

EPA Creating Partnerships in Redevelopment Breathing Life Back Into Brownfields

Jasper County/ Norandex Inc. Success Profile

Site Description: An undeveloped property in Joplin, Missouri, located within the Tri-State Mining Area, an inactive lead and zinc mining region

Site Size: Approximately 20 acres near a 7,000+ - acre Superfund National Priorities List site

Brownfields Tool: Comfort Letter, July 1996; Prospective Purchaser Agreement, September 1996

Norandex Property: Purchased September 11, 1996, facility completed April 14, 1997

New Facility: 210,000-square-foot Norandex Inc. vinyl siding and building products manufacturing plant and warehouse

Jobs Created: 50 to 60 short-term construction jobs and over 90 permanent jobs

Revenues Generated: Approximately \$6 to \$7.5 million from local goods and services; \$175,000 to \$200,000 annually in city and county taxes

EPA Region: 7

State: Missouri

Congressional District: 7

Partners in Redevelopment: U.S. Environmental Protection Agency, U.S. Department of Justice, City of Joplin, Norandex Inc., Jasper County Superfund Site Coalition, Jasper County Health Department, Jasper County EPA Superfund Citizens' Task Force, Missouri Department of Natural Resources, Missouri Department of Health, St. Francois County, U.S. Department of Housing and Urban Development, Agency for Toxic Substances and Disease Registry, Joplin Industrial Development Authority, Joplin Business and Industrial Development Corporation



Success in Brief

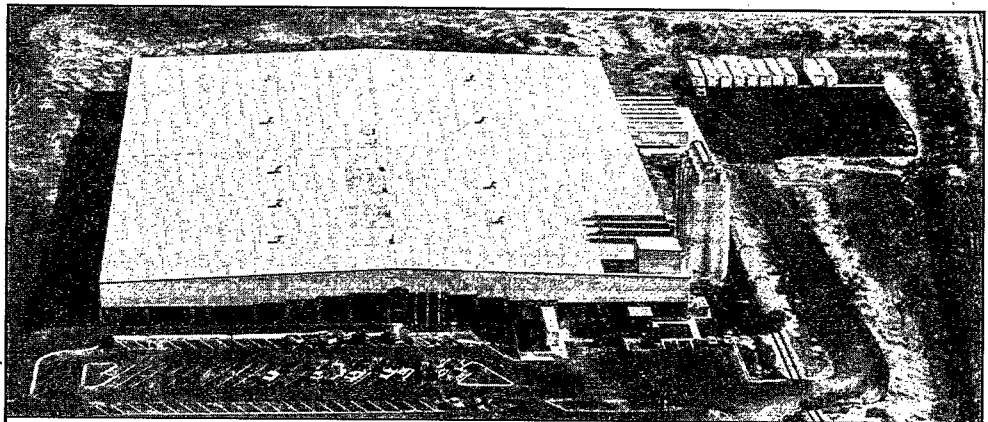
PPA Paves Way for Norandex

The U.S. Environmental Protection Agency (EPA), the U.S. Department of Justice (DOJ), the City of Joplin, Missouri, and Norandex Inc., an Ohio-based manufacturer and distributor of vinyl siding and other building materials, signed a prospective purchaser agreement (PPA) in September of 1996 that was instrumental in bringing Norandex's new, 210,000-square-foot manufacturing and warehouse facility to Joplin. Through the PPA, EPA promised not to sue Norandex under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA or "Superfund") for cleanup of any pre-existing contamination found on property the company purchased at the Joplin-Webb City Industrial Park in northeast Joplin. In return for this release from potential Superfund liability, Norandex contributed \$10,000 to the City of Joplin to operate a lead hazard education program and blood lead testing program for local children.

The Norandex property is located within the Oronogo-Duenweg Mining Belt, a former lead and zinc mining area that covers over 7,000 acres of Jasper County, Missouri. In 1990, areas near the Norandex property were placed on the Superfund National Priorities List (NPL), EPA's roster of the nation's most severely contaminated hazardous waste sites, making the area eligible for cleanup funds from EPA's Hazardous Substance Superfund. NPL listing also made property owners within the area potentially liable for site cleanup. Although the Norandex property is not part of the NPL site and no contamination had been discovered on it, its proximity to an NPL site created a significant disincentive for potential purchasers. EPA brownfields tools such as PPAs were developed to overcome just this kind of obstacle to development.

