

Brownfields

Partnering For A Greener Tomorrow

Track Four: Legal

PURPOSE OF THE TRACK

The existing legal framework of the brownfields program may seem daunting, but you can understand it easily and use it to your advantage. Discuss legislative outlooks with congressional staff and navigate complex regulations with seasoned environmental professionals. Learn about real estate transactions, dispute resolution techniques, the insurance industry's new attitude about brownfields, and government comfort and assurance issues.

(4A) Heard on the Hill: Brownfields Federal Legislative Outlook

Friday, September 5, 1997

8:00 a.m. - 10:00 a.m.

Description: Key House and Senate staff will participate in a spirited discussion of different provisions of proposed Superfund and brownfields legislation. Sit in on the debate everyone is talking about! After staff have offered their views of current congressional thinking, you will be encouraged to present your vision of what's needed to perfect a Superfund and brownfields bill.

Location: Room 1203C

Speakers and Affiliation:

Mr. Charles Bartsch (Moderator)

Northeast-Midwest Institute

Members of Congressional Staff

MR. CHARLES BARTSCH

Charles Bartsch is a senior policy analyst at the Northeast-Midwest Institute, specializing in economic development issues. He is the co-author of numerous publications on brownfields opportunities, including the Institute's pioneering *New Life for Old Buildings: Confronting Environmental and Economic Issues to Industrial Reuse* (1991). Most recently, he has written a series of papers on brownfields financing, including *Financing Brownfield Reuse: Creative Use of Public Sector Programs*, and has co-authored (with Elizabeth Collaton) the landmark *Coming Clean for Economic Development and Brownfields: Cleaning and Reusing Contaminated Properties* (the latter published by Praeger). Mr. Bartsch's writings on economic development and brownfields issues have been published in *Economic Development Quarterly*, CUED's *Economic Development Commentary*, *Public Utilities Fortnightly*, and *Issues in Science and Technology*, among others. Mr. Bartsch has testified several times before Congress on various aspects of the brownfields issue, and worked closely with key staff to identify appropriate federal strategies to meet specific brownfields needs. In addition, he has spoken on brownfields redevelopment and finance issues at dozens of conferences around the country, before lenders, lawyers, state and local officials, and others interested in promoting brownfields reuse.

MEMBERS OF CONGRESSIONAL STAFF

[Biographies were not available at time of printing. Please refer to conference addendum.]

**DOCUMENTS THAT SUPPORT
PANEL 4A: HEARD ON THE HILL: BROWNFIELDS FEDERAL LEGISLATIVE
OUTLOOK**



***Federal Legislative Proposals to Promote
Brownfield Cleanup and Redevelopment:
Status in the 105th Congress***

*by Charles Bartsch
and Elizabeth Collaton
Northeast-Midwest Institute
Updated July 22, 1997*

PROVIDED TO EPA BROWNFIELD '97 PARTICIPANTS FOR THEIR USE

SUMMARY BY BILL PROVISIONS

Tax Incentives

- full expensing of cleanup costs -- S 235, HR 505, HR 990, HR 997, HR 1049
- environmental remediation tax credits -- HR 523
- IDBs/tax-exempt finance for site remediation -- HR 523, HR 996
- "brownfield IRA" -- HR 990

Capital Attraction Incentives

- grants for site assessment -- S 8, S 18, HR 1049, HR 1120, HR 1395
- grants for site cleanup -- HR 1049
- capitalization of revolving loan funds for site cleanup -- S 8, S 18, HR 1049, HR 1120, HR 1395, HR 1462
- give existing federal programs a brownfields "spin" -- HR 1049, HR 1533, S 1034

Liability and Process-Related Initiatives

- move toward process finality, by having EPA certify state voluntary cleanup programs -- HR 990, HR 1120, HR 1206, HR 1392 and/or offer federal liability releases to sites remediated via state VCPs -- S 8, S 23, HR 873, HR 1120, HR 1206, HR 1392
- financial assistance to launch or enhance state VCPs -- S 8, HR 1049, HR 1120
- protect innocent, adjoining property owners and prospective purchasers -- S 8, S 18, HR 873, HR 990, HR 1120, HR 1392, HR 1395

OVERVIEW OF PROPOSALS

Clinton Administration's Brownfield Tax Incentive

- the President requested it in his FY1998 budget, transmitted to Congress on February 6
- introduced in the Senate as *S. 235* on January 30 and in the House as *H.R. 505* on February 4 (see following)
- at this time, brownfield tax incentives (permitting expensing of environmental remediation costs) are included in H.R. *2014*, the Revenue *Reconciliation Act of 1997*, the budget agreement pending before Congress
- uses the tax code to encourage site reuse by permitting non-responsible parties — such as innocent owners and prospective purchasers — to fully expense their cleanup costs (i.e., make cleanup expenses fully deductible in the year incurred)
- proposes \$2 billion in incentives over seven years
- targeted in four ways:
 - (1) existing empowerment zones and enterprise communities, and to those in a second round of designations proposed in the President's FY 1998 budget;
 - (2) EPA brownfield pilot sites announced prior to February 1997 (the first 40);
 - (3) census tracts with a poverty rate of 20 percent or more; or
 - (4) census tracts with less than 2,000 residents, zoned 75 percent industrial or commercial, that adjoin qualifying poverty areas
- assumes 30,000 sites will be cleaned at an average cost of about \$400,000

S. 235 — ...to “encourage economic development through the creation of additional empowerment zones and enterprise communities and to encourage the cleanup of contaminated brownfield sites”

- introduced on January 30, 1997, by Sens. Carol Moseley-Braun (D-IL), Spencer Abraham (R-MI), Alfonse D'Amato (R-NY), James Jeffords (R-VT), Joseph Lieberman (D-CT), Thomas Daschle (D-SD), and Patty Murray (D-WA)
- *additional co-sponsor*: Sen. Dodd (D-CT)
- *COMMITTEE REFERRAL* — Finance

H.R. 505 — ...to “encourage economic development through the creation of additional empowerment zones and enterprise communities and to encourage the cleanup of contaminated brownfield sites”

- introduced on February 4, 1997, by Rep. Charles Rangel (D-NY)
- *additional co-sponsors*: Reps. Fattah (D-PA), Matsui (D-CA), Coyne (D-PA), McDermott (D-WA), John Lewis (D-GA), Neal (D-MA), Jefferson (D-LA), Conyers (D-MI), Dellums (D-CA), Foglietta (D-PA), Towns (D-NY), Serrano (D-NY), Waters (D-CA), Bishop (D-GA), Clyborn (D-SC), Meek (D-FL), Blumenauer (D-OR), Jackson (D-IL), Kennelly (D-CT), Kleczka (D-WI), Ackerman (D-NY), Norton (D-DC), Watt (D-NC), Stark (D-CA), D. Davis (D-IL), T. Barrett (D-WI), Bentsen (D-TX), DeLauro (D-CT), and Cardin (D-MD)
- **COMMITTEE REFERRAL** — Ways and Means

These companion bills are virtually identical to bills developed during the 104th Congress, in conjunction with the White House and the Treasury Department. H.R. 2014 contains essentially these components. In addition to the provisions noted above, S. 235 and H.R. 505 would also:

- authorize designation of an additional 20 empowerment zones (15 urban/5 rural) and 80 enterprise communities (50 urban/30 rural) by the end of 1998
- allow two additional urban empowerment zones to be named under the 1994 authority
- authorize a new category of tax-exempt financing for businesses in the new zones; such issuances would not count under current state bond volume caps, but would be limited as follows:
 - (1) \$60 million for each rural zone
 - (2) \$130 million for each urban zone with a population under 100,000
 - (3) \$230 million for each urban zone with more than 100,000 persons

<p>SENATE PROPOSALS 105TH CONGRESS</p>
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S. 8 — Superfund Cleanup Acceleration Act of 1997.

- introduced on January 21, 1997, by Sen. Robert Smith (R-NH)
- Title I authorizes \$65 million annually to address “Brownfields Revitalization” in three ways:
 - (1) establishes a grant assistance program for site characterization (\$15 million);

- (2) capitalizes revolving loan funds for remediation (\$25 million)
 - (3) offers assistance to state voluntary response programs (\$25 million)
- eligible entities include local governments, regional councils, redevelopment authorities, and Indian tribes
- *site characterization* grants to any facility can not exceed \$100,000 in any fiscal year, or \$200,000 total
- loans distributed from *remediation revolving fund* resources are limited to \$150,000 per facility in any fiscal year, or \$300,000 total
- state applicants for revolving fund grants must pay a 50 percent matching share
- establishes criteria for ranking characterization and remediation grant applications that include:
 - (1) the site's economic development potential; and
 - (2) degree to which other cleanup and redevelopment funds will be leveraged
- states could get at least \$250,000 per year to establish or expand *voluntary response programs* that feature:
 - (1) opportunities for technical assistance
 - (2) adequate opportunities for public participation
 - (3) streamlined procedures to expedite voluntary cleanups
 - (4) mechanisms to ensure that proper cleanups are conducted and completed
 - (5) mechanisms to approve cleanup plans
 - (6) "certification" from the state that the cleanup is complete
- no enforcement actions or private civil actions could be taken against any sites certified by states, for "releases subject to a state plan"
- liability limitations are included for: (a) owners of properties adjoining a contaminated site, where migration of pollutants has occurred; and (b) prospective purchasers
- all brownfield funds to be drawn from the Superfund trust fund, with authority sunseting after 5 years
- *additional co-sponsors*: Sens. Chafee (R-RJ), Lott (R-MS), Abraham (R-MI), Allard (R-CO), Coverdell (R-GA), Craig (R-ID), DeWine (R-OH), Domenici (R-NM), Gorton (R-WA), Grams (R-MN), Hagel (R-NE), Hatch (R-UT), Helms (R-NC), Hutchinson (R-AR), Kyl (R-AZ), Lugar (R-IN), Murkowski (R-AK), Roberts (R-KS), Sessions (R-AL), Thurmond (R-SC), Warner (R-VA), Mack (R-FL), Coats (R-IN), Bond (R-MO), Inhofe (R-OK), Bennett (R-UT), Faircloth (R-NC), Kempthorne (R-ID), and Thomas (R-WY)
- **COMMITTEE REFERRAL** — Environment and Public Works

S. 18 — Brownfields and Environmental Cleanup Act of 1997

- introduced on January 21, 1997, by Sen. Frank Lautenberg (D-NJ)
- would authorize EPA to provide \$25 million annually from the Superfund for:
 - (1) site inventory and characterization grants (\$10 million)

- (2) grants to capitalize revolving loan programs to encourage site cleanups (\$15 million)
- eligible entities include state and local governments
- *site characterization grants* (up to \$200,000) could be used to inventory brownfields and carry out assessments of sites targeted for cleanup under a state voluntary cleanup program; applicants must be able to:
 - * identify sites;
 - * describe the impact on the community and the need for financial assistance;
 - * show the potential to stimulate economic development and leverage additional resources;
 - * lay out a plan for implementation
- proceeds of *revolving loan fund capitalization grants* (up to \$500,000) could be lent to public or private owners or prospective purchasers for site cleanup; borrowers must be unable to secure private financing for cleanups, which must conform to the requirements of state voluntary cleanup programs or federal authority; in making a grant, EPA is to consider factors such as the applicant's ability to:
 - * administer a revolving loan fund
 - * ensure appropriate cleanups
 - * develop and carry out adequate borrower criteria and appropriate underwriting guidelines
- includes non-financial provisions to support brownfield reuse, including:
 - (1) definition of "bona fide prospective purchasers" and exemption from liability
 - (2) guidelines to define innocent landowners, and modifications to the definition of "contractual relationship" to be consistent with these guidelines
- *additional co-sponsors*: Sens. Baucus (D-MT), Reid (D-NV), Moynihan (D-NY), Graham (D-FL), Boxer (D-CA), Wyden (D-OR), Levin (D-MI), Torricelli (D-NJ), Breaux (D-LA), Kennedy (D-MA), Lieberman (D-CT), Mikulski (D-MD), and Kerry (D-MA)
- **COMMITTEE REFERRAL** — Environment and Public Works

