



# Senate Environmental Resources and Energy Committee

## Senator Mary Jo White Chairman

*Patrick Henderson, Executive Director*

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May 27, 2009

John Hanger, Secretary  
Department of Environmental Protection  
16<sup>th</sup> Floor Rachel Carson Building  
Harrisburg, PA 17105

Dear Secretary Hanger:

Thank you for your letter concerning Senate Bill 118. As you know, this legislation would require the Department of Environmental Protection (DEP) to deposit civil penalties in the Hazardous Sites Cleanup Fund (HSCA Fund).

Senate Bill 118 has already passed the Senate unanimously. It would have been extremely helpful to have received your letter prior to the Senate's final consideration of this bill. I note that this was not a new bill; it is identical to legislation considered by the Senate last session.

I am confused by DEP's current position on this legislation. Prior to receiving your letter of May 22<sup>nd</sup>, DEP informed me that it was officially opposed to SB 118 because – according to your staff – DEP preferred its existing flexibility to deposit fines levied under the HSCA statute in whichever special fund it thought appropriate. The current interpretation – that SB 118 is essentially unnecessary because current law requires fines and penalties to be deposited into the HSCA Fund – was never raised by DEP while SB 118 was under consideration. Moreover, it is troubling in that your previous position on the bill reflected an opinion that DEP could in fact deposit HSCA fines and penalties anywhere it chose.

I did not introduce this legislation on a whim. This bill was first introduced as Senate Bill 1068 of last session after I became aware that DEP might be levying fines under the authority of the HSCA Act, but depositing the money elsewhere. My office inquired and confirmed this practice with former Secretary McGinty's staff. Given the recurring threats of furloughs and project interruptions due to HSCA revenue shortfalls, my view was that we should ensure as much money as possible went into the HSCA Fund – especially fines and penalties. The Senate unanimously agreed.

As evidence of this concern, I am enclosing an August 15, 2007 DEP press release which announced a \$575,000 fine against Norfolk Southern Railway Company. DEP announced that Norfolk Southern violated several environmental statutes, including the Hazardous Sites Cleanup Act. Yet, DEP announced and my office confirmed that all \$575,000 was deposited into DEP's

Clean Water Fund. At a minimum, under both the text and the spirit of the HSCA Act provision cited in your letter, a portion of this fine should have been deposited into the HSCA Fund.

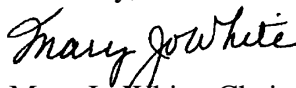
Given this practice, I believe it is important that the General Assembly reaffirm and strengthen the provision requiring that all HSCA related fines and penalties be deposited into the HSCA Fund. Further, I am requesting the following information from your office:

- 1) The number, nature and amount of any fines or penalties assessed by DEP for violations of the HSCA Act for FY '06-'07 through and including FY '08-'09.
- 2) The disposition of the fine and penalty money received by DEP (ie where it was deposited or, if applicable, how it was used)

The Senate Environmental Resources and Energy Committee amended language similar to the contents of SB 118 into SB 783. SB 783 is currently on first consideration in the Senate. While I do not believe that passage of either of these bills imperils DEP's existing authority with respect to the deposit of criminal fines – since neither of these bills repeals or in any way modifies §1110 – I am happy to amend my legislation to make specific reference to the deposit of both criminal and civil penalties to avoid any potential confusion.

I look forward to your prompt response to the questions and concerns I have raised.  
Thank you.

Sincerely,



Mary Jo White, Chairman  
Senate Environmental Resources  
& Energy Committee

cc: Honorable Joe Scarnati  
Honorable Dominic Pileggi  
Honorable Jake Corman  
Honorable Raphael J. Musto  
Honorable Camille "Bud" George  
Honorable Scott E. Hutchinson

Enclosure