The Site Today

Norandex Inc. employs over 90 local residents at its vinyl siding and building materials manufacturing facility, pumping millions of dollars annually into the local economy, and is moving ahead with plans to expand its research and development of new compounds and vinyl building products at the Joplin facility by adding four to six new employees. Cargo Transporters, a trucking company that services Norandex's plant in Claremont, North Carolina, recently purchased five acres at the Joplin-Webb City Industrial Park in order to service the Joplin facility, and a Norandex supplier is scouting the Joplin area as an alternative location to the current east coast operation.



Norandex Inc.'s 210,000-square-foot facility at the Joplin-Webb City Industrial Park.

Photo Courtesy of Norandex Inc.

Brownfields Liability Tools

EPA defines brownfields as abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. The initial Brownfields Action Agenda, announced January 25, 1995, outlined the Agency's plans to encourage and facilitate the productive development of such facilities. One of the items on that agenda was developing ways to help interested parties realistically assess the possibility of incurring liability for performing or reimbursing cleanup work under CERCLA, the statute that established the Superfund program. Several of these "liability tools" came into play during discussions with Norandex Inc. concerning its prospective purchase of property at the Joplin-Webb City Industrial Park.

Comfort Letters. EPA issues comfort letters to share its current state of knowledge about conditions at a site with interested parties, and to signify its intent to exercise its Superfund response and enforcement authorities based on that knowledge. Comfort letters are issued for informational purposes only; they create no legally enforceable rights and act neither as waivers of EPA's CERCLA authorities nor guarantees of no Superfund response action. Nonetheless, they have often provided interested parties enough certainty to proceed with acquisition and development plans. This is especially the case where a site is not listed on the NPL and EPA has no information about releases of hazardous materials on the site that would warrant further investigation. Region 7 issued a comfort letter to Norandex in July 1996, noting that there were no waste piles on the site and that the Agency did not intend to pursue a ground water treatment remedy. In light of its experience with environmental issues, the potential impacts of the nearby NPL site, and the fact that it was contemplating a substantial investment, however, Norandex was not willing to go forward unless it had a legally enforceable agreement.

De Minimis Settlements. EPA may enter into so-called *de minimis* settlements, one type of which is made with landowners who had no

knowledge that property was contaminated when they acquired it, provided that they performed "due diligence" and did not add to the contamination themselves. These settlements provide property owners a covenant not to sue from EPA and protection against lawsuits by third parties seeking contribution to the cost of an Agency-ordered cleanup. As part of the **Brownfields Action Agenda**, EPA announced that *de minimis* settlements were available to owners of property with aquifers (water-bearing geologic formations) that were contaminated through migration of contaminants from sources outside the property. Since subterranean contaminant migration was of concern to Norandex, and a *de minimis* settlement would have been legally enforceable, the possibility of entering into one was discussed. The idea was eventually dropped, however, as Norandex could not satisfy the "no knowledge" requirement, and in addition, CERCLA limits *de minimis* settlement to parties who already own contaminated property.

Prospective Purchaser Agreements. PPAs are used where property is contaminated, EPA intends to or has already exercised response or enforcement authority under CERCLA, and the prospective purchaser is fully aware of the situation. In these circumstances, EPA will give the prospective purchaser a covenant not to sue in return for performance of specified cleanup work or reimbursement of a fixed amount of response costs already incurred by the Agency. As part of the **Brownfields Action Agenda**, EPA had expanded the *quid pro quo* to include substantial benefits to the community in the form of job creation, property rehabilitation, or community revitalization. However, a direct environmental benefit is still necessary to enter into a PPA. This instrument gave Norandex the certainty it required to go ahead with the purchase. There was no cleanup work to perform on the future plant site, but contributing to the lead education remedy for residential and mine waste yard soils provided the substantial environmental and community benefit necessary to satisfy these requirements.

EPA turned the prospective purchaser agreement from a cleanup tool into an economic development tool

— Rob O'Brian, President, Joplin Area Chamber of Commerce

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park lies within a state Enterprise Zone (EZ) in a mixed-use area located within the incorporated boundaries of the two cities and populated by low- and moderate-wage earners. New businesses that locate facilities in the EZ obtain credits against state taxes for investing, creating jobs, and employing local residents. In addition, both Joplin and Webb City offer partial abatement of property taxes on buildings to companies whose facilities are located in the park.

