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Brownfields Report No. 4

Environmental Financial Advisory Board

EFAB INDIANAPOLIS MEETING ON FINANCING BROWNFIELDS REDEVELOPMENT

This report has not been reviewed for approval by the U.S. Environmental Protection Agency; and hence, the views and opinions expressed in the report do not necessarily represent those of the Agency or any other agencies in the Federal Government.

March 1996

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EXECUTIVE SUMMARY

Brownfields, abandoned or under-used industrial and commercial properties with known or suspected contamination problems, pose a major problem for many cities. To gain input on the extent of the problem and possible solutions, the United States Environmental Protection Agency's (EPA) Environmental Finance Advisory Board (EFAB) held a public meeting in Indianapolis, Indiana on March 27-28,1995. Meeting sessions included:

- Brownfield Definitions and Perspectives;
- Federal and State Brownfield Initiatives;
- Community and Neighborhood Involvement;
- Financial Perspectives;
- Business Perspectives;
- Development Perspectives; and
- Capital Provider Perspectives.

During these sessions, speakers and participants shared ideas and experiences on the financial, legal, real estate, regulatory, economic development, community, and environmental issues faced in brownfields cleanup and redevelopment. They discussed at the barriers limiting the public and private sectors' ability to finance and implement successful brownfield projects. Speakers and participants suggested that:

- EPA clarify its regulatory role in brownfield sites;
- the federal government give a liability release to new property owners, municipalities, and developers who make productive use of these sites;
- risk-based approaches be used -- that real risks, rather than perceived risks, determine cleanup actions and future uses of properties;
- the federal government and States provide economic incentives to property owners and developers to make brownfield projects profitable and to overcome the competitive advantages of suburban "greenfield" sites.;
- EPA recognize and rely more on State voluntary cleanup programs such as the innovative Ohio and Indiana models;
- States become the lead players in brownfields cleanup and redevelopment;
- the role of the private sector in brownfields be expanded in the investigation and cleanup processes; and
- State and local officials undertake a comprehensive effort to encourage economic development in distressed urban areas where brownfields are concentrated.

Participants recognized that EPA was giving greater attention to innovative solutions to the brownfields problem. They saw that EPA was building new relationships with the States and the private sector to bring cost-effective legal and financial solutions to these problems. While some speakers were critical of environmental regulators, most recognized the difficulty the federal government and State regulators face in bringing effective and equitable solutions to these problems.

Meeting speakers and attendees provided much valuable information that will help in evaluating brownfields cleanup and redevelopment issues. It was clear from the presentations and ensuing discussions that a variety of perspectives exist on addressing the brownfields issue. Speakers were nearly unanimous in calling for realistic, cost-effective, and coordinated solutions. The majority of speakers and audience participants were optimistic that cities could tackle these problems successfully -- with help from federal and State regulators.

I. INTRODUCTION

Many American cities are running out of "clean land" to support economic and community development. Brownfields, abandoned or under-utilized industrial and commercial properties with known or suspected contamination problems, are a major problem. To gain public input on the dimensions of the brownfields problem and possible solutions, the Environmental Finance Advisory Board (EFAB) of the United States Environmental Protection Agency (EPA) held a two-day public meeting on March 27-28, 1995 in Indianapolis, Indiana. Primary goals of the meeting were to discuss the barriers limiting the public and private sector's ability to finance brownfields site cleanup and redevelopment --- and to find solutions.

The meeting was held in Indianapolis, Indiana, at the invitation of Mayor Stephen Goldsmith, an EFAB member. Warren Tyler, a Vice President of State Savings Bank in Columbus, Ohio and an EFAB member, chaired the meeting. This report was developed to capture the major ideas presented and discussed at the meeting.

During the two-day meeting, speakers shared their ideas and experiences with the EFAB on the financial, legal, real estate, regulatory, economic development, and community issues faced in redeveloping brownfields. Speaker sessions covered the following key topics:

- Brownfield Definitions and Perspectives;
- Federal and State Brownfield Initiatives;
- Community and Neighborhood Involvement;
- Financial Perspectives;
- Business Perspectives;
- Development Perspectives; and
- Capital Provider Perspectives.

At the meeting, speakers and attendees provided the EFAB with valuable information that will help in evaluating financing barriers and various strategies related to brownfields cleanup and redevelopment. Participants identified possible federal actions that could increase public and private sector investment in site cleanup and redevelopment. In addition, many legal liability, regulatory, financial, community, and institutional barriers that discourage reinvestment in these properties were highlighted. This report identifies the major ideas and issues presented during the meeting.

II. MEETING SUMMARY

Day 1 -- March 27, 1995

A. Brownfield Definitions and Perspectives

Speakers: Stephen Goldsmith, Mayor of Indianapolis
Pat Taylor Woodyard, CH2M Hill

Brownfields pose complex challenges to federal and State environmental regulators, cities, neighborhoods, and private sector investors and lenders. In general, these groups agree that greater attention should be given to solving these problems, but considerable differences of opinion exist over what constitutes the most cost-effective solutions. Current budget pressures on all levels of government underscore the need for efficient use of public capital in addressing brownfields. Similarly, the intense competition for private capital underscores the need for regulators and other public sector authorities to assure private business and investors that they can receive an adequate return on investment in making sites competitive for future use.

