION 105(C).

15 (b) Noninterference.--~~The prospective~~ ONCE THE PROSPECTIVE <—
16 PURCHASER HAS ACQUIRED LEGAL TITLE TO THE ABANDONED INDUSTRIAL
17 SITE, THE purchaser shall not interfere with any subsequent
18 remedial response by the department or others to deal with the
19 contamination identified in the comprehensive site assessment.

20 (c) Deed restriction.--If necessary, a restriction shall be
21 placed on the deed for the property covered by this act which
22 restricts the use of the property to industrial activities and
23 compatible uses which will protect the integrity of any cleanup
24 measures implemented on the property or prevent contaminated
25 portions of the property from being disturbed.

26 Section ~~107~~ 108. Transferability. <—

27 ~~The agreement or cleanup liabilities entered into by the~~ <—
28 ~~department and the prospective purchaser pursuant to this act is~~
29 ~~transferable without review by the department in its entirety to~~
30 ~~any and all subsequent owners of the property who did not, by~~

1 ~~act or omission, cause or contribute to any contamination or to~~
2 ~~the release or threatened release of hazardous substance on the~~
3 ~~industrial site.~~

4 ~~Section 108. Liability of other parties.~~

5 ~~The lender which provides financing for the abandoned~~
6 ~~industrial site and to the prospective purchaser shall not be~~
7 ~~liable in an action by the department as a responsible person~~
8 ~~for cleaning up contamination on an industrial site covered by~~
9 ~~an agreement developed in accordance with this act provided that~~
10 ~~the person providing financing does not participate in~~
11 ~~management with respect to the industrial site. For purposes of~~
12 ~~this section, participation in management means:~~

13 ~~(1) the exercising of decision making control over the~~
14 ~~environmental compliance of the industrial site or the~~
15 ~~occupant of the industrial site; or~~

16 ~~(2) the exercising of decision making control over~~
17 ~~operational aspects of the property or an occupant, other~~
18 ~~than financial or administrative decisions that must be made~~
19 ~~as part of the lender's lawful authority.~~

20 (A) TRANSFER OF CONSENT ORDER AND AGREEMENT.--THE CONSENT
21 ORDER AND AGREEMENT, INCLUDING ALL RIGHTS AND CLEANUP
22 LIABILITIES ENTERED INTO BY THE DEPARTMENT AND THE PROSPECTIVE
23 PURCHASER UNDER THIS ACT, IS TRANSFERABLE WITH WRITTEN NOTICE TO
24 THE DEPARTMENT IN ITS ENTIRETY TO ANY AND ALL SUBSEQUENT OWNERS
25 OF THE PROPERTY WHO DID NOT, BY ACT OR OMISSION, CAUSE OR
26 CONTRIBUTE TO ANY CONTAMINATION OR TO THE RELEASE OR THREATENED
27 RELEASE OF HAZARDOUS SUBSTANCE ON THE INDUSTRIAL SITE.

28 (B) USE OF SITE BY SUBSEQUENT OWNERS.--SUBSEQUENT OWNERS
29 SHALL RECEIVE A COPY OF THE CONSENT ORDER AND AGREEMENT FROM THE
30 PROSPECTIVE PURCHASER AND SHALL NOT USE THE SITE IN A MANNER

1 THAT DIFFERS FROM THE INTENDED USE DESCRIBED IN THE CONSENT
2 ORDER AND AGREEMENT AUTHORIZED BY SECTION 105(C).

3 (C) RECORDATION.--WITHIN 30 DAYS OF THE DATE THAT THE
4 PROSPECTIVE PURCHASER ACQUIRES LEGAL TITLE TO THE ABANDONED
5 INDUSTRIAL SITE, THE PURCHASER SHALL FILE A NOTICE OF THE
6 CONSENT ORDER AND AGREEMENT WITH THE PROTHONOTARY IN THE COUNTY
7 IN WHICH THE SITE IS LOCATED. THE PROTHONOTARY SHALL DOCKET AND
8 RECORD THE NOTICE SO THAT IT APPEARS IN THE PURCHASER'S CHAIN OF
9 TITLE.

10 Section 109. Funding.

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

17 Section 110. Transfer of funds.

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

21 Section 111. Powers and authority of department.

22 The department has the authority to adopt any necessary
23 regulations to implement this act.

24 Section 112. Effective date.

25 This act shall take effect in 60 days.