S. 23 — The New Urban Agenda Act of 1997

- introduced on January 21, 1997, by Sen. Arlen Specter (R-PA)
- essentially, a comprehensive economic growth bill targeted to cities
- Title IV, "Response to Urban Environmental Challenges," provides a federal liability release to non-NPL urban sites that have garnered a liability release through a state or local program; and requires EPA to maintain a brownfields program
- *additional co-sponsor*: Sen. Moseley-Braun (D-IL)
- **COMMITTEE REFERRAL** — Finance

S. 1034 -- Department of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act of 1998

- introduced on July 17, 1997, by Sen. Kit Bond (R-MO)
- Section 209 of Title II delineates "BROWNFIELDS AS ELIGIBLE CDBG ACTIVITY," permitting block grant funds to be used for "*remediation and development activities related to brownfields projects in conjunction with the appropriate environmental regulatory agencies*"
- **COMMITTEE REFERRAL** -- Appropriations; bill passed full Senate on July 22, by a vote of 99-1

<p>HOUSE OF REPRESENTATIVES PROPOSALS 105th Congress</p>
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H.R. 523 — Brownfields Redevelopment Act of 1997

- introduced on February 4, 1997, by Rep. William Coyne (D-PA)
- offers a 50 percent credit to offset costs of carrying out site cleanup according to remediation plan approved by the EPA or a designated state agency
- credit available only to property owners having no association with the contamination
- qualifying sites must meet four criteria:
 - (1) have had no productive use for at least one year;
 - (2) be unlikely candidates for redevelopment without tax credits
 - (3) have strong job-creating, tax-generating potential once redeveloped
 - (4) have the potential for expeditious cleanup and redevelopment
- permits existing tax-exempt redevelopment bonds to be used for cleanup purposes
- *additional co-sponsor*: Rep. Rangel (D-NY)
- **COMMITTEE REFERRAL** — Ways and Means

H.R. 873 — Land Recycling Act of 1997

- introduced on February 28, 1997, by Rep. James Greenwood (R-PA)
- eliminates CERCLA or RCRA enforcement actions/liability at sites being cleaned up in accordance with an established state voluntary cleanup program
- eliminates federal permit requirements for remediation activities at these sites
- state must (1) self-certify to EPA that it has enacted a voluntary cleanup program and that it has the resources necessary to carry out the program; and (2) notify EPA about which facilities are being addressed through the program

- ineligible sites include those on or proposed for listing on the NPL, federal facilities, and sites already subject to existing federal response actions
- EPA maintains authority to investigate sites for possible NPL listing
- provides liability protection to innocent parties:
 - * to *prospective purchasers* that conduct a baseline property assessment as long as they do not contribute to contamination or impede cleanup; and
 - * to *innocent landowners* who have made “all appropriate inquiry,” which includes a site assessment within 180 days of acquisition (ASTM standard practice Phase I or EPA defined alternative)
- *additional co-sponsors*: Reps. Klink (D-PA), Doyle (D-PA), Quinn (R-NY), B. Franks (R-NJ), Traficant (D-OH), Holden (D-PA), Rush (D-IL), C. Weldon (R-PA), Ehlers (R-MI), and Goodling (R-PA).
- **COMMITTEE REFERRAL** — Commerce, Transportation and Infrastructure

H.R. 990 — Brownfields Remediation and Economic Development Act of 1997

- introduced on March 6, 1997, by Reps. Jack Quinn (R-NY) and Paul McHale (D-PA)
- establishes a process by which EPA certifies state brownfield cleanup programs and their review processes, for non-NPL sites contaminated prior to enactment; and establishes a financing mechanism to promote site assessments and cleanups
- *certification*: to be certified, state programs must:
 - (1) provide for “good faith” public participation prior to site owner’s release from liability
 - (2) provide a mechanism for reopeners (when site use changes, when fraud or improper site maintenance is discovered, or when there is a “significant” change in scientific standards)
 - (3) contain standards that protect public health and the environment
 - (4) promote coordination among state economic development and environmental agencies
- releases site owners and operators from federal liability under Sections 106 and 107 of CERCLA once a state program has been certified, and after the site has been remediated and released from state liability in conformance with state program requirements
- extends Superfund liability relief to lenders and developers, local governments, and prospective purchasers if existing site contamination has not been caused by their actions
- if the certified state program includes a waiver from state permitting requirements, then federal permits may be waived as well
- *financial assistance*: allows taxpayers to establish their own hazardous waste remediation reserve accounts, called “brownfield IRAs”; site owners, including ongoing manufacturing concerns, can put up to \$5 million into the IRA on a tax-

exempt basis, to cover the costs associated with (a) site assessment and (b) brownfield cleanup

- also allows brownfield site hazardous waste cleanup costs to be allowed as a deduction from income in the year such costs occur
- *additional co-sponsors*: Reps. Franks (R-NJ), Meehan (D-MA), Doyle (D-PA), Kelly (R-NY), Traficant (D-OH), C. Smith (R-NJ), Ehlers (R-MI), Lipinski (D-IL), Frelinghuysen (R-NJ), Conyers (D-MI), Carson (D-IN), Porter (R-IL), Holden (D-PA), Kennedy (D-RI), McHugh (R-NY), English (R-PA), Vento (D-MN), Shays (R-CT), and Molinari (R-NY)
- **COMMITTEE REFERRAL** — Commerce, Transportation and Infrastructure, Ways and Means

H.R. 996 — “...to permit the issuance of tax-exempt bonds to finance environmental remediation of contaminated sites.”

- introduced on March 6, 1997, by Rep. Jerry Weller (R-IL)
- establishes tax-exempt “qualified contaminated site remediation bonds” as a financing mechanism that can be used to acquire or assess and clean contaminated sites (presumably within the confines of volume caps and bond limits, except that the restriction against land acquisition will not apply to these bonds)
- at least 60 percent of bond proceeds must be devoted to site remediation
- total bond proceeds can not exceed fair market value of site after cleanup
- *additional co-sponsors*: Reps. Lipinski (D-IL), Crane (R-IL), Rush (D-IL), Fawell (R-IL), J. Jackson (D-IL), Manzullo (R-IL), Gutierrez (D-IL), English (R-PA), Blagojevich (D-IL), Shays (R-CT), Davis (D-IL), Costello (D-IL), Evans (D-IL), Hastert (R-IL), and P. Kennedy (D-RI)
- **COMMITTEE REFERRAL** — Ways and Means

H.R. 997 — “...to allow expensing and rapid amortization of certain environmental remediation expenditures.”

- introduced on March 6, 1997, by Rep. Jerry Weller (R-IL)
- permits expensing (first year cost recovery) of the first \$500,000 in environmental assessment and cleanup costs associated with a non-NPL brownfield site
- permits a 5-year recovery period for the balance
- land acquisition costs are ineligible
- *additional co-sponsors*: Reps. Lipinski (D-IL), Crane (R-IL), Rush (D-IL), Fawell (R-IL), J. Jackson (D-IL), Manzullo (R-IL), Gutierrez (D-IL), English (R-PA), Blagojevich (D-IL), Shays (R-CT), Davis (D-IL), Costello (D-IL), Evans (D-IL), Hastert (R-IL), and P. Kennedy (D-RI)
- **COMMITTEE REFERRAL** — Ways and Means

H.R. 1049 — Brownfield Economic Revitalization Act of 1997

- introduced on March 12, 1997, by Rep. Christopher Shays (R-CT)
- authorizes HUD and EPA to provide financial assistance for brownfield assessment, cleanup, and redevelopment activities
- **EPA** would be given \$87.4 million annually for:
 - (1) grants of up to \$200,000 to states and local governments to inventory brownfield sites and conduct assessments and other pre-cleanup activities
 - * applicants must show development potential of earmarked sites and offer an implementation plan for proposed activities
 - (2) grants of up to \$500,000 to states and local governments to capitalize revolving loan funds for site cleanup
 - * applicants must define the criteria they will use when making loans (including an affirmation that, but for the loan, the project would not go forward), define loan terms, explain how they will manage their fund portfolio, and show the fund's potential to stimulate economic development
 - (3) "partnership" grants to states, local governments, other federal agencies, and private entities to disseminate information about brownfield reuse issues and strategies
 - (4) grants and technical assistance to promote brownfield workforce/ environmental education and training programs at colleges and community-based job training organizations
 - (5) grants to states to develop, enhance, or expand voluntary cleanup programs
- **HUD** would be given \$25 million annually to:
 - (1) provide grants to cities and states for brownfield cleanup and redevelopment activities, to use in conjunction with Section 108 loan guarantees
 - * applicants must show how (a) they have developed a brownfield reuse approach or process, and (b) coordination with appropriate environmental agencies
 - * in awarding grant assistance, HUD will give priority to activities intended for empowerment zones or enterprise communities
- permits expensing of environmental remediation costs incurred in target areas that include:
 - (1) census tracts with at least a 20 percent poverty rate
 - (2) adjoining census tracts with less than 2,000 residents, if zoned at least 75 percent for industrial or commercial use
 - (3) empowerment zones and enterprise communities
 - (4) EPA pilot sites designated before February 1, 1997

- claimants must receive a statement from their state agency (as designated by federal EPA) that cleanup costs were carried out in a target area
- *additional cosponsors*: Reps. J. Maloney (D-CT), DeLauro (D-CT), Gejdenson (D-CT), Kennelly (D-CT), Meek (D-FL), Dellums (D-CA), Rush (D-IL), Martinez (D-CA), and G. Miller (D-CA)
- **COMMITTEE REFERRAL**: Commerce, Banking and Financial Services, Ways and Means