Brownfields redevelopment is a leading subject of discussion at many national conferences and meetings. Many people want to know what guidelines they should follow in structuring solutions. They want to know if there are any critical success factors to increase the chances of successful redevelopment. Effective brownfields solutions will depend upon the public and private sectors' ability to identify and employ critical success factors in the clean-up and redevelopment of these properties.

Mayor Stephen Goldsmith, Indianapolis
Brownfields Impact on Urban Social and Economic Conditions

Mayor Goldsmith spoke directly to the issue of how brownfields impact on urban social and economic conditions. He discussed how brownfield sites have reduced Indianapolis' ability to compete with surrounding suburbs and outlying areas for residents, businesses, and jobs. The Mayor pointed to the City's increased difficulty in competing with land-rich suburbs offering "greenfield" sites and sizable economic development incentives. He saw the impact of brownfields on urban development patterns in Indianapolis as typical of many other American cities' experience. He stressed the need for greater coordinated action by federal and State environmental regulators to help city officials, residents, and businesses cleanup and redevelop brownfield sites.

Mayor Goldsmith suggested the following priorities:

- regulators need to adopt a more rational approach to defining real risks and associated costs and benefits of contaminated site cleanup;
- regulators need to reduce the threat of future regulatory enforcement action once a property owner has developed and implemented an agreed upon cleanup plan meeting appropriate State and federal standards; and
- all levels of government must do a better job of reducing real and potential inequities and threats experienced by neighborhood residents directly exposed to these sites.

Pat Taylor Woodyard, CH2M HILL

Build Upon Critical Success Factors

Pat Taylor Woodyard from CH2M Hill, one of the nation's largest environmental consulting firms, believed that regulators can learn much from the observed shortcomings of the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and Resource Conservation and Recovery Act (RCRA) programs. She stated that these lessons can help policy makers devise better solutions to brownfields site problems.

Ms. Woodyard urged federal and State officials to reexamine the technical investigation processes associated with brownfields. She identified the following critical success factors, gleaned from her CERCLA and RCRA project experiences, as guides to brownfields redevelopment efforts:

- regulators should grant greater flexibility to the compliance process on a site-by-site basis;
- the focus of investigation efforts should be to identify real risk, and not theoretical or perceived risk;
- greater attention should be given to how risk itself is defined;
- more attention should be given to how remediation technologies are selected and implemented;
- the regulatory process should be directed to the ultimate issue of clean-up and not strict investigation;

- the brownfield regulatory process should be simplified and revamped to encourage both cleanup and reuse of these sites;
- future regulations should be developed more carefully and less haphazardly to avoid conflict between federal and State regulatory requirements; and
- the litigious climate surrounding Superfund and brownfields should be greatly reduced.

Ms. Woodyard said chances of success greatly increase if these factors are followed.

B. Federal and State Brownfield Initiatives

Speakers: **James Bower, EPA, Region V**
Greta Hawvermale, Indiana Department of Environmental Management
Jennifer Kwasniewski, Ohio Department of Environmental Protection

Federal and State environmental agencies often receive great criticism for their efforts to protect the environment and public health, especially when these actions prove costly to the general public and private businesses. Environmental regulators are working to address brownfields redevelopment concerns raised by businesses, and State and local officials. They are developing innovative legal and financial solutions to problems associated with brownfields.

As an alternative to the traditional environmental regulatory/enforcement model, State environmental officials are implementing innovative strategies to permit property owners to voluntarily devise and initiate site cleanup plans. At the time of the meeting, nineteen states had launched voluntary cleanup programs since the late 1980s. These initiatives have been developed in response to severe criticism of the traditional regulatory approach by businesses, property owners, and State and local officials themselves.

James Bower, EPA, Region V
New Approaches by Federal Regulators

James Bower, Region V's Brownfield Coordinator, described some of EPA's major actions to address these issues. He explained that EPA views the brownfields problem as a major priority, and agrees with many of the issues raised about how to improve federal regulatory efforts in this area. EPA is concerned about four major issues:

- how legal liability is defined and enforced;
- whether the specification of future cleanup standards can be based upon the planned future use of the property (the "how clean is clean" issue);
- how to form more intergovernmental partnerships to increase the cost-effectiveness of public sector brownfield solutions; and
- how to equitably finance cleanup efforts with public and private sector capital resources.

Mr. Bower informed the group that U.S. EPA was working on the following policy improvements at the present time:

- initiation of new lender liability guidance to give commercial lenders greater comfort in providing private capital for brownfields redevelopment;
- development of prospective purchaser guidance to allow "reasonable" agreements allowing these properties to be acquired and redeveloped;
- clarifying the aquifer contamination issue by not holding property owners liable for cleanup if they did not contribute to its pollution;
- reducing municipalities' liability in those cases where they acquire contaminated sites for redevelopment purposes.

He indicated that EPA had recently removed 24,000 CERCLA sites from its register. Sites, he stated, that EPA had indicated it has no further interest in regulating. Moreover, he noted that the Agency was working with the States to reach agreement on how it can recognize State voluntary cleanup programs through its new State Memorandum of Understanding Program.

Mr Bower suggested the Brownfields Pilot Demonstration Program as an example of how EPA was attempting to form partnerships with local governments in solving local brownfield problems. Three initial demonstration projects had been funded by EPA -- in Cleveland, Ohio; Richmond, Virginia; and Bridgeport, Connecticut. Another 15 communities, including the City of Indianapolis, were recently selected as brownfield pilot cities. EPA planned to have 50 such pilot projects either in-place or designated by the end of 1996. Mr. Bower also said that EPA had initiated a new outreach program to commercial lenders to determine gain their financial participation in future brownfields redevelopment efforts.

