

**Testimony of
Kathleen A. McGinty, Secretary
Department of Environmental Protection
on
Pennsylvania's Hazardous Sites Cleanup Fund
before the
Senate Environmental Resources and Energy Committee
Harrisburg, PA
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Chairman White, Chairman Musto and members of the committee: I want to thank you for calling this hearing to examine long-term funding options for Pennsylvania's Hazardous Sites Cleanup Fund, and I appreciate the opportunity to appear before you today to discuss what is an issue of great importance to both the state's environment and its economy.

Established under the Hazardous Sites Cleanup Act (HSCA), this emergency response and cleanup fund remains the Department of Environmental Protection's most important tool to respond immediately and eliminate any threat to public health and safety when toxic chemicals or hazardous substances are spilled or leaked, or otherwise found in the environment.

More than that, the fund also supports programs and initiatives that have been a resounding success in revitalizing communities and keeping residents safe, and provides the state share to leverage critical federal dollars for other environmental programs. Among some of the key priorities of the fund:

- Finances cleanup projects at abandoned industrial facilities and contaminated sites where the responsible party is either unknown or financially unable to conduct the necessary work. Work includes site investigations, interim responses, remedial responses and ongoing operation and maintenance.
- Provides the commonwealth's 25 percent match for the Resource Conservation and Recovery Act, the federal hazardous waste program, and the state's 10 percent for the Comprehensive Environmental Response Compensation Liability Act, commonly called Superfund. The 25 percent RCRA match leverages \$12.6 million in federal funds over a two-year period, and the 10 percent Superfund match brings in \$140 million for 18 cleanup projects requiring long-term operation or maintenance.
- Supports land recycling and brownfield redevelopment efforts by leveraging federal funds that can be used for site assessments and remediation.
- Finances the investigation of illegal hazardous waste disposals and methamphetamine labs, and provides relocation expenses for residents and businesses affected by the release of hazardous substances. The fund also supports the department's Household Hazardous Waste Program, including electronics recycling and mercury diversion to prevent hazardous chemicals from entering state landfills.

- Provides up to \$2 million per year for non-hazardous responses, such as cleanup activities related to severe flooding. The state spent more than \$300,000 on emergency response contracts to perform hazardous material removal related to June 2006 floods, for example.
- Supports the department's computer systems, including global positioning systems and eFACTS, a public database of compliance and enforcement records.
- Helps municipalities with waste-related activities, including fee collections and record-keeping, and provides support for host municipal inspectors.
- Ensures a statewide emergency response network and enables the department to provide interim cleanup actions to remove contaminants and stabilize serious environmental releases. These activities include drum removal, responses to tire pile fires, highway accidents with chemical spills, and the evacuation of residents, if needed.

As this committee is aware, without a new dedicated funding source for the Hazardous Sites Cleanup Fund, the program's future remains uncertain. In 2002, the legislature voted to stop funding the Hazardous Sites Cleanup Fund through the Capital Stock and Franchise Tax to begin addressing what then was a growing deficit in the state's General Fund budget.

Normally a program that operates on \$50 million a year, the HSCA fund was left to rely on Hazardous Waste Fees and recovered costs --- sources that provide less than \$4 million per year -- as well as carry-over reserve funds that decreased each year. According to the Comptroller, at typical expenditure rates, the fund would have been bankrupt fully before the start of the 2004-05 fiscal year.

Companies involved in brownfield cleanup and remediation, which at that time was supported by the Hazardous Sites Cleanup Fund, underscored to the department the impending crash of the state's Land Recycling Program unless HSCA funding was restored. In 2003, just months into office and learning of these far-reaching problems, Governor Edward G. Rendell immediately directed the department to take a number of actions to reduce expenditures to extend the life of the cleanup fund and allow time to find a solution to the revenue shortfalls. Among those actions:

- In the 2003-04 fiscal year, the department made its last transfer of \$5 million from the Hazardous Sites Cleanup Fund to the Environmental Stewardship Fund to support Growing Greener.
- Staff positions supported by the Hazardous Sites Cleanup Fund were frozen, and only vacancies critical to HSCA operations were filled. Through reductions in staff complement and operating expenses, the department reduced its general operating costs by \$4 million per year.

- The department has reduced dramatically the complement supported by the HSCA fund. At its most, the complement had 327 positions in 1992. Today, the complement authorizes 285 positions, a 13 percent reduction. At the end of September, 34 of those positions remained vacant, for a total reduction of 24 percent from 1992 levels.
- All non-essential HSCA contract work was halted. The only work authorized under the cleanup fund included operation and maintenance activities at remediated sites, obligations the state must fulfill as part of the federal Superfund program, and temporary water replacements for residences whose drinking water supplies were contaminated.
- At the direction of the Comptroller's Office and with only two weeks notice, HSCA contracts were liquidated to free up money to meet payroll. The department used "placeholder" funding from other programs to avoid canceling the contracts, thereby affecting other DEP programs.
- The department stopped transfers to Department of Community and Economic Development's Industrial Sites Cleanup Fund in the 2002-03 fiscal year (DEP has contributed \$47 million to this fund since 1995) and in the 2004-05 fiscal years suspended the transfer of \$2 million annually to DCED's Industrial Site Assessment Fund.