H.R. 1120 -- Community Revitalization and Brownfield Cleanup Act of 1997

- introduced on March 19, 1997, by Rep. John Dingell (D-MI)
- would use the Superfund Trust Fund to finance brownfield activities by providing \$45 million annually (for three years) for local governments to:
 - (1) carry out site assessments (\$15 million)
 - (2) capitalize revolving loan funds to finance site cleanups (\$30 million)
- eligibility is targeted to local governments, although EPA may award grants to states if the agency determines that needy jurisdictions do not have the capacity to participate
- *site characterization grants* (up to \$200,000) could be used to inventory brownfields and carry out assessments; applicants must be able to:
 - * describe the impact on the community, the need for financial assistance, and the potential to leverage other resources
 - * show the potential to stimulate economic or recreational space development
 - * lay out a plan for implementation
- *proceeds of revolving loan fund capitalization grants* (up to \$500,000) could be lent for site cleanup purposes to public or private borrowers (including prospective purchasers) who are unable to secure private financing for cleanups; in making a loan fund capitalization grant, EPA must consider factors such as:
 - * the method and time needed to clean up the site
 - * potential of the cleaned site to stimulate economic or recreational space development
 - * the applicant's ability to administer a revolving loan fund, ensure appropriate cleanups, and develop and carry out adequate borrower criteria and appropriate underwriting guidelines
- an additional \$15 million annually for five years would be provided to states to establish or enhance voluntary cleanup programs, including creative insurance mechanisms
- state programs can ask EPA to determine if they are suitably "qualified"
 - * EPA could not seek recovery of cleanup costs at sites remediated through qualified state programs
- *liability relief*: protects the following parties from liability:
 - (1) innocent landowners, when they make "all appropriate inquiry" into prior

ownership and uses, in accordance with ASTM Phase I or comparable procedures

- (2) prospective purchasers
 - (3) adjoining property owners affected by pollution migration, if they did not cause or contribute to the release, and if they took reasonable precautions
- *additional co-sponsors:* Reps. Gephardt (D-MO), Oberstar (D-MN), Borski (D-PA), DeGette (D-CO), Manton (D-NY), S. Brown (D-OH), Towns (D-NY), Rush (D-IL), Clement (D-TN), Clyburn (D-SC), Waxman (D-CA), Markey (D-MA), Mascara (D-PA), Boucher (D-VA), Tauscher (D-CA), Pascrell (D-NJ), Furse (D-OR), Deutsch (D-FL), Blumenauer (D-OR), Eshoo (D-CA), Klink (D-PA), Stupak (D-MI), Engel (D-NY), Sawyer (D-OH), Wynn (D-MD), Green (D-TX), K. McCarthy (D-MO), Conyers (D-MI), Rivers (D-MI), Kilpatrick (D-MI), T. Barrett (D-WI), Kaptur (D-OH), DeLauro (D-CT), Olver (D-MA), Lipinski (D-IL), Doyle (D-PA), DeFazio (D-OR), J. Johnson (D-WI), Menendez (D-NJ), Gordon (D-TN), C. Brown (D-FL), Norton (D-DC), Wise (D-WV), Millender-McDonald (D-CA), Lowey (D-NY), Cummings (D-MD), Rangel (D-NY), E. Johnson (D-TX), Pallone (D-NJ), P. Kennedy (D-RI), Pelosi (D-CA), Ford (D-TN), McDermott (D-WA), Strickland (D-OH), Dellums (D-CA), Capps (D-CA), Poshard (D-IL), Andrews (D-NJ), Bonior (D-MI), Weygand (D-RI), Cardin (D-MD), LaFalce (D-NY), Meek (D-FL), G. Miller (D-CA), Serrano (D-NY), and Kildee (D-MI)
 - **COMMITTEE REFERRAL:** Commerce, Transportation and Infrastructure

H.R. 1206 -- Brownfield Cleanup and Redevelopment Act

- introduced on March 20, 1997, by Rep. Visclosky (D-IN)
- would have EPA certify state cleanup programs (within 120 days of state application), thereby giving states authority over the cleanup, provided the programs meet certain criteria (specified by EPA within one year of enactment), including:
 - (1) offer opportunities for meaningful public participation in cleanup plans
 - (2) ensure that technical assistance is available for each voluntary cleanup
 - (3) ensure that adequate resources are available to carry out cleanup and run the program
 - (4) feature adequate oversight and enforcement authority so that cleanups comply with federal and state laws
 - (5) provides certification to owner or prospective purchaser that cleanup is complete
- most low- and medium-priority sites are eligible; certain types, such as NPL sites, federal facilities, and sites subject to corrective action, are ineligible
- certified states may modify federal permit requirements for eligible sites to expedite cleanup

- *additional co-sponsors:* Reps. LaFalce (D-NY), Kaptur (D-OH), Sisisky (D-VA), and Jefferson (D-LA)
- **COMMITTEE REFERRAL:** Commerce, Transportation and Infrastructure

H. R. 1392 -- Brownfields Reuse and Real Estate Development Act

- introduced on April 17, 1997, by Rep. Ralph Regula (R-OH)
- would have EPA certify state voluntary cleanup programs; and amend CERCLA to address landowner and prospective purchaser liability
- *certification:* would have EPA certify state cleanup programs (within 120 days of state application), thereby giving states authority over the cleanup, provided the programs meet certain criteria (specified by EPA within a year of enactment), including:
 - (1) offer opportunities for meaningful public participation and involvement, in relation to site risks
 - (2) ensure that technical assistance is available for each voluntary cleanup
 - (3) ensure that adequate resources are available to carry out cleanups and run the program
 - (4) ensure adequate oversight and enforcement authority
 - (5) provide documentation to owner or prospective purchaser that cleanup is complete
- this act does not impose any requirements on existing (or future) state voluntary cleanup programs, although they need to comply with EPA criteria to gain certification
- most low- and medium-priority sites are eligible; certain types, such as NPL sites, federal facilities, and sites subject to corrective action, are ineligible
 - * states, "for good cause," may seek eligibility waivers on a case-by-case basis
- *liability relief*-- protects the following from liability:
 - (1) innocent landowners, when they make "all appropriate inquiry" into prior ownership and uses, not more than 180 days before site acquisition, in accordance with ASTM Phase I or comparable procedures defined by EPA
 - (2) prospective purchasers
 - (3) owners of contiguous property affected by pollution migration, if they did not cause or contribute to the release, and if they cooperate and provide site access to permit cleanup
- *additional co-sponsor:* Rep. Murtha (D-PA)

COMMITTEE REFERRAL: Commerce, Transportation and Infrastructure

H.R. 1395 -- Brownfields and Environmental Cleanup Act of 1997

- introduced on April 17 by Rep. Rothman (D-NJ)
- authorizes \$15 million annually (through fiscal 2002) in grants for site characterization, and \$25 million for revolving loan fund capitalization

- *site characterization grants* (up to \$200,000) could be awarded to states or local governments to inventory brownfield sites and carry out site assessments; applicants must, to the extent practical, be able to:
 - * identify sites and offer a cleanup plan
 - * show financial need and economic development potential (including the potential for leveraging other funds)
 - * describe local commitment, including a community involvement plan
 - * include a statement on long-term benefits and sustainability
- proceeds of *revolving loan fund capitalization grants* (up to \$500,000), awarded to states or local governments, could be lent to public or private owners or prospective purchasers to carry out site cleanups; borrowers must be unable to secure private financing for cleanups, prove they can repay the loans,
- in making a capitalization grant, EPA is to consider factors such as the applicant's ability to:
 - * administer a revolving loan fund
 - * ensure appropriate cleanups that comply with applicable state and federal laws
 - * develop and carry out adequate borrower criteria (that includes a statement that, but for the revolving fund, cleanup would not occur), and appropriate underwriting guidelines
- most sites eligible for financial assistance; exceptions include NPL sites, facilities subject to corrective action, LUST trust fund-eligible sites, and federal facilities
- *liability limitations* -- the following parties are given liability protection:
 - (1) prospective purchasers, who acquired the facility after enactment who can show (a) all disposal took place before acquisition; (b) all appropriate inquiry was made; and (c) reasonable steps were taken stop or prevent releases
 - (2) innocent landowners, who made all appropriate inquiry including a site assessment not more than 180 days prior to acquisition (in accordance with ASTM standards or designated alternative standards)
- *additional co-sponsors*: Reps. Olver (D-MA), Hinchey (D-NY), Pastor (D-AZ), C. Maloney (D-NY), Rush (D-IL), Christian-Green (D-VT), John Lewis (D-GA), McKinney (D-GA), McIntyre (D-NC), and Sisisky (D-VA)
- **COMMITTEE REFERRAL**: Commerce, Transportation and Infrastructure

H.R. 1462 -- Brownfield Cleanup and Redevelopment Revolving Loan Fund Pilot Project Act of 1997

- introduced April 24, 1997, by Rep. Peter Visclosky (D-IN)
- establishes a three-year state revolving loan fund pilot program; \$5 million would be authorized for fiscal 1998, and \$7.5 million for both fiscal 1999 and 2000

- states apply to EPA for loan fund capitalization loans; at a minimum, applications must show evidence of:
 - * an active voluntary cleanup program
 - * opportunity for meaningful public participation
 - * sufficient technical assistance and resources to carry out cleanups
 - * oversight to ensure that cleanups comply with federal and state laws
 - * certification to the owner or prospective purchaser that cleanup is complete
- state must match loan with at least a 20 percent share cost from new or existing state resources
- state must describe how revolving loan fund would be used and show its ability to begin repaying the capitalization loan within five years
- public and private parties conducting cleanups are eligible for loans if they cannot get loans from private lenders or other sources
- most low- and medium-priority facilities are eligible to use loan proceeds; certain types, such as NPL sites, federal facilities, and sites subjective to corrective action are ineligible
- loan priority is given to facilities that:
 - (1) will be reused for industrial purposes, using environmentally sound
 - (2) will generate jobs for contractors whose principal place of business is the political subdivision where the facility is located
- loans cannot be used for new construction, environmental fines or penalties, speculative assessments, or rehabilitation at facilities with little or no potential for economic redevelopment, or other activities determined by EPA
- *additional co-sponsors*: Reps. LaFalce (D-NY), Kaptur (D-OH), Sisisky (D-VA), and Jefferson (D-LA)
- **COMMITTEE REFERRAL**: Commerce

H.R. 1533 -- National Initiative on Surface Transportation and the Environment Act

- introduced on May 6, 1997, by Rep. Andrews (D-NJ)
- Sec. 3 addresses "Assessment and Cleanup of Brownfield Sites"
- would permit use of highway and surface transportation funds for:
 - (1) assessment and cleanup of brownfield sites related to highway and surface transportation projects
 - (2) projects for development of brownfield sites that lead to: reduced congestion; increased transit use; and improved access to a transportation facility
- **COMMITTEE REFERRAL**: Transportation and Infrastructure

(4B) A Premium Ideal Can Brownfields Insurance Work for You?

Thursday, September 4, 1997

10:30 a.m. - 12:30 p.m.

Description: The insurance industry is changing its attitude toward brownfields. Panelists will discuss current and emerging trends in the industry and insurance products and how these can be matched with the unique needs of brownfields.

Location: Room 1205

Speakers and Affiliation:

Dr. Peter B. Meyer (Moderator)

Mr. Bruce Amos

Mr. John G. Arlington

The Honorable Joseph Vas

University of Louisville

ECS, Inc.

American Insurance Association

City of Perth Amboy, New Jersey

DR. PETER B. MEYER

Dr. Meyer is professor of Urban Policy and Economics and director of the Center for Environmental Management at the University of Louisville, where he has been since 1988. He was on the faculty of the Community Development Program at the Pennsylvania State University from 1968 through 1987, serving as director of the Local Economic Development Assistance Project from 1978 through 1987. His research centers on the problems and prospects associated with pursuit of environmentally sustainable economic development and he has been engaged in research on brownfields redevelopment financing and related public policy issues since 1991. He also serves as the president of The E.P. Systems Group, Inc., an economic and environmental planning firm.