Greta Hawvermale, Indiana Department of Environmental Management
Indiana's Innovative Voluntary Clean-Up Program

Greta Hawvermale, the Assistant Commissioner of the Indiana Department of Environmental Management, explained that Indiana created a voluntary cleanup program two years earlier, which had worked well thus far. She described the program as more user-friendly than most environmental programs, allowing property owners to use greater flexibility on a site-specific basis. Indiana officials recognize both the environmental and economic sides of the brownfields problem, which were discussed earlier by Mayor Goldsmith. Ms. Hawvermale described a local brownfields initiative started in Northwest Indiana, where considerable site contamination occurred as a result of early heavy industrial uses. According to Ms. Hawvermale, the federal government should do the following to help state voluntary cleanup programs become more successful:

- recognize State programs and provide technical assistance to States in future policy development;
- provide seed money to help fund the technical investigation and cleanup of properties, especially at the Phase 1 study level;
- work on partnership-building to ensure continued flexibility by federal and State regulators; and
- share more information in the future to accelerate State and EPA joint progress along the brownfields redevelopment learning curve.

Jennifer Kwasniewski, Ohio Department of Environmental Protection
Ohio's Innovative Cleanup Program

Jennifer Kwasniewski, the Manager of Ohio DEP's voluntary cleanup program, explained that Ohio's program began in 1994 and was making good progress. Ohio, like other States grappling with this problem, examined issues such as cleanup standards, strategies and conditions for the release of legal liability, third-party liability issues, and other issues. Ms. Kwasniewski stated that Ohio's program contains nine key elements:

- it sets clear site cleanup numbers as targets;
- it permits flexibility allowing the "volunteer" to choose to do a property-specific risk assessment;
- it provides a legal release of liability as cleanup targets are attained;

- it sets performance goals in attaining cleanup;
- it relies upon the private sector to provide the certification and lab testing required;
- it protects the information provided by the volunteer to the State to avoid use of the information in future litigation;
- it provides a level of protection to lenders against legal liabilities once an agreement has been reached;
- it provides new tax credits and financing to help stimulate greater private investment in these sites; and
- the Ohio program uses proportional liability to allow volunteers to seek contributions from the original polluter to help pay for cleanup.

She explained that Ohio's brownfields financing tools currently include:

- two tax abatement options which the property owner may qualify for in exchange for cleanup and redevelopment; and
- a revolving loan fund drawing funds from Ohio EPA, the Ohio Water Development Authority, and the Ohio Department of Development.

Ms. Kwasniewski noted that the State expects to investigate other incentives in the future to promote these sites for economic development.

She indicated that Ohio officials believe U.S. EPA could help the States in the future by:

- providing liability protection after a State voluntary cleanup has been completed;
- stressing performance rather than process in State voluntary programs;
- providing more funding to increase State and local capacity to handle brownfields; and
- providing added incentives to encourage the private marketplace to respond to these problems in the future.

Question and Answer Session

Important questions were raised during the first question and answer session. This discussion followed the first two panel presentations on brownfield definitions and perspectives and federal and State brownfield initiatives.

1. How much "comfort" can states provide to lenders and property owners alone without federal help in this area?

Ohio and Indiana officials stated that their programs were working well, but would work even better if U.S. EPA provided liability protection. Ultimately, the federal government will need to give greater assurance against future liability to make the State programs successful. One respondent indicated that some States consider it beneficial to have some level of federal regulatory pressure urging cleanup by parties.

2. Can federal and State environmental regulators control potential legal actions by State attorney generals and the U.S. Department of Justice related to property cleanup?

The feeling by the two State regulators and U.S. EPA was that this is unlikely to be a major problem since these judicial bodies would probably rely on regulators' decisions.

3. Does the federal government have the ability to delegate authority to the States on State voluntary clean-up?

While the federal government has the ability to recognize State programs, it does not have full authority to delegate this responsibility to State agencies.

4. Are we giving enough attention to advancing new technical cleanup methods; and would more attention help resolve site cleanup technology selection issues?

More attention should be given to this issue, but property owners and industry may be reluctant to experiment with new technology, especially if costs are too great and regulations don't permit these alternatives.

5. Why is encapsulation a preferred approach over actual cleanup efforts?

If remediation (cleanup) efforts were more closely matched to future property use, then more actual cleanup of these sites would occur. Encapsulation occurs because it is a less costly method of addressing the problem in most cases.

6. How are State voluntary programs financed; and will they be self-funded in the future?

Fees are collected in both Ohio and Indiana, which appeared to be a common approach in many other States. Self-funding in the long-term hinges on the extent these programs are used and whether the programs can rely on private sector firms for much of the certification and testing work required. In the short term, States have indicated they need some financial help to run these programs. This is an area where the federal government could be helpful to ensure that State programs have adequate capacity.

7. Is there a need to recognize different types of brownfield sites and establish appropriate processes to deal with different types?

Several speakers and others present saw some merit to this approach, especially in those cases where large "mega-brownfield sites" were concerned.

C. Community and Neighborhood Involvement

Speakers: Kay Nelson, City of East Chicago
Jeff Golc, City of Indianapolis
William Beranek, Indiana Environmental Institute

Community residents must participate in public decision-making about the cleanup and future use of brownfield sites. This participation is essential since these decisions affect citizens, and because their support is needed to ensure the success of future redevelopment efforts. The EFAB heard a number of useful ideas about how to approach community involvement in dealing with brownfields.