The Joplin Business and Industrial Development Corporation (JBIDC), a not-for-profit economic development organization affiliated with the area Chamber of Commerce, operates a Spec Building Program that works in tandem with JIDA. Under this program, JBIDC erects shell buildings on its property holdings, and markets land and building as a unit through trade magazines, trade shows, and contacts in the Missouri Department of Economic Development, the Chamber of Commerce, and the Empire District Electric Company, a local, investor-owned utility with its own community economic development program. JBIDC acquired a 15-acre parcel at the park from JIDA in 1995, erected a 105,000-square-foot shell building on it, and received expressions of interest from Norandex Inc.

Potential Superfund Liability Creates Obstacle

Norandex was unaware that Joplin was in the middle of an NPL site when it first heard about JBIDC's partially developed property, but that fact came to light as it pursued its "due diligence" investigations. Norandex found the Joplin area an attractive location for a new plant because of its rail lines, financial incentives, and proximity to markets in the southwest, but the NPL status of the

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surrounding area turned into a major obstacle to the purchase.

This was so even though the JBIDC parcel had no mining waste piles or lead-tainted soil on it, and three test holes that Norandex drilled into the shallow aquifer tested negative for the heavy metal contaminants prevalent throughout Jasper County. Moreover, EPA issued a comfort letter to Norandex in July 1996 indicating that it did not anticipate remediating ground water at the site. But Norandex's parent company, Dallas, Texas-based Fibreboard Corporation, had manufactured asbestos-containing products until the early 1970s, and been involved in protracted and expensive litigation with alleged asbestos victims and insurers as a result. Due to its experience with asbestos and other environmental issues, and the potential impacts of the NPL site on the JBIDC property, Fibreboard was wary of Superfund's broad liability net.

Under Superfund's strict, joint, several, and retroactive standard, EPA can hold property owners liable to clean up pre-existing contamination unless one of a limited number of statutory defenses is available. Superfund's liability standard ensures that parties responsible for contamination will pay to clean it up if they can be identified and are financially viable, but the mere fear of potential Superfund liability, especially at a huge site like Oronogo-Duenweg, can have a negative effect on beneficial

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Superfund Combats County-Wide Contamination

Early Studies Expose Extent of Problem

Ground water sampling conducted by the U.S. Geological Survey (USGS) in 1976 showed elevated levels of lead, zinc, and cadmium in surface water runoff from former mining areas. Five of 18 private wells in Jasper County sampled by EPA in 1986 showed excess concentrations of cadmium, nickel, manganese, lead, and/or zinc; a preliminary assessment and site inspection (PA/SI) the following year showed that the same metals were entering streams at levels toxic to aquatic life. As these metals can cause impaired fetal development, chronic kidney and cardiovascular disorders, and central nervous system damage, especially in children under the age of seven, EPA added the site to the NPL in August 1990, making it eligible for comprehensive cleanup under the Superfund program.

Superfund Cleanup Process Gears Up

EPA and potentially responsible parties (PRPs) began a remedial investigation/feasibility study

(RI/FS) in 1993 to gather more detailed information about health and environmental problems associated with the mining wastes. The PRPs identified private water wells in the eastern part of the site that exceeded health standards for lead, cadmium, zinc, and manganese. EPA ordered them to provide bottled water to these homes, sample additional private wells, and begin an FS to select a permanent water supply for the area. This FS is scheduled for completion in late 1997.

By January 1996, EPA and the PRPs had completed RIs for all 11 DAs, and MDOH had completed a human health risk assessment. EPA is scheduled to complete an ecological risk assessment in late 1997. The PRPs will then begin the FS phase, which will evaluate alternative strategies for achieving comprehensive cleanup of mining wastes.

Soil Identified As Major Source of Lead Exposure

Meanwhile, MDOH had completed an ATSDR-funded lead and cadmium exposure study of Jasper County in 1994, concluding that 14 percent of children under the age of seven in the study area had blood lead levels exceeding 10 micrograms per deciliter (10µg/dl), the level that ATSDR considers protective of health, and that the primary cause of these elevated levels was high concentrations of lead in residential soils.

In response, EPA decided to prioritize and clean up areas with elevated levels of soil lead. PRPs performed sampling at all day care centers in Jasper County and neighboring Cherokee County, Kansas, and in all residential areas around historical smelters and mining areas. They identified the area around the former Eagle-Picher smelter in northwest Joplin as having the highest concentrations of soil lead. EPA announced a "time-critical" action to remove and replace soil at day care centers where soil contained more than 500 parts per million (ppm) lead and at residential yards where soil exceeded 2,500 ppm or a child in the home had a blood lead level greater than 15 µg/dl.

