



Senate Environmental Resources and Energy Committee

Senator Mary Jo White
Chairman

Patrick Henderson, Executive Director

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March 10, 2005

The Honorable Kathleen A. McGinty
Secretary of Environmental Protection
16th Floor Rachel Carson Building
Harrisburg, PA 17105

Dear Secretary McGinty:

We are writing to express very serious concerns regarding recently announced changes to the Commonwealth's Land Recycling program.

We were surprised to read your press release of March 2, 2005 whereby you stated that the Department of Environmental Protection will not accept remediation reports, or provide the liability relief afforded by Act 2 of 1995, for properties formerly used as agricultural or orchard land and slated for development. No explanation is given regarding the definition of 'slated for development', or any indication if similarly situated land not slated for development, but rather simply proposed to be remediated, would now be disqualified.

This clarification amounts to a substantive policy change, neither authorized by statute nor incorporated in a regulatory change. To our knowledge, this change was not reviewed or commented on by the Cleanup Standards Scientific Advisory Board.

We respectfully suggest that any area which is in need of environmental remediation, and therefore seeks relief under the land recycling program, is not "prime farmland, open-space areas and natural areas". The intent of the legislature referenced in your press release is to protect prime, unspoiled greenfields by rejuvenating contaminated sites into productive use. Further, the action of the department may in fact be illegal, since Act 2 clearly defines the requirements for a person to receive liability relief. Specifically, section 501 states in part "*Any person demonstrating compliance with the environmental remediation standards established in Chapter 3 shall be relieved of further liability for the remediation of the site under the statutes outlined in section 106 for any contamination identified in reports submitted to and approved by the department to demonstrate compliance with these standards and shall not be subject to citizen suits or other contribution actions brought by responsible persons*" (emphasis added).

Sound land use decisions and the protection of farmland and open space are worthy goals. However, Pennsylvania has long respected the right of local governments to make land use determinations, and we do not think it appropriate for the Commonwealth to utilize the land recycling program to substitute its own preferences.

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We respectfully request your review of our concerns, the legal basis for excluding certain remediation projects from participating in the land recycling program, the number of projects submitted to the department for review over the last two years that now would be rejected under this policy, and an update on what, if any, public outreach or participation went into this determination.

The department's press release may discourage legally eligible projects from being submitted or considered for the program. Therefore, your prompt attention to our concerns is greatly appreciated.

Sincerely,

Senator Mary Jo White, Chairman
Senate Environmental Resources
& Energy Committee

Senator David J. Brightbill
Senate Majority Leader

Senator Raphael J. Musto, Democratic Chairman
Senate Environmental Resources
& Energy Committee