Kay Nelson, City of East Chicago
City Involves Community in Project

Kay Nelson, a brownfields project coordinator for the City of East Chicago, described how the City involved affected stakeholder groups in their project. She talked about the Northwest Indiana Brownfield Redevelopment Project which focused on several sites contaminated by earlier industrial uses. Ms. Nelson indicated that committees played a key role in issue identification and resolution in the City's community participation efforts. This allowed the group to focus on issues of concern and address them. She stated that the City has strong concerns that environmental justice be protected through community involvement. The impact of the brownfields on minorities and disadvantaged groups were an utmost concern in this regard.

Jeff Golc, Indianapolis City Councilman
City Deals with Superfund and Brownfield Sites

Jeff Golc, an Indianapolis City Councilman, talked about how his district has learned to cope with two Superfund sites and various brownfield problems over the years. Mr. Golc stated that brownfields pose the following interrelated problems:

- health and safety--which must be protected;
- property value decline--which must be reversed to reduce poverty; and
- future development directions--which must be carefully selected to ensure market demand for the cleaned site and sufficient economic benefit returned to the community.

Mr. Golc strongly believed that all three must be addressed if communities are to be protected and projects successful.

William Beranek, Indiana Environmental Institute
Keys to Effective Community Involvement

William Beranek stated that five things were needed to bring about effective community involvement -- which helps solve the problems associated with brownfield sites:

- establish agreement on what is a non-threatening property, since people react emotionally to these issues;
- define clearly what actions are required to remediate a site and what standards will be achieved;
- reduce the "political bandwagon effect" -- where people use the brownfields issue for political reasons other than the immediate environmental, economic, and social issues posed by these problems;
- explain to the public exactly what the risk is to them, and tell them about the unknowns; and
- listen more carefully to the public regarding its concerns.

Question and Answer Session

The second question and discussion session produced useful ideas on how to increase success in dealing with brownfield sites, as stated below .

1. How can officials achieve both "process" and "outcome" results from community involvement strategies?

Both are important according to the speakers. Sometimes greater attention is focused on process, or using community involvement to move the decision-making process forward. At times, final outcomes and goals are not discussed adequately during the community involvement process. Greater attention should be given to using community involvement to achieve desired end results that are satisfactory to residents and other stakeholders. Also, community residents should participate in decisions about the future use of these sites, once cleanup has occurred.

2. How do you resolve community conflict where a development "deal" is possible in site cleanup and redevelopment? How frequently does this situation occur?

Citizens will cooperate when they are involved from the beginning of the process, as opposed to being brought in at the last minute and told by government and private developers what is going to be done. Citizens are less likely to oppose a "deal", if they have been involved throughout the process.

3. What are the best types of local groups to offer citizen input to community decision-making about environmental issues? Can these groups play a role as a developer if the private sector does not step in?

The Community Development Corporations (CDCs) can play this developer role, and have in some instances. Most cities have a number of CDC organizations, which are active in community economic development. CDCs should be seen as the "developers of last resort", that is if the private sector does not respond to the situation. These local groups need to bridge businesses and residents in the neighborhood to be effective.

4. How can we deal more effectively with brownfield cleanup issues at the two most risky points in the process: 1) before the site is stabilized; and 2) during construction when demolition and excavation occurs?

This is a common issue, and speakers agreed these are two very risky points in the "life" of the brownfield. On-site controls for dust, and other occurrences should be addressed by state voluntary cleanup programs, as they are in Ohio.

Day 2 -- March 28, 1995

D. Financial Perspectives

Speakers: Larry Wilson, Indiana University
Jim Snyder, Indianapolis Bond Bank
Philippa Guthrie, Ice, Miller, Donadio & Ryan

The meeting's second day was devoted to financial, business, and development perspectives of brownfields redevelopment. EFAB heard a number of ideas on how to overcome barriers to private sector investment in site cleanup and redevelopment.

Larry Wilson, Indiana University
Ideas for EFAB Consideration

Larry Wilson, from Indiana University's Center for Urban and Environmental Affairs, offered eight ideas for EFAB consideration:

- State and federal regulators need to improve understanding of the number and location of brownfield sites within states and across the country;
- States and EPA need to adopt overall strategies to deal with brownfields, rather than continue to rely on strict site-by-site approaches;
- regulators should work harder at getting industrial companies responsible for polluting these sites more involved in financing cleanup;
- site cleanup efforts should be guided by clear priorities that weigh health and environmental risks and redevelopment potential;
- major problem sites posing serious health threats should be addressed regardless of redevelopment potential;
- second/ third-order priority sites with less pollution should be prioritized largely based on future demand and economic development potential;
- local planning and zoning tools should be considered in structuring solutions to brownfield problems; and
- the public sector needs to continue to develop new financial strategies to spark cleanup and reuse of brownfields.

Mr. Wilson also specifically recommended that the federal government assess the feasibility of a national brownfields insurance pool, modeled after the national flood insurance program, which could provide environmental title insurance to property owners and other parties.