MR. BRUCE AMOS

Bruce Amos is the brownfields redevelopment manager for ECS, Inc. Mr. Amos is responsible for the identification and development of projects involving the reuse of both private and public closed, abandoned, or underutilized industrial sites, with the goal of returning these properties to productive use. Mr. Amos has over twenty-five years' experience in the consulting and engineering business. Mr. Amos has an undergraduate degree in electrical engineering from the University of Pittsburgh, a master's degree in business administration from the Keller Graduate School of Management in Chicago, and a master of science degree in environmental engineering from Drexel University.

ECS, Inc., is a provider of environmental insurance, consulting, and claims management services to business and industry.

MR. JOHN G. ARLINGTON

[Biography was not available at time of printing. Please refer to conference addendum.]

THE HONORABLE JOSEPH VAS

[Biography was not available at time of printing. Please refer to conference addendum.]

**DOCUMENTS THAT SUPPORT
PANEL 4B: A PREMIUM IDEA! CAN BROWNFIELDS INSURANCE WORK FOR
YOU?**



KIESD

The Kentucky Institute for the Environment and Sustainable Development
203 Patterson Hall, University of Louisville, Louisville, Kentucky 40292
Center for Environmental Management

Notes on Insurance and Brownfields Investment Decisions

These notes are intended to provide some framework for consideration of the role of insurance in stimulating investment in the redevelopment of urban brownfields. More accurately, they address the roles, plural, that different types of insurance can play in facilitating the flow of funds for different stages of redevelopment efforts.

The materials here are extracted from a two sources, and it is appropriate to acknowledge the financial support that made them possible. Pages 2-6 derive from research conducted by The E.P. Systems Group, Inc., under U.S. Department of Housing and Urban Development Order HP97-2665 and are extracted from the Draft Final Report of the "Feasibility Study of Environmental Insurance for Urban Redevelopment." Pages 7-8 are taken from Center for Environmental Management Working Paper 97-3, "Small Borrowers and Big Financiers: the Urban Redevelopment Conundrum." That report, in turn, is based on research conducted under U.S. Environmental Protection Agency Order 6W-3586-NASA, for Research and Development of a source book, "The Loan Application Process for Brownfields Financing: What Borrowers Need to Know," also by The E.P. Systems Group, Inc.

The final two pages in the materials provided here are a list of Working Papers available from the Center for Environmental Management at the University of Louisville. Please contact the Center for an order form if you are interested.

Peter B. Meyer
Professor of Urban Policy and Economics
Director, Center for Environmental Management
July, 1997

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Insurance Policy Variables

These definitions are not legally precise, but provide a layman's understanding of the terms for discussion by non-specialists. Each definition is followed by comment on the relevance of the variable to the insurance coverage purchase decision.

Application Requirements - The information required and any fees or prepayments due from the would-be insured party at the time of application for insurance coverage. The cost of acquiring the necessary information can be substantial, and filing fees to pay for preliminary underwriting may not be refundable if insurance is not purchased.

Coverage - The protection purchased, including a definition of the risks against which protection is provided and the maximum payments to be made by the insurer. Minimum coverages may far exceed the needs of small developers or projects on sites with only limited contamination; maximum coverages may not be sufficient for large and complex projects, although those maxima have been rising over time.

Coverage Fee - That portion of the cost of insurance that pays for the coverage provided, typically described in terms of cost per \$1,000 in coverage and varying with the coverage purchased. This amount is not predictable for many forms of environmental insurance; it may depend on project- and site-specific data employed in underwriting.

Filing Requirements - The requirements governing the filing of a claim, most particularly the provisions for delayed filing if harm is not discovered until after expiration of the term of the insurance policy. The broader the provisions for delayed filings on liability coverages, the more valuable the policy is to the insured since these provisions increase the protection against future liabilities.¹

Policy (Underwriting) Fee - That portion of the cost of insurance that is fixed, regardless of the amount of coverage purchased, which is charged for the costs incurred in writing the insurance policy, including any effort committed to assessing the risks and determining the appropriate level of the coverage fee. This fee can raise the total cost of coverage to an uneconomical level for small projects or those with relatively low projected site cleanup costs and similarly limited liability risks. Hence it may limit the value of insurance to the majority of urban redevelopment sites, those of two acres or less.

¹ The filing requirements and potential coverage often depend on whether a policy is written to protect for "claims" or "occurrences." For a policy with a limited term, the difference is essential, since the claims may be made years after the occurrences that generated the damage. Under a pure claims policy, coverage is provided only for claims made during the insurance term. An "occurrences" policy provides protection for claims made about damage discovered at a later date, and is subsequently more expensive to buy.

Renewal or Rollover Conditions - The provisions for renewal of the insurance policy, including any assurances of guaranteed renewal, the terms of renewal policies, and any assurances about the cost of renewals. These conditions are important to the extent that insurance coverage provides protection for long-term investors, since the terms of debt instruments, or commitments to equity investments, may exceed the maximum term of available insurance policies.

Retention or Deductible - The unreimbursable expenditure required of the insured prior to the initiation of payment under the coverage in the event that insurance is activated. This is, in effect, the "self-insured" portion of the risk and thus represents the remaining cost uncertainty after the purchase of insurance.

Term - The period of time for which the insurance is in force and effect. Cost savings may be possible through matching the term for policies covering remedial actions on a site to the time period scheduled for cleanup; for assurance to longer-term investors, however, the longer the term of other coverages, such as for liability or possible regulatory reopenings, the more valuable the policy may be.

Transferability - The conditions under which the insurance coverage provided to an insured owner of a property or other asset is transferred to subsequent owners of the asset. Transferability provides protection to financiers in the event of loan default or other developments that may lead them to become owners of the asset for which insurance was purchased. The more easily the policy may be transferred, the more valuable it will be.

Umbrella or Pooled Coverage - Provision of insurance protection to a defined group of properties, currently available to the owner of a number of parcels, but potentially provided to a single agent acting as the insured and representing a group of individual parties.

Broad Categories of Insurance Coverage Types

Professional Liability Coverage

By 1996, environment-specific "errors and omissions" insurance was routinely available and largely carried by both engineering and legal firms with environmental practices. Such insurance is generally underwritten at relatively fixed fees for virtually any amount, so smaller as well as larger firms can now offer their clients the assurance of protection in the event of professional error.

Owner/Operator Liability Coverage

This coverage is available to protect the parties actually conducting work or operating on the site in question. It could be provided to the owner of the site, the business(es) operating on the site, or firms engaged in mitigation or removal and transport of the hazardous materials found on site. First, coverage may be provided for demonstrable health damage resulting from exposure to some known toxic materials. Second, coverage may be provided for two types of economic damage: (i) for actual immediate effects such as income losses associated with inability to use a site, including adjacent sites, or the need to cleanup an adjacent property due to the movement of spilled toxics; and, (ii) for so-called "diminution of value," reduction in the value of the property or adjacent/nearby properties. This coverage may be needed for noise and aesthetic consequences of mitigation efforts as well as with operations, even if the activities are not directly associated with the toxics exposures, so long as they involve controlling regulated substances.

Cleanup Cost-Cap or Stop-Loss Coverage

Any redevelopment project involving a brownfield site may incorporate actions taken to cleanup past contamination or otherwise to mitigate exposure risks on the property. No projects proceed without a budget for expenses and some allowance for cost overruns or other uncertainties. This coverage is designed to limit the cost uncertainties by capping the cost of cleanup to the redeveloper (or seller of the site). Cost-cap coverage is generally provided with either a 10% or 25% "retention" by the covered party for cost overruns, with limits starting at 200% of the initially budgeted cleanup cost. The term of the policy, which can vary, may be critical for multi-year cleanups or mitigations with post-cleanup monitoring that could require additional action at a later date.

Legal Defense Coverage

Coverage for the costs of legal defenses may help to prevent settlements that encourage further suits and reduce the costs of environmentally risky redevelopment efforts. This coverage is generally incorporated into liability coverages.

Re-opener or Regulatory Action Coverage

Prospective liability is unlimited under CERCLA. While this exposure exists in law in principle, there is minimal experience of high reopener costs incurred by conscientious mitigators. Nevertheless, some insurance against the possibility of a future reopening of a previously approved cleanup may be desirable in order to minimize uncertainties, especially since such reopeners may not only require expenditures but may limit use of the site, thus reducing future revenues.

Trends in Coverage

Major changes that have affected the coverages available from urban regeneration and their value to parties in the redevelopment process include:

- Longer terms for many policies, which may now be purchased for coverage extending for ten years when previously available for a maximum of three to five years;
- Portfolio or pooled coverage for multiple properties owned by (or in some instances, simply insured by) a single covered insured entity;
- Increased flexibility in combining coverages and varying the amount of coverage in different elements of a combined policy - moving away from fixed ratios to tailored mixes; and, most significantly,
- Reduced costs of coverage and lowered minimum premiums for virtually all lines of environmental coverage.

These shifts have both decreased the cost and increased the value of environmental insurance as a tool for use in the urban redevelopment process.

The Stages of a Brownfield Redevelopment Effort

We can distinguish five key stages in the process leading to redevelopment of a brownfield parcels or other urban sites. Each involves slightly different parties, but all need to be considered as possible beneficiaries of insurance coverage.

- (1) Site selection, by a would-be redeveloper, will, at some point, involve CERCLA-type site assessment efforts, and thus benefit from professional liability coverage.
- (2) Remediation, if needed, is facilitated by both forms of third party liability coverage and, of course, stop-loss protection.
- (3) New construction/rehabilitation costs are more certain if comprehensive owner/operator liability coverage is available; professionals involved in advising on such operations, including architects and engineers, may benefit from professional liability coverage.
- (4) Ongoing operations involve uncertainties that are reduced by the availability of owner/operator liability coverage, and would be further resolved if long-term regulatory reopener coverage were available as the result of a prior cost-cap policy.
- (5) Refinancing (and lender sale or securitization of a mortgage) will tend to be easier if long-term and guaranteed renewable owner/operator and reopener insurance coverage is available.

In all these cases, insurance could facilitate progress with brownfield redevelopment.

Insurance and Control of Lender Risk Exposures

The "Asset Conservation, Lender Liability, and Deposit Insurance Protection Act," passed as part of the Omnibus Consolidated Appropriations Act on September 30, 1996 amended CERCLA and formalized as law a "lender liability rule" that had previously been passed as a regulation by the EPA. Although the full effects of the new laws are still uncertain, they are expected to encourage greater lender willingness to offer loans on previously used properties. Lenders, however, will still require attention to environmental issues for several reasons:

- Concern about the ability of borrowers to repay the loan since a borrower's ability to do so may be jeopardized by cleanup costs;
- Fears that if they do have to foreclose, environmental problems will lower the value of their collateral;
- The danger that they may still be liable, especially if, after foreclosure, they are forced to get involved in removing hazardous substances from a site;
- The lender liability that still could arise under some 25 other federal environmental laws and myriad state laws; and,
- The risk of litigation against lenders by other private parties trying to tap financial 'deep pockets' to recoup cleanup expenses imposed on them.

All these concerns lead to exceptional concerns about securing risks on the part of lenders that may add to project costs - or render projects impossible without the risk management capacity provided by insurance. These issues emerge from the three varieties of risk that concern lenders with regard to any loan, whether or not it involves environmentally suspect properties:

- Loan or credit risk, the likelihood that borrowers will be able to make loan payments. Risk assessment involves looking at the financials of the project, and at the credit rating of the borrower.
- Collateral risk, the possibility that the lender will not recoup the value of the loan if default and foreclosure occurs. It is often controlled by reducing loan-to-value ratios if the value of the collateral is uncertain or by requirements that special forms of insurance are purchased.
- Liability risk, the danger that a lender will be somehow exposed to liability claims (potentially those associated with past contamination), a risk that was reduced a great deal by the 1996 legislation, but still needs to be controlled through careful exercise of environmental "due diligence."