Governor Rendell has worked aggressively to hasten brownfield redevelopment. His Business in Our Sites Fund provided \$300 million for local redevelopment authorities and economic development corporations to make brownfield sites "pad ready." This fund was part of an ambitious \$2.3 billion economic stimulus package that has proven successful in rebuilding the economy of Pennsylvania.

In February 2004, Governor Rendell also stepped up with a plan, Growing Greener II, to preserve and expand key environmental programs, including the Hazardous Sites Cleanup Fund. To shore up the HSCA fund, the Governor proposed a toxic emissions fee of 15 cents per pound, raising \$20.4 million per year, and the commitment of additional revenues from Growing Greener II, amounting on average to \$29 million per year, thus providing nearly \$50 million per year for HSCA.

The legislature rejected these revenue sources, instead proposing to finance the Hazardous Sites Cleanup Fund (as well as Growing Greener) by redirecting money from the state's Recycling Fund. The Rendell administration rejected this approach. Ultimately, the legislature passed and the Governor enacted a \$625 million voter-approved bond initiative that, among other things, included at least \$50 million for the Hazardous Sites Cleanup Fund over two years.

The infusion of \$50 million, however, represents only stopgap emergency funding; it does not address the financial challenges that the Hazardous Sites Cleanup Fund continues to face. A long-term solution still is needed to keep the program alive beyond the 2006-07 fiscal year --- and to ensure the program remains the effective tool that the legislature designed it to be. There are a number of reasons dedicated funding is essential:

- DEP is second in the nation with 120 Superfund sites and currently has 18 contracts with the U.S. Environmental Protection Agency with a balance totaling \$4.3 million. EPA anticipates another five contracts with DEP in the next three years, requiring an additional \$1.3 million in state funds. DEP currently spends \$1 million annually at 12 completed Superfund sites for operation and maintenance, with this cost set to increase to \$1.5 million in two years and \$3.5 million in 10 years at a total of 23 sites. If DEP breaches the terms of a federal Superfund contract, EPA can bring action in federal court to enforce payment.
- The HSCA program cannot run without contractors on contract, committed to immediate deployment of their resources when called upon by the department to address an environmental emergency or cleanup response. Contractors will not invest in and have resources on stand-by if funding is only episodic rather than steady and secure over the long term.
- The entire cleanup process --- from initial response to full remediation to cost recovery -- - can stretch over several fiscal years. Projects cannot be started up and then throttled back depending on whether the next infusion of funding is secured. The department has to mothball and triage cleanup projects last year when the HSCA fund faced bankruptcy. Bringing the program back to full operation took a full six months.
- The department is unable to support or initiate multi-year projects (some groundwater cleanups are planned over 30 years) if revenue streams are unsure year to year, and instead must undertake only interim measures and then ensure resources are available for ongoing operation and maintenance activities. Funding needs to be dedicated and secured.
- Because HSCA resources support measures that are necessary literally to save lives, dips and vagaries in funding the program mean new cleanups will not be initiated, investigation and remediation efforts will not be launched because every resource will have to be held in order to ensure those most urgent efforts that directly and immediately save lives are sustained.

The effects are significant and widespread. Rather than cleaning up contaminated sites, the department is forced to halt its progress at dozens of projects in communities across the commonwealth, focusing attention not on remediation but on finding some break point at which our efforts can be stopped while still ensuring some minimal level of protection for public health and the environment.

In other words, stopgap funding measures are unacceptable because they result in enormous inefficiencies as staff and contractors spend their precious resources shutting down and starting up projects instead of cleaning up contaminated sites.

There are approximately 107 abandoned sites where investigations and cleanups are being financed under the Hazardous Sites Cleanup Fund. There are another 180 projects where HSCA

staff are working with responsible parties on site assessments and cleanup. Long-term funding not only is critical to ensuring these and other projects move forward.

As it stands right now, the fund will run out of money at the end of the 2006-07 fiscal year, meaning the department once again is facing a scenario where the program must be scaled back, cleanup projects must be halted and staffing decisions must be made --- all of this at a time when the department only now is getting up to full speed in initiating new public protection projects and restarting cleanups that were put on hold during the fiscal crisis that nearly shut down the HSCA program last year.

The Hazardous Sites Cleanup Fund has been a tremendous success in ensuring a clean environment and safer communities for all Pennsylvanians. Even with all progress we have made in Pennsylvania, we still have many immediate environmental needs, and the Hazardous Sites Cleanup Fund is critical to enabling us to continue our work to address these problems and offer residents a higher quality of life.

Ensuring the highest standards of environmental protection and public health remain bipartisan, shared priorities for all of us in Pennsylvania. I look forward to working with you to establish a long-term funding source for this key environmental program.

For your further review, I have included with my testimony a copy of the department's Hazardous Sites Cleanup Fund Annual Report, which accounts for all expenditures during the 2004-05 fiscal year and summarizes the accomplishments of the program. Thank you for your interest in this report, and for continuing to partner with DEP to promote a clean environment and safer communities for all Pennsylvanians.

Chairman White, Chairman Musto, members of the committee: I thank you for your time and attention. I'd be happy to answer any questions you have at this time. Thank you.

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