Jim Synder, Indianapolis Bond Bank
Addressing Municipal Liability Concerns

Jim Synder, an official from the Indianapolis Bond Bank, offered suggestions on how to address municipal liability concerns associated with local brownfield initiatives. He informed the EFAB that cities face serious liability problems, like any other party, once they are in the "chain of title" for these properties. Mr. Synder echoed Larry Wilson's recommendation that a national brownfields insurance program be evaluated. He urged State and local governments to make greater use of tax increment financing --- a tool used by many governmental entities to finance infrastructure improvements related to site development and to help pay for brownfields cleanup.

Mr. Synder pointed out that many brownfields possess serious limitations from a business location standpoint. He noted that limited transportation access and other locational weaknesses are frequent problems reducing the attractiveness of these sites for future reuse by business and industry.

Philippa Guthrie, Ice, Miller, Donadio & Ryan
Reusing Brownfield Sites for Business Expansion

Philippa Guthrie, an attorney, shared some major concerns raised by her firm's corporate clients about reusing brownfield sites for business expansion. She stated that the biggest concern underlying the liability issue is uncertainty. A major cause of this uncertainty is that State and federal regulators are unable to "guarantee" that enforcement action will not be taken even if the developer complies with current cleanup standards.

She observed that accurate cost estimates are also difficult to make, which adds uncertainty to business decision-making. Site investigation costs can be substantial -- depending upon the cleanup method chosen, these costs can be very major. Ms. Guthrie suggested that State and federal environmental agencies consider the following actions:

- adopt new strategies to spread the cost of cleanup across the public and responsible private parties;

- seek broader covenants-not-to-sue that would protect future property owners and lenders; and

- expand the number of State voluntary cleanup programs; and expand the purview of existing programs to offer more comprehensive solutions to site cleanup and reuse.

Question and Answer Session

The speakers from the Financial Perspectives session generated several interesting questions and comments, which are summarized below.

1. What process should be followed by federal and State regulators to remove sites from regulated lists?

As a starting point, the process followed by EPA to de-list the 24,000 CERCLA sites should be examined for guidance on how to accomplish this again in the future. It is unclear how many of these sites were placed on the CERCLA list in the first place.

2. Can tax increment financing (TIFs) be used for brownfields cleanup costs?

It is unclear whether or not these are eligible costs under current law. Indiana has used TIFs for land acquisition, but not actual cleanup expenses. Many people believe TIF's could help communities finance certain types of site cleanup costs.

3. Has the national brownfield insurance program been defined in any depth? (The national insurance program, as suggested by Mr. Wilson, is modeled after the national flood insurance program)

In principle, the idea appears to make sense, but a detailed evaluation of the proposal has not occurred yet. Perhaps such a program should be adopted by the States to avoid many of the earlier problems associated with the national flood insurance program.

4. How are property appraisal issues dealt with as a part of the brownfields redevelopment process? What do you suggest to deal more effectively with the appraisal process in this context?

The appraisal process is very important. Brownfield sites are hard to appraise because it is difficult to determine fair market value. Many of these sites have little or no commercial value as long as the contamination problem exists. But once corrected, these sites gain value, especially if they possess favorable locational attributes. Often, appraisers will simply ask the lenders what they would pay for a piece of property. Perhaps part of the problem relates to how you dispel the negative image (stigma) associated with brownfield sites -- which is a problem beyond the actual contamination on the site.

E. Business Perspectives

Speakers: Konrad Banaszak, Geraghty and Miller
Mark Anderson, The Greenfields Group
Louis Tosi, Fuller & Henry

Businesses evaluate multiple factors when they locate production and office operations in an area. It is crucial that federal and State regulators understand how brownfield sites are viewed from a business location perspective -- which is usually very negatively at the onset. The mere presence of these sites is often a factor used to screen out these areas from consideration. Moreover, environmental planners and public officials should examine how firms make business location and investment decisions-- and how firms come to grips with brownfields cost and liability issues. In this regard, local and State economic development groups can be valuable resource since they work with firms on a regular basis.

Konrad Banaszak, Geraghty and Miller
The Business Location Issue

Mr. Konrad Banaszak offered a perspective of how businesses approach the business location issue and what factors they consider. According to Mr. Banaszak, environmentalists tend to be too "fastidious" in their approach to clean-up -- that is they are overly concerned about 100% clean-up. Businesses view this tendency as an obstacle to finding reasonable and practical solutions to environmental problems. Mr. Banaszak cautioned the group to consider this when setting future cleanup standards. He also urged EFAB and regulators to look for -- better approaches to defining the "off-site" extent of contamination -- and better approaches to defining standards on "how clean is clean".

When defining cleanup costs, Mr. Banaszak challenged regulators to think of solutions that cover "capital" costs and "operation and maintenance" costs. He urged the group to identify more solutions that could be treated as "O & M" costs in dealing with brownfield problems. For example, site capping solutions fall into this "O & M" category.

Mark Anderson, The Greenfields Group
Problems with Enforcement-Based Approaches

Mark Anderson encouraged the group to examine more State and local solutions to brownfield problems. He cited eight problems with enforcement-based approaches:

- their insistence on joint and several liability contributes to legal battles over liability;

- cleanup standards are often burdensome and unwarranted based upon planned future reuse of the property;
- most enforcement programs are too inflexible, slowing cleanup and reuse;
- many States lack funds and staff for enforcement programs -- this causes them to deal with problems too categorically;
- most sites do not get cleaned because the redevelopment potential of the property is never considered;
- a lack of intergovernmental cooperation hinders progress in cleanup and redevelopment;
- too much emphasis is given to adversarial approaches-- pitting companies against government and vice versa; and
- lenders continue to back away from deals involving brownfields because of liability for past contamination.

