

**ENVIRONMENTAL FINANCIAL ADVISORY BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**

**OCT 5 1998**

Honorable Carol M. Browner  
Administrator  
United States Environmental Protection Agency  
401 M Street, SW  
Washington, D.C. 20460

Dear Administrator Browner:

The Brownfields Workgroup of the USEPA's Environmental Financial Advisory Board (EFAB) has reviewed *Section 198 Expensing of Environmental Remediation Costs, Public Law 105-34, Title IX, Miscellaneous Provisions, Subtitle E - Brownfields* (Brownfields Tax Incentive) to evaluate its potential effectiveness and make recommendations concerning its implementation. We have been assisted in this review by the California Center for Land Recycling (CCLR). In addition, members of our Brownfields Workgroup have met with Assistant Administrator Tim Fields and his staff to discuss this and other work.

Overall, the Workgroup agrees that tax credits and/or deductions can create powerful incentives and should be ideal for application to Brownfields. The purpose of this letter report is to make recommendations to maximize the benefits specifically within the context of the Incentive's structure as a qualified deduction. We believe that the Brownfields Tax Incentive could realize its highest potential value with modest regulatory guidance and/or legislative amendment. The following recommendations would significantly enhance the potential for fulfillment of the intended benefit of the incentive concept.

1. **Eliminate the sunset provision.** We understand that legislation to eliminate the sunset provision is planned. We concur.
2. **EPA and the Department of Treasury should support legislation to amend Section 198 to moderate the impact of recapture on the benefits of the tax incentive.** The recapture of qualifying expenses as ordinary income upon the resale of the real property may significantly reduce the after tax net present value of the tax incentive unless the taxpayer is a corporation. We recommend expanding the usefulness of the tax incentive for non-corporate taxpayers by eliminating the recapture provision.

3. **Support legislation to broaden the definition of hazardous substances to include those that otherwise would be excluded by the CERCLA petroleum exclusion.** This definition would be applicable only for Section 198 provisions in order to spur wider use of these tax provisions for property remediation.
4. **Treasury should clarify by regulation “paid or incurred in connection with the abatement or control of hazardous substances.”** We are concerned that “paid or incurred in connection with the abatement or control of hazardous substances” could be interpreted broadly or narrowly, particularly when expenditures have a dual purpose. Treasury should issue regulations clarifying that the cost of any activity which abates or controls hazardous substances is a qualified environmental remediation expense, even if the activity also has another purpose.
5. **Treasury should issue regulations to clarify that “held” in Section 198 (c)(1)(A)(I) includes holding pursuant to a long-term ground lease.** In some cases, a site may not be owned by the taxpayer in fee, perhaps to avoid the environmental liability associated with fee ownership. Treasury should clarify that “held” includes a lessee’s interest in a long-term lease.

We know that implementation of these recommendations may be challenging, given the legislative and multiple-agency implications. If the Board can be of any further assistance to you in crafting the Brownfields financial incentive package, please do not hesitate to call upon us. For example, should you wish to share these recommendations with Treasury, we will prepare the appropriate transmittal documents.

In closing, I want to recognize and thank Brownfields Workgroup Chair, Evan Henry from Bank of America, for his continuing leadership in evaluating this and other Brownfields cleanup and redevelopment issues.

Sincerely,



Robert O. Lenna

Chair

Environmental Financial Advisory Board

cc: Peter D. Robertson, Acting Deputy Administrator

Timothy Fields, Jr., Acting Assistant Administrator for  
Solid Waste and Emergency Response

John C. Wise, Executive Director, EFAB.