Loan risk may be addressed directly through insurance. The insurance industry has developed "stop loss" products, protecting developers from cost overruns on cleanups. High fixed underwriting costs have, until recently, precluded the use of these policies for small scale projects. Pooled coverage, whether used by municipalities and redevelopment districts or agencies or by lenders for their portfolios, offers a lower cost per dollar of coverage to developers with fixed costs underwritten by the public or quasi-public entity promoting local economic development. Having insurance may even overcome some stigma concerns, albeit indirectly.

Credit risk may also be eased by insurance coverage, if loan guarantees for some proportion of loans to redevelopers for defaults attributable to a specified list of causes, including factors such as undiscovered contamination (if not covered by other insurance) could be purchased, much as mortgage guarantee insurance is now demanded of home-buyers.

Collateral risk, our second major concern, would also be reduced by the provision of any loan guarantees, since foreclosure by the institution would not be needed - or the return on the foreclosure assured. To the extent that loan guarantees do not protect investors from all possible defaults, however, this form of risk remains.

Finally, liability risk (which has not been fully eradicated by the 1996 amendment to CERCLA, which protects against federal claims, but not private lawsuits or actions by other levels of government) remains an issue. Insurance may be the best way to address these concerns in the current environment, despite potentially high costs of coverage, because:

- (1) The impact of the 1996 amendment is not yet clear, and further action should await evidence of the effects of provision of partial liability relief;
- (2) As we have already argued, the effect of reduction in liability risk was to increase the relative significance of other forms of risk, and we have just identified actions that could be taken to increase the competitiveness of small scale redevelopments with respect to those factors;
- (3) Some residual environmental liability risk exposure is desirable in light of the comments of a number of parties, especially attorneys, attesting to the utility of such concerns in motivating lenders to act as environmental enforcement agents; and,
- (4) Liability risks are associated with any development or redevelopment project, and it is not clear that the environmental liabilities that remain after the passage of the 1996 Act constitute a significantly greater exposure than would exist on a greenfield project.



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The Kentucky Institute for the Environment and Sustainable Development
203 Patterson Hall, University of Louisville, Louisville, Kentucky 40292
Center for Environmental Management

Working Papers Available, April, 1997

- 92-1, Meyer, P. B., LANDFILLS AND DEVELOPMENT: LOCAL UNIQUENESS AND LONG TERM SOCIOECONOMIC IMPACT ASSESSMENT (A Preliminary Methodology and Agenda for Research), October.
- 93-1, Meyer, P.B., and S.M. Olson, FACTORS AFFECTING HOUSEHOLD WILLINGNESS TO PAY TO AVOID EXPOSURE TO TOXICS, April.
- 93-3, Yount, K.R., FEAR AND LOATHING IN URBAN AMERICA: ENVIRONMENTAL RISKS AND THE CONSTRAINTS ON URBAN REGENERATION, June, 1993.
- 93-4, Meyer, P.B., THE ROOTS OF ENVIRONMENTAL CONCERNS AND THE PROSPECTS FOR NEW LANDFILLS AND RENEWAL OF URBAN BROWNFIELD SITES, September.
- 94-2, Yount, K.R., and P.B. Meyer, WHO WILL PAY FOR RECLAMATION OF URBAN ENVIRONMENTAL BLIGHT? POLICY POTENTIAL IN LIGHT OF DEVELOPER AND LENDER RISK PERCEPTIONS, March.
- 94-3, Yeager, J., and P.B. Meyer, ENVIRONMENTAL RISKS AND URBAN REGENERATION: REGULATION, RISK PERCEPTION AND THE FLIGHT OF DEVELOPMENT CAPITAL, March.
- 94-4, Burayidi, M.A., THE QUEST FOR GLOBAL ENVIRONMENTAL SUSTAINABILITY, April.
- 94-5, Meyer, P.B., and K.R. Yount, UNDERINVESTMENT IN THE FACE OF ENVIRONMENTAL RISKS: CULTURAL AND ORGANIZATIONAL CONSTRAINTS TO URBAN BROWNFIELD REDEVELOPMENT, July.
- 94-6, Yount, K.R., MOTHERHOOD AND MARKETPLACE MENTALITIES: AN EMPIRICAL EXAMINATION OF GENDER-BASED RESPONSES TO HAZARDOUS TECHNOLOGIES, July.
- 94-7, Meyer, P.B., ECONOMIC "DEVELOPMENT" AND ENVIRONMENTAL THREATS: INSTITUTIONAL FACTORS SHAPING SOCIO-ECONOMIC IMPACTS, July.
- 94-8, Meyer, P.B., and Hyung-Ki Ahn, ENVIRONMENTAL PLANNING, INDUSTRIAL ACCIDENTS, RISK COMMUNICATION AND CITIZEN RESPONSES, August.
- 94-9, Lyons, T.S., and G.A. Lichtenstein, NEW STRATEGIES IN RURAL AND SMALL TOWN INCUBATION: EXAMPLES OF SUCCESSFUL PRACTICE, October.
- 95-1, Meyer, P.B., TOWARD ACCOUNTING FOR SUSTAINABLE ECONOMIC DEVELOPMENT: MEASUREMENT PROBLEMS AT DIFFERENT LEVELS OF AGGREGATION, March.

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- 95-2, Keil, T.R., V. Andreescu, and D.M. Austin, PERCEPTIONS OF ENVIRONMENTAL QUALITY AND LOCAL MIGRATION POTENTIAL IN ROMANIA, March.
- 95-3, Lyons, T.S., and W.J. Rauhe, TOWARDS CREATING A MODEL FOR EMPOWERING CITIZENS TO SUSTAIN COMMUNITY PLANNING AND DEVELOPMENT EFFORTS: THE CASE OF MINOMINEE, MICHIGAN, March.
- 95-4, Meyer, P.B., TOWARD AN ETHICAL ECONOMICS OF ENVIRONMENTAL EQUITY, April.
- 95-5, Yount, K.R., CONTENDING WITH POLLUTED PROPERTIES: POLICY INSIGHTS FROM THE EUROPEAN UNION AND UNITED STATES DEBATES, May.
- 95-6, Meyer, P.B., RESTRUCTURING THE INSTITUTIONS FOR NORTH-SOUTH COOPERATION THROUGH INCORPORATING SUSTAINABILITY AND EXISTENCE VALUES INTO THE NORTH'S OPTIMIZATION CALCULATIONS, July.
- 95-8, Lyons, T.S., G.A. Lichtenstein and S. Chhatre, A BARRIERS-PRACTICES APPROACH TO UNDERSTANDING THE EFFICACY OF RURAL BUSINESS INCUBATION, October.
- 95-10, Lyons, T.S., G.A. Lichtenstein and S. Chhatre, SURMOUNTING BARRIERS TO INNER-CITY MINORITY ENTREPRENEURSHIP: THE ROLE OF BUSINESS INCUBATION, October.
- 96-1, Meyer, P.B., COPING WITH REALITY: DELUSIONS, DATA, AND DRIFT-AVOIDANCE, March
- 96-2, Ahn, H-K., and P.B. Meyer, ACCIDENT RISKS AND WELFARE LOSSES: TAKING A SECOND LOOK AT EVACUATION DECISIONS, March.
- 96-3, Meyer, P.B., T.S. Lyons, and V. Mani, FORECASTING KENTUCKY'S ENVIRONMENTAL FUTURES - FINAL REPORT EXECUTIVE SUMMARY, June.
- 96-4, Meyer, P.B., PENNSYLVANIA COPES WITH ITS PAST: ONE STATE'S EFFORTS TO REDEVELOP URBAN BROWNFIELDS AND CLEAN UP CONTAMINATED LANDS, July.
- 95-6, Chilton, K.M., THE ROLE OF ECONOMIC DEVELOPMENT ORGANIZATIONS IN BROWNFIELD REDEVELOPMENT: A COMPARISON OF PENNSYLVANIA AND OREGON, October.
- 96-7 Meyer, P.B., and C.W. Reaves, BROWNLINING BANKS: THE BANK MERGER MOVEMENT AND URBAN REDEVELOPMENT, December.
- 97-1 Meyer, P.B., 'POLLUTER PAYS' - BUT WHO IS IT? ... IMPLICATIONS FOR RECLAMATION OF ABANDONED INDUSTRIAL SITES, March.
- 97-2 Yount, K.R., ONE SIZE DOES NOT FIT ALL: DIFFERENTIATING BROWNFIELD PROJECTS FOR EFFECTIVE POLICY DEVELOPMENT, April.
- 97-3 Meyer, P.B., SMALL BORROWERS AND BIG FINANCIERS: THE URBAN REDEVELOPMENT CONUNDRUM, April.

(4C) Increasing Your Return on Investment Using Federal, State, and Local Tax Incentives

Wednesday, September 3, 1997

3:45 p.m. - 5:15 p.m.

Description: From brownfields tax incentives to greenfields disincentives, a variety of creative options are being tested across the country. Get ideas on how to benefit from federal, state, and local tax incentives for cleanup and redevelopment of brownfields.

Location: Room 1201

Speakers and Affiliation:

The Honorable Michael S. Barr (Moderator)

U.S. Department of the Treasury, Office of Community
Development Policy

Mr. George D. Baker

Williams & Jensen, P.C.

Mr. Michael Finnegan

State of New York, Office of the Governor

THE HONORABLE MICHAEL S. BARR

Michael Barr is Deputy Assistant Secretary for Community Development Policy at the U.S. Department of the Treasury. In that capacity, he helps develop Administration policy with respect to low income households and communities. The Treasury Department has proposed a new brownfields tax incentive to spur the revitalization of economically distressed areas, and has worked to reform lender liability laws.

MR. GEORGE D. BAKER

George Baker has been a partner at Williams & Jensen in Washington, D.C. since April 1984. He became associated with the firm in March 1980 after two and one-half years experience as an attorney with the Office of Hearings and Appeals of the U.S. Department of Energy.

Mr. Baker concentrates on legislation and administrative policy pertaining to energy, environment, agriculture and natural resource matters. As Executive Director of Superfund Reform '95, the primary broad-based, national coalition working on behalf of fundamental reform of Superfund, Mr. Baker has become extensively involved with brownfields issues including tax-based incentives and other policy approaches at both the state and federal levels.

MR. MICHAEL FINNEGAN

[Biography was not available at time of printing. Please refer to conference addendum.]

**DOCUMENTS THAT SUPPORT
PANEL 4C: INCREASING YOUR RETURN ON INVESTMENT USING FEDERAL,
STATE, AND LOCAL TAX INCENTIVES**

**SURVEY OF BROWNFIELDS
TAX INCENTIVES**

**George D. Baker
Williams and Jensen, P.C.
1155 21st Street, N.W.
Washington, D.C. 20036
202-973-5946**

September 3, 1997

INTRODUCTION

Federal, state, and local environmental regulations designed to protect natural resources and public health have inadvertently created an atmosphere of hesitation and anxiety for many of our nation's businesses and investors. Brownfields, generally described as vacant, abandoned, or underutilized commercial and industrial property that may require an environmental cleanup before being developed, are a perfect example of unintended but undesirable consequences created by some of our environmental regulations. Almost every older city in the nation, regardless of size, wrestles with the challenge of reusing contaminated commercial and industrial sites.