Mr. Anderson praised the Ohio Voluntary Cleanup Program because it deals effectively with the eight drawbacks above. He noted that 19 states have voluntary clean-up programs in place now, and more are expected in the future.

Louis Tosi, Fuller & Henry
Future Use of Brownfields

Louis Tosi, an attorney, offered guidance on how to address issues related to the future use of brownfields. He stated that the definition of "brownfield" is important. He urged more precise definitions of "brownfields" to avoid the perception that all sites are alike if they are called "brownfields." He noted that there are major differences in these properties, and therefore there should be differences in how concerned environmental regulators are about these sites. Mr. Tosi talked about his experiences in helping business clients address these problems. Like earlier speakers, he complimented the Ohio Voluntary Cleanup Program for its reasonableness and effectiveness.

Mr Tosi urged greater leadership from the States in addressing the brownfields problem, rather than relying too much on the federal government for answers. He suggested the U.S. Department of Commerce be allowed to help EPA in implementing future federal brownfield programs. He said this would ensure that businesses would be meaningfully involved in solving these problems, and that the private marketplace would deal with the problem to the maximum extent possible.

Question and Answer Session

Considerable discussion emerged after the Business session -- the issue of EPA's legal jurisdiction over non-Superfund brownfield sites was of great interest. The following question concerned this interest.

1. What actual jurisdiction does EPA have over brownfields if they are not placed on the CERCLA list? Should States take the lead in dealing with this problem?

The extent of EPA's jurisdiction on these matters remains uncertain. EPA is signaling that it will have less interest in brownfields in the future, if the sites do not have severe contamination problems. Businesses are afraid of undertaking site assessments and volunteering the information to federal and State regulators. Businesses want protection from legal action if and when they address brownfield problems.

F. Development Perspectives

Speakers: Lou Zickler, Tucker Real Estate
Vicki Keramida, Keramida Environmental, Inc.
Louis Norry, Norry Company

While brownfields are important for environmental protection and public health reasons, most city and State officials are equally concerned about the development potential of these sites. Many believe that State and local economic development strategies can contribute to the reuse of these sites --- more so than environmental efforts that concentrate on regulatory compliance issues. A panel of experts shared perspectives on how to increase redevelopment activity, after site contamination problems have been addressed.

Lou Zickler, Tucker Real Estate
How Realtors View Brownfields

Lou Zickler, a realtor from Indianapolis, described how realtors view brownfields. In general, many realtors would prefer not to deal with these properties if clean land is available to meet their clients' needs. But, commercial realtors are concerned about brownfields -- many have contributed to local brownfields redevelopment initiatives. While the incentive system in commercial estate causes realtors to market "ready" sites first, Mr. Zickler indicated that willingness to tackle these sites is growing -- at least ones with manageable environmental problems.

Mr. Zickler noted that for redevelopment purposes, these properties must be dealt with one-by-one, or on a special case basis. Further, he stated that EPA and the Justice Department should issue covenants-not-to-sue. These covenants would run with the property and would allow the transfer of property to new users --- as opposed to just the current property owner. He also recommended that the federal government hold fiduciaries and lending institutions harmless for liability after sites have been remedied.

Vicki Keramida, Keramida Environmental, Inc.
Encouraging Brownfield Redevelopment

Vicki Keramida presented her views on actions that would encourage brownfield redevelopment. Ms. Keramida stated that Superfund has led to few site cleanups because the program has had too much of an investigative focus and has not been concerned enough about remediation and reuse. Future brownfield initiatives should avoid these earlier mistakes. Ms. Keramida made several points about how firms were a party to potential liability suits. She explained that environmental consulting firms had to carry substantial liability insurance for protection against potential claims. Risk assessment should be used to determine risks, which is the case in most State voluntary cleanup programs. These techniques should be used to determine what is appropriate for a site, in light of clearly identified risks. She urged federal and State regulators to use flexible approaches to gaining cleanup and redevelopment commitments.

Louis Norry, Norry Company
Development Priorities

Louis Norry, from Rochester, New York, spoke about development priorities and how they affect brownfield solutions. He described some of his firm's experiences in dealing with these properties. He advised the EFAB to recognize that not all sites are brownfields. He also pointed out that there are four parties to the brownfield conversion process:

- the user and/or original generator of the pollution;
- government;
- the subsequent property holder or redeveloper; and
- the businesses which might occupy the site in the future;

Mr Norry suggested that all four parties should adopt an approach which embodies the three Rs -- reasonable, rational, and responsible.

He emphasized that the greatest initial concern of development firms is with identifying the generator of the pollution on the site, and examining obligations for paying for cleanup. He further stated that it is important to examine how prepared State and local governments are to help the developer convert the site to productive reuse. Additional developer concerns involve determining local market demand for the property, availability of financing, and the ability to accomplish the deal profitably. Mr. Norry was optimistic that more redevelopment of these sites could occur if these basic issues are addressed.

Question and Answer Session

Considerable discussion emerged following the Development session presentations. Key questions included:

1. How difficult is it to get non-recourse financing for projects?

It depends to a high degree on the involvement of the pollution generator and their willingness to contribute. A generator with solid financial strength is in a better position to help pay for cleanup. Not all financial institutions can handle non-recourse financing. Government incentives help to make projects profitable and worth doing.

2. Why does the Norry Company act on only 1 out of 50 deals it looks at? Should this be troubling to EFAB and environmental regulators?

