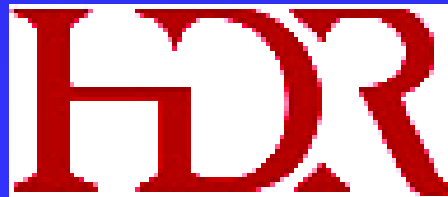


Brownfields 101

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CERCLA Liability

- Facilitates cleanup of abandoned, uncontrolled sites
- “Let the Polluter Pay” funding scheme
- Retroactive, Strict Liability
- Potentially Responsible Parties (PRPs) and Responsible Parties (RPs)

Broad Net of CERCLA Liability

- Current owners and operators
- Generators of contamination
- Transporters who hauled waste to the site
- Lessees
- Individuals, corporate officers, shareholders
- Parent corporations
- Lenders
- Bankrupt parties

PA's Land Recycling Program

- Uniform cleanup standards based on health and environmental risks (Act 2)
 - ◆ Clearly identified end point for cleanup
 - ◆ Cleanup based on intended use ~ *practicality*
 - ◆ Allows for use of institutional and engineering controls ~ *flexibility*
- Standardized review procedures (Act 2) ~ *predictability*

Act 2 and LVLRI Goals

- To Make Contaminated Sites Safe
- To Return these Sites to Productive Use Creating Jobs and Stimulating Economic Growth
- To Preserve Farmland and Greenspace

Voluntary Nature of ACT 2

- Program design is to encourage remediators to propose cleanups voluntarily.
- Remediator may select areas of contamination within the property without having to characterize the entire property.
- Act 2 Liability relief applies to area addressed in Final Report.

Three Remediation Options

- Remediation may involve one or a combination of:
 - ◆ Background Standard: Concentration present but not related to a release at the site
 - ◆ Statewide Health Standard: Medium specific concentrations (soil and water)
 - ◆ Site-specific Standard: Risk based approach - pathway elimination
 - ◆ Special Industrial Area: Special provision of Act 2 that applies to abandoned industrial properties

Combination of Standards

- By “Site”
 - ◆ One property may have more than one site (aka area of concern)
- By media
 - ◆ Groundwater and soil can use different standards, even for the same substance.
- By substance
 - ◆ Can apply any one of the standards to each substance

Procedures

- Publish Notice of Intent to Remediate
- Characterization, Identify Contaminants
- Establish Points of Compliance
- Choose Standard
- Remediate Contamination

Procedures

- Demonstrate Attainment
- Final Report to DEP
 - ◆ Submit Covenant documenting land use restrictions, if required.
- Liability Relief with approval of Final Report
- Post-Remediation Care and Monitoring

Public Notice by Applicant

- Initiated by Notice of Intent to Remediate (NIR).
- Persons who intend to perform an Act 2 remediation submit an NIR.

Public Notice by Applicant

- When an applicant submits a NIR to DEP, the applicant shall send a copy of the NIR to the municipality and a summary of the NIR in a local newspaper.
- DEP will publish notice of submission of the NIR in the Pennsylvania Bulletin.

Public Notice by Applicant

- If the remediation is for a Site-specific standard or special industrial area cleanup, a 30-day comment period is required.
- During the 30-day comment period, the municipality may request a Public Involvement Plan (PIP).

Public Involvement Plan (PIP)

- If the municipality requests a PIP within 30 days, a plan must be developed by the applicant which provides the public with the opportunity to read and comment on remediation plans.
- Any plan and report submissions must include a public comment and response document if a PIP was requested.

Site Characterization & Conceptual Model

- Understand the nature of the contamination and potential exposure
 - ◆ *Nature of contaminants*
 - ◆ *Potential exposure*
 - ◆ *Extent*
 - ◆ *Transport mechanisms*
 - ◆ *Conceptual model*
 - ◆ *Determine source of contamination*

Factors to be Considered at the Site Characterization Stage

- General contaminant characterization
 - ◆ Choosing the area of contamination (AOC) or “site(s)”.
 - ◆ Soils Characterization
 - ◆ Groundwater (GW) characterization
 - ◆ Wastes & Separate phase liquids in soil/GW
 - ◆ Vapor intrusion into buildings
 - ◆ Regulated Storage Tank Sites

Final Report Elements

- Site Description and Site Characterization
- Establish/Select Standard
- Description of Remediation
- Attainment Demonstration
- Fate and Transport Analysis
- Post Remediation Care Plan if Required
- References

Liability Protection

- Persons demonstrating compliance with either the background, statewide health standards, or site-specific standard shall be relieved of further remediation of contamination identified in submissions to DEP.
- Includes protection from citizen suits and contribution actions under PA law

Liability Protection

- Liability protection applies to
 - ◆ (1) the current owner
 - ◆ (2) future owners
 - ◆ (3) any other person who participated in the cleanup
 - ◆ (4) developer
 - ◆ (5) occupiers
 - ◆ (6) successors or assigns
 - ◆ (7) public utilities who perform work on the property

Reopeners

- Fraud in the attainment demonstration
- Newly identified areas of contamination
- Remedy failure
- Increased risk due to substantial changes in exposure or new toxicology information

Special Industrial Areas

■ Overall Process

- ◆ **Determine Eligibility**
- ◆ **Notice of Intent to Remediate**
- ◆ **Conduct a baseline remedial investigation in accordance with a DEP approved work plan.**
- ◆ **Sign Consent Agreement specifying limited liability**
- ◆ **Eliminate immediate, direct or imminent threats based on the intended reuse of the property.**

Special Industrial Area Eligibility

- Property must have been used for industrial activity.
- Person proposing use of the property may not have caused or contributed to contamination on the property.
- There is no financially viable responsible person to clean up the contamination; OR the property is located within an Enterprise Zone.

Special Industrial Areas

Benefits

- Person has limited cleanup obligations
 - ◆ A person is responsible for remediation of any immediate, direct or imminent threats which would prevent the intended property reuse.

Immediate, Direct and Imminent Threats

- Human or Ecological exposure to regulated substances.
- Contained wastes.
- Uncontained wastes.

Act 3

Statutory Liability Protection

“Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act
...preempt laws imposing environmental liability on [lenders, fiduciaries and economic development agencies] in order to promote economic development.”

35 P.S. Section 6027.2

Act 3

Pre-Remediation Liability Protections

- Redevelopment authorities
- Industrial development authorities
- Any other Commonwealth or municipal authority acquiring title or interest in property
- Municipal development departments organized by ordinance
- Conservancies engaged in reclamation of industrial sites
- EDAs are defined to be lenders as well, so EDAs engaging in routine commercial lending practices are entitled to lender liability protections

Pre-Remediation Liability Protection – Buyer-Seller Agreements

- Seller locks in the sale & \$\$ for cleanup
- Aids the identification and quantification of the remediation alternative and costs
- Act 2 Liability for Seller and Buyer prior to completion of remediation
- Legally binding agreement with DEP
Ensures completion of the remediation

One Cleanup Program

- Historic Agreement between DEP and EPA
- Establishes Pennsylvania as a one-stop-shop for State and Federal Standards Guiding Cleanup of Brownfield Sites
- MOA between EPA Region 3 and DEP
 - ◆ Provides Act 2 liability relief and Federal Comfort under CERCLA, TSCA, RCRA

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