Some of the problems include cleanup costs that often exceed the uncontaminated value of the property, unrealistic cleanup standards which result in exorbitantly high cleanup costs and risk of immediate or downstream liability that drives off potential purchasers and lenders. The precise inventory of such contaminated sites is unknown, but experts have suggested that more than 500,000 sites nationwide show evidence of at least some contamination which could trigger statutes like the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) and its state "Superfund" progeny that ultimately inhibit owners from selling the site, securing financing, or proceeding with reuse. Such legal uncertainty often makes it difficult, or impossible, to arrange financing to carry out both cleanup and redevelopment activities. Although estimates regarding the total cost of cleaning up the nation's brownfield inventory vary, the General Accounting Office has indicated the price tag for cleanup of U.S. brownfield sites may be as high as \$650 billion.

Virtually every state, city and town that is affected now realizes that brownfields represent a huge waste of resources as long as they remain unreclaimed. Many urban areas are decaying in part because abandoned sites result in millions of dollars of lost tax revenue and lost wages from missed employment opportunities. Additionally, existing streets and roads, water lines, railroads, and other infrastructure systems go unused or unrepaired --- resulting in the waste of billions of dollars in public and private investments. By encouraging reuse of contaminated property, local and state governments generate not only additional jobs and property taxes based on higher assessed values, but increase much needed sales and business taxes as well. Frequently, the assessed values of nearby properties will also be increased.

Congress, the Environmental Protection Agency (EPA), and many states have acknowledged that

environmental laws and regulations contribute to the decay of these contaminated and industrial areas. The question becomes - How do we remove these barriers and stimulate investors and developers to invest their resources in redeveloping a brownfield site? What kind of incentives can we give developers that would make them prefer redeveloping a brownfield rather than the environmentally safe and economically stable greenfields? States have been passing legislative initiatives to try and find the answers to these very questions. While the EPA pilot programs are limited in number, the state initiatives have provided a more powerful incentive for the redevelopment of brownfield sites. However, while many of these state initiatives allay the fear of liability through Voluntary Cleanup Programs¹ they do not necessarily contain the necessary funds needed for site acquisition, cleanup and redevelopment. Delays can occur because of these financial shortfalls.

Recognizing this problem, a handful of states have enacted legislation that creates effective tax policies to redress some of these financial shortcomings. This memorandum (1) summarizes some of the leading states' efforts to encourage brownfield development through tax-based incentives; (2) summarizes tax-based proposals in Congress aimed at encouraging brownfield development; and (3) evaluates the likely successes and downfalls of some of the federal brownfield tax provisions.

STATE BROWNFIELD TAX INITIATIVES

For many years, state and local governments have used or sponsored tax and public finance mechanisms to stimulate economic activity in certain geographic areas or industries. Now, such economic development initiatives are targeting environmental improvement, specifically brownfield development. Several states have also passed legislation providing tax incentives to investors that develop on brownfields.

¹ Voluntary programs create incentives for investors to redevelop brownfield sites by minimizing governmental red-tape and limiting liability. If developed according to a state plan, the state environmental agency will usually not hold the developer liable for prior contamination and will release the developer from further liability. As of the fall of 1996, the total number of state voluntary cleanup programs rose to 37, 33 of these having been created or formalized in the past five years. Several more states are following closely behind and plan to unveil programs this year. Northeast-Midwest Institute, *Coming Clean*, 1996 Annual Report, at p.1, Chapter 4.

These incentives include: tax abatements², tax credits, and creative tax-increment financing³ rules. Below is a brief summary of some of the leading state tax initiatives.

Michigan. In 1996, Governor Engler signed legislation encouraging development of brownfields in urban areas. The legislation created the Brownfields Redevelopment Financing Act which would allow municipalities to develop and implement brownfields redevelopment financing plans (i.e., tax increment financing plan or tax capture plan) to capture state or local property taxes from a contaminated site in order to conduct response activities at the site. (The Act will allow municipalities to establish Brownfield Redevelopment Authorities to facilitate local initiatives by: (1) leasing or purchasing brownfield sites; (2) borrowing or lending money from the authority responsible for response activities; (3) reimbursing parties for response activities at sites; and (4) establishing site remediation revolving loans and grants to fund cleanups.)

The bill also provides taxpayers a credit against their single business tax liability for certain contaminated properties, provided that the taxpayer makes an economic investment at the site. The amount of an individual credit is 10% of the eligible investment costs the taxpayer has incurred to redevelop or expand the eligible property in the tax year, with a \$1 million cap on total credits a taxpayer may claim. Thus, not only may the developer of the contaminated property be reimbursed, but the user of the redeveloped property can qualify for a 10% single business tax credit on its investment. The credit is not available to owners or tenants who are liable for the contamination at the site.

Delaware. In addition to its voluntary cleanup and financial assistance programs, Delaware provides

² Tax abatements are reductions in or forgiveness from tax liabilities that are granted for a specific period of time. Tax abatements are commonly used to stimulate investments in building improvements or new construction in areas where property taxes or other conditions discourage private investment.

³ To raise public-sector capital for a project, the tax-increment financing (TIF) process uses the anticipated growth in property taxes generated by the development project. TIFs are built on the concept that new value will be created, and that the future value can be used to finance part of the activities needed now to create that new value. TIFs do not lower the amount of tax revenues collected, nor do they impose special assessments on the project area. Bonds are issued to raise the capital needed for the redevelopment, and the new tax revenues generated by the projects are earmarked to redeem the bonds. Northeast-Midwest Institute, *Coming Clean*, 1996 Annual Report, at p.13, Chapter 3.

a brownfield tax credit. For sites demonstrating development potential, tax credits covering up to the full cost of cleanup may be available. The tax credit amounts to \$500/year for each job created through the redevelopment of a site, and it runs until the cost of cleanup has been recouped.

Ohio. In addition to providing low-interest loans for some brownfields activities, Ohio has enacted legislation that provides tax abatements and tax credits for brownfield redevelopment. Ohio's Voluntary Action Program includes a plan for abating taxes on the redevelopment of brownfield sites. The program provides two types of prospective tax abatements. Property owners may obtain a ten-year tax abatement that applies to increases in market value attributable to a cleanup. In addition, taxpayers undertaking voluntary cleanups may secure a ten-year tax abatement for development projects.

Ohio has also enacted a nonrefundable corporate franchise and individual income tax credit for costs incurred in completing a voluntary cleanup of a contaminated site, pursuant to an agreement with the state development director. The credit is equal to the lesser of \$500,00 or 10 percent of the eligible costs incurred in performing the voluntary cleanup action. If the action is undertaken in an "economically disadvantaged" area the credit is the lesser of \$750,000 or 15 percent of the eligible costs.

New Jersey. New Jersey recently enacted the Environmental Opportunity Zone Act. The Act permits municipalities to offer up to a 10-year tax abatement to reclaim abandoned or underutilized industrial tracts designated as Environmental Opportunity Zones. An Environmental Opportunity Zone can consist of one site or several that a community wants to revive for industrial or commercial use. Businesses that cleanup and redevelop Environmental Opportunity Zone properties can receive up to a 10-year tax abatement on the new project as it is being built, permitting a 100 percent abatement on real estate taxes for the first year, phasing out to zero abatement in the 10th year.

The abatement runs until the developer recoups the cleanup costs, but cannot exceed the 10-year cap. In addition, the developer must complete the cleanup according to a state approved work plan. Participating in the state plan allows zone sites to undergo an expedited approval process and their developers are not required to post bond at the start of the remediation.

Maryland. In late February 1997, the state of Maryland passed brownfields legislation that establishes a Voluntary Cleanup program and provides tax abatements for cleanup at brownfield sites. The

Act allows the state and localities to grant a five-year 50% tax abatement for the increase in value attributable to cleanup at the site. The tax abatement is only allowed if the taxpayer participated in the state voluntary cleanup or corrective action plan. Provisions are included in the Act that will allow for an increase in the abatement up to 80 percent. In certain areas, the tax abatement may be extended for an additional five years.

Idaho. Idaho also offers a 50% tax abatement for remedial activities for investors developing on brownfield sites. In order to qualify for the abatement, an investor must participate in the state Voluntary Cleanup plan and agree to a Covenant-Not-To-Sue.

FEDERAL TAX INITIATIVES

Clearly, state and local governments are at the forefront of creating tax initiatives to induce businesses and developers to invest in brownfields. However, the federal government has indicated its interest in playing a stronger, more visible role in brownfield redevelopment. In the Administration's FY-98 budget proposal, President Clinton authorized \$87 million to expand brownfield redevelopment initiatives, doubling his FY-97 budget request. The President's budget proposal also includes a proposed targeted tax credit allowing businesses to deduct, in the year incurred, certain costs associated with the clean up of brownfield sites.

The Congress also has devoted a great deal of attention to the need for brownfield redevelopment. The relevant subcommittees of the Senate Environment and Public Works Committee and the House Transportation and Infrastructure Committee have commenced hearings regarding the problems associated with brownfield development and what approaches should be taken in order to encourage redevelopment. Additionally, to date, at least nine brownfield redevelopment proposals have been introduced, four of which contain redevelopment tax incentives. The leading tax proposals are: S. 235 and H.R. 505 introduced by Senator Moseley-Braun (D-IL) and Congressman Rangel (D-NY) respectively; H.R. 990, introduced by Congressman Quinn (R-NY); and H.R. 525, introduced by Congressman Coyne (D-PA). A summary of the leading proposals follows:

President Clinton's Brownfield Tax Incentive. To encourage the cleanup of brownfields, President Clinton's budget proposal includes a provision that would allow certain remediation costs to be currently deductible if incurred with respect to a qualified site. Generally, these expenses would be limited to those paid or incurred in connection with the abatement or control of environmental contaminants. Qualified sites would

be limited to those properties that satisfy use, geographic, and contamination requirements. The use requirement would be satisfied if the property is held by the taxpayer incurring the eligible expenses for use in trade or business or for the production of income, or the property is of a kind properly included in the inventory of the taxpayer.

The geographic requirement would be satisfied if the property is located in or next to high-poverty areas, federal empowerment zones and enterprise communities, and areas subject to certain EPA brownfields pilot programs. And finally, the contamination requirement would be satisfied if hazardous substances are present or potentially present on the property. To claim this deduction, the taxpayer must obtain a statement that the site satisfies the geographic and contamination from a state environmental agency, designated by the EPA, for such purposes. The President's brownfield tax proposal would cost approximately \$1 billion over five years.

The Community Empowerment Act of 1997 (S. 235/H.R. 505). Senator Moseley-Braun (D-IL) introduced S. 235, the Community Empowerment Act of 1997, which will provide a tax incentive for businesses and developers who cleanup and redevelop brownfields. The bill is very similar to the Administration's proposal. The bill was referred to the Senate Finance Committee and to date there are seven cosponsors. An identical bill, H.R. 505, was introduced in the House by Ways & Means Ranking Minority Member Rangel (D-NY). Rep. Rangel's bill has been referred to the House Ways and Means Committee and currently has 24 cosponsors. The Community Empowerment Act provides for \$2 billion in tax incentives and is expected to leverage some \$10 billion in private cleanups at approximately 30,000 brownfield properties in the United States (at an average cleanup cost of about \$400,000).