In 40 out of 50 instances, the property fails the development test for real estate issues. The building, land, or location does not meet project requirements.

3. In the cases where environmental issues are a major factor in the deal, has U.S. EPA been a help or hindrance to your efforts?

As a developer, Mr. Norry stated his company prefers not to deal with the regulator until the company is certain it wants to make the deal. Norry Company does not seek regulator involvement unless it is essential. Their Company's experiences have been generally favorable in dealing with both the Indiana Department of Environment Management and EPA, Region V.

4. Would having more information about the regulatory process help bankers and realtors in evaluating brownfield redevelopment deals?

Yes, this information would help. Information designed to define and reduce risk is most necessary. Information must be provided by credible sources, which are trusted by different stakeholder groups. In many cases, realtors may be less informed about brownfield regulations and issues than bankers.

G. Capital Provider Perspectives

Speakers: David Mooney, National City Bank
Richard Sheldon, Environmental Compliance Services
Kirk Herath, Nationwide Insurance

Commercial banks play a key role in financing business and real estate investments in cities. Strategies to gain their participation in brownfields redevelopment financing are needed. Bankers must become more comfortable with financing these deals. This will require regulatory clarification at the State and federal levels; and the development of local processes for successfully converting these sites.

David Mooney, National City Bank
Information and Risk Concerns

David Mooney, from National City Bank in Indianapolis, spoke about information and risk concerns from a capital provider's perspective. He stressed that information is needed to help bankers evaluate risk. This information must be reliable and consistent with regulatory, legal, and industry standards. Once information has been verified, it can be used in a decision-making model to reduce risks. Information can also be used to facilitate "risk management". Risk management approaches include:

- dilute or spread risk by involving other investors;
- insure against risk by use of escrows, guarantees, and other mechanisms;
- eliminate risk through cleanup, reducing the loan amount, or changing the proposed site use; and
- avoid the risk by non-involvement in the deal.

Richard Sheldon, Environmental Compliance Services
Environmental Insurance Perspective

Richard Sheldon spoke on capital provider liability concerns from an environmental insurance perspective. All parties involved in redeveloping brownfields want protection from liability -- the buyer, the seller, the financier, and the municipality. The buyer and financier want protection against cost over-runs associated with the cleanup. The buyer, developer, and financier want protection from unforeseen problems encountered in the development process. And, regulators want to protect the public from pollution.

The costs of environmental insurance to all of these parties differs depending upon the property under consideration and what the developer wants to do with it. On average, Mr. Sheldon estimated that $1 million in insurance coverage costs about $10,000. These prices may be higher if a high hazard property is being insured.

Mr. Sheldon identified three basic types of environmental insurance:

- *errors and omission coverage* -- that protects against pollution caused by a contractor during the course of operation;
- *remediation stop loss insurance* -- that caps the cost of remediation above initial cleanup cost estimates; and
- *remediation warranty insurance* -- that can be packaged with a property sale or transfer to cover costs such as unknown cleanup expenses, third-party bodily damage, property damage, and other things.

Mr. Sheldon believed the key in using each type insurance is flexibility and innovation.

Kirk Herath, Nationwide Insurance
Cost Containment

Kirk Herath offered advice on cost containment in cleaning and redeveloping brownfield properties. Mr. Herath said insurers will continue to be reluctant capital providers for brownfields cleanup. He stated that liability changes are needed to allow insurance companies to participate more in these redevelopment deals. He was particularly concerned with the fact that liability is defined differently in all fifty states, and EPA has its own definitions. He indicated that insurance companies are reluctant to either write insurance or provide capital under this ambiguous regulatory environment.

The search for "deep pockets" and rising transaction costs were also major insurer concerns in dealing with brownfield properties. Mr. Herath explained that insurance is for unexpected, but fairly predictable events. Insurers look at contaminated sites as caused by general business practices, and usually, not as accidental occurrences. He observed that these practices have become more environmentally-conscious and less risky.

According to Mr. Herath, insurance companies may be expected to pay three types of costs associated with brownfields:

- indemnification costs--insuring that cleanup costs fall within the terms of insurance.

- defense costs--associated with defending insurance from liability.
- dispute costs--coming from litigation.

Insurance companies believe cleanup and redevelopment costs can be contained through more precise information about site conditions. Many property owners, though, are reluctant to provide this information for fear it may be used against them by regulators.

Mr. Herath estimated that the insurance industry pays about 10% of total private sector costs associated with Federal National Priority List (NPL) sites. And, insurers pay nearly four times more than that for State sites because of the insurer's liability mix -- including site payments, transaction costs, and taxes.

He stressed that insurance companies are most concerned about solvency. Unlike banks, insurance companies do not have FDIC coverage. Mr. Herath urged States to address the following five issues in their brownfield efforts:

- eliminate retroactive strict joint and several liability;
- put an end to subsequent owner liability by setting lender and fiduciary limits;
- set cleanup standards based upon future site use;
- base remedy selection upon site-specific "real" risk assessments; and
- the federal government must concede on its ability to over-ride states on liability issues--that is federal covenants-not-to-sue must become a reality.

III. MEETING FINDINGS

Brownfield sites represent a major challenge to:

- private property owners;
- real estate developers;
- State and federal regulators;
- cities;
- neighborhoods;
- private financial institutions;
- economic development organizations; and
- other groups.