By January 1996, residential soil removal and replacement was complete at six day care centers and 304 homes in the former smelter area. In August 1996, EPA issued a record of decision (ROD) describing the remedy selected for residential yard and mine waste yard soils. Over the next five years, the Agency will excavate and replace all soil exceeding 800 ppm lead at over 2,500 residences in the smelter area not addressed as



City and county health professionals carried out blood lead screening of local children with the help of an EPA mobile unit.

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part of the time-critical removal action and at homes on or near mining waste piles. The ROD also calls for EPA to fund the Jasper County Health Department's child blood lead screening and health education program, and to help state and local authorities establish institutional controls (ICs) to guide future residential development in lead-contaminated areas. ICs could include such measures as zoning restrictions, special building permits, or health ordinances.

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economic activity.

Fibreboard was aware that the fractured subsurface geology of the area could create pockets of contaminated ground water that test holes might not locate. They also worried that contaminated ground water could migrate onto the JBIDC parcel from one of the NPL site's 11 DAs, the nearest of which is only a quarter-mile away, and that EPA's cleanup plans could change, depending on the outcome of an ongoing ground water feasibility study (see sidebar p.5). As Norandex attorney Jim Caulfield puts it, "We didn't want to buy ourselves into an NPL site."

EPA Brownfields Policy Tailored for Norandex

In 1989, EPA issued a guidance document to its 10 regions on entering into agreements with prospective purchasers of contaminated property. The guidance said that EPA was prepared to give covenants not to sue to purchasers who conducted specified cleanup work that EPA would otherwise have to perform, or reimbursed EPA a fixed amount of response costs already incurred. By providing lenders, developers, and new owners with certainty that Superfund liability had been foreclosed, these agreements facilitated the purchase of numerous contaminated properties for cleanup and redevelopment.

Experience led EPA to issue revised PPA guidance in 1995 as part of its Brownfields Initiative. The new guidance expanded the kinds of "consideration" it would accept in return for a covenant not to sue. The Agency announced that it would reduce the amount of cleanup work or reimburse-

ment required if the purchaser provided equivalent community benefits. The benefits had to be substantial, *i.e.*, job creation, productive use of abandoned property, or revitalization of blighted areas, and they could only replace part of the purchaser's cleanup obligation, but nevertheless the new policy radically expanded opportunities to use PPAs.

The brownfields strategy shows the way to solving some big problems in the future. We have areas here that look like deserts, and no one would have touched them before

— Earl Carr, Chairman, Jasper County EPA Superfund Citizens' Task Force

After exploring other brownfields tools that proved unsatisfactory (see sidebar p.4), Region 7 agreed to an innovative application of the new PPA guidance to clear the way for the Norandex purchase. Because there was no known contamination on the JBIDC property that

Norandex could clean up or reimburse EPA for cleaning up. Norandex agreed to contribute \$10,000 to the City of Joplin Health Department's lead education and exposure screening program, a component of the remedy for residential and mine waste yard soils (see sidebar p.5). Pursuant to EPA's guidance, this was considered the direct environmental benefit necessary to enter into a PPA.

Norandex, the City of Joplin, EPA, and DOJ finalized a PPA in September 1996. Interior construction began immediately so the new plant would be ready for the spring building season. Norandex expanded the shell building to twice its original size or 210,000 square feet, and purchased five additional acres directly from JIDA to accommodate warehouse space. Construction was completed and manufacturing operations began in April 1997.

Building on the cooperation established earlier in the Superfund process, local shareholders and EPA worked together to make sure the community reaped the economic benefits of its economic development initiative. Norandex spent approximately \$3 million to acquire the property and expand the shell building, and another \$12 million equipping the new facility. The seven-month construction phase created 50 to 60 temporary jobs, and the manufacturing and warehousing operations created over 90 permanent jobs. The plant is expected to inject \$3 million to \$3.5 million annually into the local economy through payroll and other expenditures, and to pay \$175,000 to \$200,000 in city and county taxes, most of which will go to local school districts.



Piles of fine-grained gravel called "chat" and other mining wastes are found throughout Jasper County.