Specifically, the Act will make qualified brownfield cleanup expenses fully deductible in the year in which they are incurred. To qualify for the tax deduction, the cleanup must occur only at certain types of sites: existing EPA Brownfield pilot areas; in areas with a poverty rate of 20% or more, or in adjacent industrial or commercial areas; and in empowerment zone/enterprise communities⁴, both existing ones and those that

⁴ Empowerment Zones (EZ) and Enterprise Communities (EC) are geographic areas targeted to receive federal treatment and incentives in to promote private investment and other economic activity. In December 1995, HUD and the Department of Agriculture named 95 ECs (65 urban and 30 rural), as well as nine EZs (6 urban and 3 rural). Designation brings \$100

would be designated in the future (the current empowerment zones and communities have attracted more than \$2 billion in private investment). The Act designates an additional 80 enterprise communities and 20 empowerment zones.

Brownfields Remediation and Economic Development Act of 1997 (H.R. 990). Congressman Quinn (R-NY) has introduced H.R. 990, the Brownfields Remediation and Economic Development Act of 1997. The bill would create a type of "brownfield IRA" that would permit companies to set aside monies on a tax-exempt basis to establish a cleanup fund for future use. Like a personal retirement account, the use of a tax-exempt brownfield IRA would be limited, in this case, to paying for activities associated with site characterization and cleanup. Rep. Quinn's legislation provides that the amount which a taxpayer may pay into a reserve for any taxable year shall not exceed \$5,000,000. The bill has 19 cosponsors and has been referred to the House Ways & Means, Commerce, and Transportation and Infrastructure Committees.

The Brownfield Redevelopment Act of 1997 (H.R. 523). The Brownfields Redevelopment Act, H.R. 523, was introduced by Congressman Coyne (D-PA). The bill has been referred to the House Ways & Means Committee and there is currently one cosponsor. This legislation creates an environmental remediation tax credit which could be used to offset a variety of costs, such as cleanup, site characterization, or participation in a state voluntary program. The credit can be used to offset 50 percent of the costs of carrying out a cleanup plan that has been approved by the EPA or another designated body (a state environmental agency). The legislation also provides that if the taxpayer determines that due to unforeseen circumstances the actual cost of completing the remediation plan for a qualified contamination site exceeds 200 percent of the estimated costs, the taxpayer may cease the implementation of the plan and shall be entitled to an environmental remediation credit with respect to costs incurred before such cessation. Such credit shall be taken over the 5-taxable-year period beginning with the taxable year in which cessation occurs.

In addition to the remediation tax credit, Rep. Coyne's legislation clarifies the use of "qualified

million in social service grants for each of the EZ's, \$40 million to each rural zone, and \$3 million to each EC. In addition, designated communities can compete for as much as \$2.5 billion in new tax incentives to induce investment. Northeast-Midwest Institute, *Coming Clean*, 1996 Annual Report, at p.3, Chapter 3.

redevelopment bonds⁵ (a type of Industrial Development bond issuance). The clarification specifically permits their use for environmental remediation, including "the clearing and preparation for development of land." Once federal statutes recognize site remediation activities as eligible uses, states could make brownfield projects a priority within their own IDB allocation procedure.⁶

TAX INITIATIVES - WILL THEY WORK?

Most of the state initiatives have been passed by their state legislatures within the last year or two. Thus, there is no hard-core evidence of the impact the tax incentives will have in encouraging brownfield redevelopment beyond other non-tax incentives. However, there are some traditional arguments for and against the specific tax methods some states have chosen to adopt.

Tax Increment Financing. Many states have used the TIF mechanism to revitalize economically distressed or abandoned areas. Because of TIF's traditional use, the TIF is a natural fit for the brownfield situation. Many observers believe that the TIF is an ideal financing tool for brownfield projects, and in fact, many cities with brownfield success stories helped bring them about because of TIF financing. Despite its successes, many states and localities have hesitated to employ the TIF mechanisms for brownfield projects.

⁷ If projected development fails to materialize or unanticipated complications occur, it can be difficult to retire the bonds. Some local economic development practitioners also cite the complexity of many TIF initiatives as a practical disadvantage. They can require a lot of time to put into place, and involve high levels of technical expertise and negotiations to move a project from concept to implementation, especially one made

⁵ States, cities, public agencies and other entities are authorized to issue tax-exempt, private activity industrial development bonds. The Treasury Department defines a state-wide volume cap on bond issuances each year--- the greater of \$50 per capita or \$200 million. Companies and local jurisdictions favor IDBs as a source of financing since the interest is not taxable, which reduces the yield that investors demand, which lowers a project's cost of capital. These bonds are payable from and secured by the revenues of the projects they finance; if the company defaults, the bondholders, and not the local taxpayers, absorb the loss. Northeast-Midwest Institute, *Coming Clean*, 1996 Annual Report, at p.5, Chapter 3.

⁶ Charles Bartsch, *Paying for Our Industrial Past*, Economic Development Commentary, Winter 1996, at 14, 22.

⁷ *Id* at 14,18.

more difficult by environmental concerns.⁸

Tax Abatements. Tax abatements have been used for initiating economic development for many decades. Their popularity is partly due to the varying forms available: (1) freezing the assessed value of land or buildings at some point in time; (2) reducing the tax rate for a certain period of time; and (3) exempting certain types of property from taxes altogether.⁹ Some abatement programs feature sliding scales. Tax abatement incentives generally influence larger businesses to redevelop because many small companies need greater financial help than reduced tax liabilities can provide. Additionally, the use of tax abatements still faces opposition by critics on equity grounds. Some argue that they are "giveaways." To be successful, tax abatement programs must be designed to target intended beneficiaries without offering "unnecessary" subsidies. If state and local officials can accomplish this, then tax abatements can be a flexible approach to promote brownfields redevelopment.

Tax Credits. Tax credits can be an effective tool to offset a variety of costs, such as cleanup, site characterization, and participation in a state voluntary program. The credit allows a company to "legitimize" the high costs associated with brownfield redevelopment. The credit also helps balance the economic playing field between developing old brownfield sites and new greenfield locations. The effectiveness of the credit is questioned if everyone does not benefit. For instance, many small companies have little tax liability to offset with the tax credit. The same companies lack the capital needed to initiate the first phase of a brownfield project.¹⁰ Finally, tax credits are expensive to state, local, and federal governments. They "eat up" a lot of revenue, and offsets for the credit are usually hard to find due to budgetary constraints.

CONCLUSION

Brownfield redevelopment is essential to revitalizing inner cities, fostering economic growth in depressed areas, and improving the quality of urban environment. Business, government, and community leaders have a unique opportunity to work together to achieve their common goals through successful

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.* at 22.

brownfield redevelopment. Fortunately, some state governments have recognized the untapped resources brownfields contain, and have developed initiatives that have helped increase brownfield redevelopment dramatically over the last few years. Initial success stories in New Jersey, Ohio, Pennsylvania, and Maryland all indicate that brownfield redevelopment tax initiatives can work. It is up to Congress, states, and localities to continue to provide the necessary tools that make the economics of brownfields available and feasible. Redevelopment can and will occur if businesses are given the ability to adequately finance such high-risk endeavors. With the cost of greenfield development comparatively low, it is often sound economic and environmental policy for the government to remove the economic barriers and provide incentives to put brownfield and greenfield development on an equal playing field. Building on the state efforts discussed above, both federal and state governments have the exceptional opportunity to assist developers through creative tax and financing mechanisms, which will ensure the continued path toward brownfield redevelopment.

(4D) CPR -- Creating Partnerships in Redevelopment: Breathing Life into Brownfields

Wednesday, September 3, 1997

3:45 p.m. - 5:15 p.m.

Description: Brownfields and alternative dispute resolution (ADR) can work together to encourage sustainable, community-driven efforts long after the two-year pilot period is over. Get advice on ways ADR can help your community maintain the momentum. Panelists who have real-world experience will share examples of how ADR can work for you.

Location: Room 2210A

Speakers and Affiliation:

Mr. William R. Potapchuk (Moderator)

Ms. Teri A. Anderson

Ms. V. Lee Scharf

Ms. Louise E. Smart

Ms. Jane H. Wells

Program for Community Problem Solving

Town of Greenfield, Massachusetts

U.S. Environmental Protection Agency, Office of
Enforcement Compliance Assurance

CDR Associates

State of Massachusetts, Office of Dispute Resolution

MR. WILLIAM R. POTAPCHUK

[Biography was not available at time of printing. Please refer to conference addendum.]

MS. TERI A. ANDERSON

[Biography was not available at time of printing. Please refer to conference addendum.]

MS. V. LEE SCHARF

[Biography was not available at time of printing. Please refer to conference addendum.]

MS. LOUISE E. SMART

Louise Smart is a partner at CDR Associates, a firm which specializes in decision-making, public involvement, and dispute resolution procedures. Ms. Smart combines extensive mediation and facilitation experience with her professional trainer as a planner to help groups resolve disputes in the environmental arena, including water resource, air quality, wetlands, growth, mining, and Superfund clean-up issues. Ms. Smart facilitated discussions among the U.S. Environmental Protection Agency (EPA), the Utah Department of Environmental Quality, the potential responsible party, property owners, and municipal government regarding remediation and land use of the Murray Smelter site.

MS. JANE H. WELLS

[Biography was not available at time of printing. Please refer to conference addendum.]

(4E) RCRA and Brownfields: Waking the Sleeping Giant

Thursday, September 4, 1997

8:00 a.m. - 10:00 a.m.

Description: It is said that RCRA is the final frontier in brownfields cleanup. How can stakeholders and regulators deal with the complexities of the existing law? This panel will explore ways to maximize flexibility to facilitate cleanup and redevelopment under RCRA.

Location: Room 2201

Speakers and Affiliation:

The Honorable Don R. Clay (Moderator)
Ms. Susan E. Bromm

Mr. Gary P. King

Don Clay Associates, Inc.
U.S. Environmental Protection Agency, Office of
Enforcement and Compliance Assurance
State of Illinois, Environmental Protection Agency

THE HONORABLE DON R. CLAY

Mr. Clay is president of Don Clay Associates, Inc., a public policy consulting firm devoted to solid waste and hazardous waste issues. He also chairs the RCRA Policy Forum, an organization of private companies, public interest representatives, states and others interested in exchanging information and ideas on waste regulatory policy. From 1989 to 1993, Mr. Clay was the assistant administrator of U.S. Environmental Protection Agency's (EPA) Office of Solid Waste and Emergency Response where he was the National Program manager responsible for implementing both CERCLA and RCRA. During this time, he was responsible for initiating many "reforms" in both programs. Mr. Clay is a nationally recognized expert who often speaks and testifies concerning both programs.

MS. SUSAN E. BROMM

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. GARY P. KING

Mr. King works for the Illinois Environmental Protection Agency (EPA) in its Bureau of Land. He is the senior manager for the Illinois EPA site cleanup programs: the voluntary cleanup program, the federal and state Superfund cleanup programs, the Department of Defense (DoD) cleanup program and the Leaking Underground Storage Tank (LUST) program. Mr. King began the development of the Illinois EPA's Brownfields Initiative in 1993 and has overseen the creation of one of the best programs in the country. He has been the state's team leader for numerous legislative and regulatory initiatives, including the state's recently adopted risk based cleanup objectives program -- TACO, or "Tiered Approach to Corrective Action Objectives." He has been a frequent speaker on brownfields topics on behalf of the Illinois program.