The speakers at this meeting shed light on many of the issues that arise in cleaning-up and redeveloping these properties. It was clear from their presentations, and the ensuing discussions, that several different perspectives exist on these issues.

The meeting provided a forum to discuss and share new ideas, and innovative solutions to brownfields problems from several perspectives. It was evident that few people were searching for "silver bullets", or simplified answers. Instead, speakers were nearly unanimous in their call for realistic, cost-effective, and coordinated solutions to brownfields cleanup and redevelopment. The majority of the speakers and audience participants were optimistic that cities will be able to tackle the problems associated with brownfields successfully -- with help from federal and State regulators.

Participants felt that brownfield sites were potentially a valued resource from environmental and economic standpoints. An adequate supply of clean land was deemed essential for cities to rebuild neighborhoods and local industries. Without the redevelopment of brownfields, new development will continue its outward move away from cities. The long-term effects of this out-migration trend are devastating to city tax bases, residential neighborhood stability, and business competitiveness. It is also very important to address the special impact of these contaminated sites on minorities and other inner city residents, who cannot move away from these problems.

Speakers underscored that U.S. EPA should clarify its regulatory role in brownfield sites. Many urged the federal government to provide a complete release of liability to new property owners, municipalities, and developers who would like to make productive use of these properties. Risk-based approaches to regulation were given a strong vote of support by speakers, who argue that real risks, rather than perceived risks, should determine appropriate site cleanup actions and desirable future uses of these properties.

Many of the speakers expressed the need for additional economic incentives by the federal government and the States to motivate property owners and developers to clean and reuse these sites. Some of the specific findings by meeting participants are listed below.

State voluntary cleanup programs were viewed very favorably by speakers and other meeting participants. The Ohio and Indiana models presented were seen as innovative and effective. Some speakers expressed that EPA should recognize and rely more on State cleanup programs. Many predicted that States will become the "lead players" in brownfields cleanup and redevelopment in the future, as these and other regulatory responsibilities are turned over to them.

According to several presenters, the role of the private sector in brownfields should be expanded greatly. An increasing number of States were making greater use of private firms in the investigation and cleanup processes. Private capital must be given incentives to be attracted to redevelopment deals involving brownfield sites. These sites must offer a profitable return to investors, and they must possess other competitive advantages offered by suburban and exurban "greenfield" sites.

Many at the meeting believed that a comprehensive effort is needed by local and State officials to encourage economic development in distressed urban areas where brownfields are concentrated. Local and State economic development efforts would encourage demand for the remediated land created by cleanup efforts. Efforts by States and localities to restore downtown central business districts have produced some success.

Meeting participants recognized that U.S. EPA was giving greater attention to innovative solutions to the brownfields problem. EPA was also building new relationships with the States and the private sector to bring cost-effective legal and financial solutions to these problems. While some speakers were critical of environmental regulators, most recognized the difficulty the federal government and State regulators face in bringing effective and equitable solutions to these problems.

The organizers, speakers, and participants are to be congratulated for a productive and valuable learning experience. More of these meetings should be considered in the future to ensure that local and State perspectives are brought to bear on national environmental policy formation.

IV. APPENDIX

A. Environmental Finance Advisory Board (EFAB) Members

Honorable Stephen Goldsmith
Mayor
City of Indianapolis, Indiana

Warren W. Tyler (Meeting Chair and Moderator)
Vice President
State Savings Bank, Columbus, Ohio

Mary Ellen Whitworth
Director, Environmental Policy
City of Houston, Texas

Jim J. Tozzi
Multinational Business Services, Inc.
Washington, D.C.

George V. Pedraza
Vice President Public Finance Group
Texas Commerce Bank
San Antonio, Texas

Neil Yoskin
Partner
Picco, Mack, and Herbert
Trenton, New Jersey

B. Environmental Finance Advisory Board (EFAB) Staff

Timothy McProuty
U.S. EPA, Washington, D.C.

Gene Pontillo
U.S. EPA, Washington, D.C.

C. Meeting Speakers

Honorable Stephen Goldsmith
Mayor
City of Indianapolis

Ms. Pat Taylor Woodyard
CH2M Hill
Environmental Consultants

James D. Bower
U.S. EPA, Region V
Chicago, Illinois

Greta Hawvermale
Indiana Department of Environmental Management
Indianapolis, Indiana

Jennifer Kwasniewski
Ohio DEP
Columbus, Ohio

Robert Hallenbeck
Environmental Compliance Services

Kay Nelson
Brownfields Coordinator
City of East Chicago, Indiana

William Beranek, Ph.D.
Indiana Environmental Institute
Indianapolis, Indiana

Larry Wilson
Indiana University
Bloomington, Indiana

James Synder
Indianapolis Bond Bank
Indianapolis, Indiana

Philippa Guthrie
Ice, Miller, Donadio & Ryan
Indianapolis, Indiana

Konrad Banaszak
Geraghty and Miller
Indianapolis, Indiana

Mark Anderson
The Greenfields Group
Arlington, Va.

Louis Tosi
Fuller and Henry
Toledo, Ohio

Louis Zickler
Tucker Real Estate
Indianapolis, Indiana

Vicky Keramida
Keramida Environmental Inc.
Indianapolis, Indiana

Louis Norry
Norry Company
Rochester, NY

David Mooney
National City Bank
Indianapolis, Indiana

Richard Sheldon
Environmental Compliance Services
Indianapolis, Indiana

Kirk Herath
Nationwide Insurance
Columbus, Ohio