Photo by Mark Doolan, U.S. EPA, Kansas City, Kansas

Norandex Reinforces Lead Education and Testing Program

In Missouri, exposure to lead and other heavy metals is not a health concern confined to former mining areas. As a result of airborne dispersal, waste hauling, and the widespread use of mining debris as construction fill, contaminants have migrated well beyond the areas where they originated. In response, the state health department established the Missouri Childhood Lead Poisoning Prevention Program. The program's district representative is an environmental specialist with the Jasper County Health Department. He serves on both the Jasper County Superfund Site Coalition and the Jasper County EPA Superfund Citizens' Task Force, and works closely with the director of the City of Joplin Health Department, who also serves on the Citizens' Task Force.

The city and county health departments carry out the state program's mandate by cooperating in an extensive, ATSDR-funded lead education and blood lead testing program for children. Information on lead-related health issues is made available through schools,

community organizations, health fairs, mailings, a Parents As Teachers program, Lamaze and pre-natal groups, pediatricians, and local media coverage. The program covers the developmental problems lead can cause, useful precautions, availability of blood lead tests, and sources and symptoms of exposure.

The education program has sought to make "lead consciousness" an integral part of the community's culture. So far, it has participated in developing a lead poisoning awareness curriculum in cooperation with local school districts for kindergarten, fifth- and sixth- grade, and high school students, a site-specific coloring book about the dangers of lead, titled *Pb Possum Plays It Safe Around Lead*, and a local Ozark Area Girl Scout Council mining history and lead safety mining badge. Other local officials are working with the health departments on a residential development policy fact sheet to guide construction of new subdivisions in lead-contaminated areas. They hope to expand this effort into a county-wide Environmental Master Plan that will establish guidelines for future residential development.

Free blood lead screening clinics operate at least two days a week at local health departments, supplemented by screening made available through health fairs, evening clinics in small communities, and a door-to-door mobile screening unit. Door-to-door screening was conducted in the former smelter area in conjunction with EPA's time-critical residential soil removal action in 1995. Approximately 150 children were screened in four days; screening has been conducted at every day care center in the county twice. Information from blood lead tests is entered into a state data base that tracks blood lead levels and correlates them with the child's testing history, residence, address history, and specific-address occupant histories.

The \$10,000 contribution from Norandex to Joplin's health department is being used to develop new software that will allow local health professionals to download information from the state data base and compare it with highly specific local data. The city has contracted with Grant Environmental of Englewood, Colorado, to adapt an existing, off-the-shelf software package to provide program management and feedback capabilities. With the new software in place, health department personnel will be able to use information from the state data base in conjunction with new data fields capturing the wealth of site-specific information gathered in the course of the Superfund process and HUD demonstration project, perform enhanced statistical operations on the data, and use it to target future health, education, and cleanup initiatives.



EPA will excavate and replace lead-contaminated yard soil at over 2,500 residences over the next five years.

Success in Jasper County

The Jasper County/Norandex Inc. story is a milestone achievement for both the community and the Superfund program.

First, it showed that EPA's brownfields tools work. Jim Caulfield, the Norandex attorney, makes that point clear: "We didn't have any other issues with locating in Joplin," he said, "but it's safe to say that without the PPA, we would have gone somewhere else."

Second, it showed that where EPA has the cooperation of an energetic and creative community, it can play a positive role in promoting local economic development while fulfilling its mission to protect human health and the environment.

Third, it showed how much an affected community can contribute to the Superfund program. Community involvement in Jasper County has been so vigorous that the Boston University School of Public Health is currently conducting an ATSDR-funded study of local initiatives to learn how health agencies can best work with other communities affected by hazardous wastes or toxic chemicals.



Local Artist Annabelle Seelye Fuhr designed a coloring book that teaches children about the dangers of lead and how to avoid them.

Jasper County has prospered despite the presence there of an extensive NPL site. In the 1990s, the county has experienced annual population growth of approximately 1.5 percent, twice the rate for the State of Missouri as a whole, and job growth of three percent. With its central location, low cost of living, temperate climate, and proven economic development strategy, these trends should accelerate, and EPA's Brownfields Initiative will continue to support them.

Earl Carr, chairman of the Jasper County EPA Superfund Citizens' Task Force and mayor *pro tem* of Joplin, sees the Norandex development process as "taking lemons and making them into lemonade." He points out that the property along a proposed U.S. Highway 71 bypass east of Joplin between Duenweg and Carterville is ideal for industrial development. With brownfields tools like the PPA available to lay concerns about potential Superfund liability to rest, Mr. Carr believes there is a good chance this development will actually take place.

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