**DOCUMENTS THAT SUPPORT
PANEL 4E: RCRA AND BROWNFIELDS: WAKING THE SLEEPING GIANT**

**Memorandum of Understanding
between
the Illinois Environmental Protection Agency
and
the United States Environmental Protection Agency Region 5
on
the Illinois Site Remediation Program,
the Illinois Tiered Approach to Corrective Action Objectives,
and
the Environmental Remediation Programs
administered by
the Region 5 Waste, Pesticides, and Toxics Division
under
the Resource Conservation and Recovery Act (RCRA)
and
the Toxic Substances Control Act (TSCA)**

I. Introduction

The Illinois Environmental Protection Agency ("Illinois EPA") and the United States Environmental Protection Agency, Region 5 ("Region 5") entered a Memorandum of Agreement ("MOA") under the Resource Conservation and Recovery Act ("RCRA") Subtitle C, effective January 31, 1986. Illinois EPA and Region 5 have periodically modified that MOA to reflect authorization changes. Among other things, the RCRA MOA established operating procedures for general RCRA program coordination and communication under Subtitle C between Illinois EPA and Region 5. Illinois EPA and Region 5 do not have a general operating MOA under Subtitle I, but have maintained a continuous working relationship under successive co-operative agreements since 1987.

On April 6, 1995 the Illinois EPA and Region 5 entered Superfund Memorandum of Agreement, Addendum No.1. That agreement specifies how the Illinois EPA Pre-Notice Site Cleanup Program, precursor of the Site Remediation Program referenced in this MOU, intersects with administration of the Superfund program by Region 5 and Illinois EPA.

Effective December 21, 1995, the Environmental Protection Act of the State of Illinois was amended to add Title XVII: Site Remediation Program (415 Illinois Compiled Statutes 5/58.-58.12). Title XVII was amended effective June 30, 1996. The Illinois EPA and Region 5 have agreed to establish this Memorandum of Understanding ("MOU") for the following purposes:

- (1) to encourage voluntary environmental cleanup, which is protective of human health and the environment, at contaminated locations in Illinois;
- (2) to establish how the State of Illinois Site Remediation Program intersects with RCRA and the Toxic Substances Control Act ("TSCA"), as administered by the Waste, Pesticides, and Toxics Division of Region 5; and

- (3) to recognize the Illinois EPA's use of the Tiered Approach to Corrective Action Objectives (35 Ill. Adm. Code 742) for sites subject to RCRA or the TSCA¹.

This MOU is not intended to alter any other existing agreements between Region 5 and Illinois EPA, including the Memorandum of Agreement authorizing administration of the State's RCRA Subtitle C program.

II. Background

The Illinois EPA and Region 5 recognize that revitalization of contaminated property provides a significant benefit to both the environment and the economy. This is especially true for "brownfields". The term "brownfields" refers to properties which are abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. Some of the contaminated properties in Illinois, including some brownfields, are subject to environmental cleanup requirements which are established by Federal laws (e.g., closure, post-closure, and corrective action under RCRA; PCB Cleanup Policy under TSCA; the National Oil and Hazardous Substances Pollution Contingency Plan under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")).

Both Illinois EPA and Region 5 are mandated to protect human health and the environment and both play a critical role in Illinois in the cleanup and redevelopment of brownfields. Each Agency acknowledges the potential benefits that can be achieved by clarifying the liabilities associated with brownfields as a result of environmental cleanup requirements in both State and Federal laws. Both agencies recognize each other as key partners in addressing the perceived uncertainties in the financing, transfer and development of brownfields. Both agencies seek to facilitate the productive use of their authorities and resources in ways that are mutually complementary and are not redundant. Both Region 5 and Illinois EPA acknowledge their mutual respect, positive working relationship and commitment to the successful implementation of the MOU. In particular, both agencies seek to protect human health and the environment by:

- (1) Promoting appropriate voluntary investigations and cleanups of brownfields in Illinois.
- (2) Developing partnerships between Region 5, Illinois EPA, other Federal, State, local governmental agencies and other stakeholders, including representatives from the private sector and citizen/community groups, for the cleanup and redevelopment of brownfields.
- (3) Providing information and technical assistance to the key stakeholders to allow for informed decision making by property owners, prospective purchasers, lenders, public and private developers, citizens, municipalities, counties and elected officials.

¹Facilities which perform PCB cleanups under this MOU must, at this time, be limited to TACO Tier 1 cleanup due to regulatory limitations under the preemption provisions of Section 18 of TSCA and the applicable PCB disposal rules and policies (e.g. U.S. EPA's Spill Cleanup Policy, 40 CFR 761 Subpart G). Upon adoption of the pending amendments to TSCA PCB rules, Region V EPA anticipates modifying this MOU to include PCB cleanups under Tiers 2 and 3 of TACO.

- (4) Ensuring remediation of sites that protects human health and the environment and promoting revitalization of contaminated property for an appropriate use.
- (5) Promoting processes by which corrective action activities and consistent cleanup objectives are carried out.

III. Illinois EPA Administration of Title XVII

Illinois EPA's administrative responsibilities under Title XVII are divided into several subject matters, two of which directly pertain to the purposes of this MOU. First, Illinois EPA is directed to administer a program that provides standards and procedures for remediation activities for sites voluntarily entering the Site Remediation Program. (See Sections 58.6, 58.7, 58.8, and 58.10). These standards and procedures are set forth in 35 Ill. Adm. Code 740. Second, Illinois EPA is directed to establish, through the Illinois Pollution Control Board, risk-based remediation objectives. (See Section 58.5). These standards are incorporated in 35 Ill. Adm. Code 742.

A. Site Remediation Program (35 Ill. Adm. Code 740)

Under Title XVII, any "remediation applicant"² who proceeds under the Title may choose to have the Illinois EPA review and approve any of the remediation objectives for any or all of the "regulated substances of concern"³ by submitting plans and reports to Illinois EPA. Illinois EPA then carries out its review in conformance with Title XVII and its rules. Illinois EPA may approve, disapprove, or approve with conditions, a plan or report. Under Title XVII, Illinois EPA administers the Site Remediation Program using 35 Ill. Adm. Code 740. Part 740, in turn, requires remediation objectives to be established in accordance with 35 Ill. Adm. Code 742. Part 740 allows sites to enter the Site Remediation Program to the extent allowed by federal law, federal authorization, or by other federal approval, such as through this MOU.

In the case of Illinois EPA approving, or approving with conditions, a plan or report, Illinois EPA prepares a document known as a "No Further Remediation Letter." Within 45 days of a remediation applicant's receipt of such a letter, the remediation applicant must submit the letter to the Office of the Recorder or the Registrar of Titles of the County in which the site is located. When the letter is accepted and recorded in accordance with Illinois law so that it forms a permanent part of the chain of title for the site, the letter becomes effective. The remediation applicant then submits a copy of the letter, as recorded, to the Illinois EPA.

The Illinois EPA's issuance of the No Further Remediation Letter signifies a release from further responsibilities under the State of Illinois Environmental Protection Act in performing the

²"Remediation Applicant" means any person seeking to perform or performing investigative or remedial activities under Title XVII, including the owner or operator of the site or persons authorized by law or consent to act on behalf of or in lieu of the owner or operator of the site.

³"Regulated substance of concern" means any contaminant that is expected to be present at the site based upon past and current land uses and associated releases that are known to the "Remediation Applicant" based upon reasonable inquiry.

approved remedial action and shall be considered prima facie evidence that the site does not constitute a threat to human health and the environment and does not require further remediation under that act, so long as the site is maintained and utilized in accordance with the terms and conditions of the No Further Remediation Letter.

B. Tiered Approach to Corrective Action Objectives ("TACO") (35 Ill. Adm. Code 742)

TACO establishes a comprehensive tiered approach to the development of remediation objectives at sites evaluating cleanup needs in Illinois. This approach sets forth five independent methodologies for use, singly or in combination, in developing methodologies. The centerpiece of TACO is a set of Tier 1 baseline objectives for residential and commercial uses that were drawn directly from the technical concepts and principles established by USEPA's final "Soil Screening Guidance: User's Guide", EPA/540/R-96/018, PB96-963505 (April 1996)). TACO is used by the Illinois EPA in developing remediation objectives for remediation activities under the following programs:

- (1) Leaking Underground Storage Tanks (35 Ill. Adm. Code 731 and 732);
- (2) Site Remediation Program (35 Ill. Adm Code 740); and
- (3) RCRA Part B Permits and Closure Plans (35 Ill. m. Code 724 and 725).

IV. Eligibility for Site Remediation Program Under 35 Ill. Adm. Code 740

This agreement approves the use of 35 Ill. Adm. Code 740 with regards to contaminated properties in Illinois subject to RCRA or TSCA except for the following:

- (1) facilities which are required to have RCRA permits⁴ issued by either (i) Illinois EPA, (ii) U.S. EPA, or (iii) both agencies;
- (2) sites at which investigation or remedial action has been required by a Federal court order or an order issued by the U.S. EPA. Such orders include orders or consent agreement and consent orders issued under:
 - Section 3008(a), 3008(h), 3013, 7003, or 9003(h) of RCRA;
 - Section 16 of TSCA; and
 - Sections 106, 107, 120, and 122 of CERCLA;
- (3) units, and associated releases from such units, at which treatment, storage, or disposal of hazardous waste has occurred after November 19, 1980, and whose owners and operators

⁴RCRA Subtitle C permits for the treatment, storage or disposal of hazardous waste shall require corrective action for all releases of hazardous waste or constituents from any solid waste management unit at the permitted facility, regardless of the time at which waste was placed in the unit. Illinois EPA is authorized by U.S. EPA to issue, administer, and enforce such permits. U.S. EPA may also enforce such permits.

are required to (and have not yet) plan, conduct and certify closure and, if necessary, post-closure monitoring and maintenance pursuant to Subtitle C of RCRA;

- (4) properties which are the subject of an order or a consent agreement and consent order proposed to be issued by Region 5 under section 3008(a), 3008(h), 3013, 7003, or 9003(h) of RCRA; or section 16 of TSCA;
- (5) properties approved by, or seeking the approval of, U.S. EPA under TSCA (40 CFR Part 761, Subpart D) for the disposal or commercial storage or polychlorinated biphenyls (PCBs);
- (6) sites listed in the CERCLA National Priorities List (40 CFR Part 300, Appendix B); and
- (7) sites subject to 35 Ill. Adm. Code 807, 810-817, or 830-832 that have not satisfied all development, operation, and closure requirements (including postclosure) applicable under 35 Ill. Adm. Code 807, 810-817, or 830-832.

V. Principles

A. Although nothing in this MOU constitutes a release from liability under applicable Federal law, generally Region 5 does not anticipate taking any federal environmental cleanup action under RCRA or TSCA at a site, or portion thereof where the Illinois EPA has approved a remediation as having met the requirements of 35 Ill. Adm. Code 742 through:

- (1) a "No Further Remediation" letter issued pursuant to 35 Ill. Adm. Code 731, 732 or 740;
- (2) a Part B permit issued pursuant to 35 Ill. Adm. Code 724; or
- (3) a closure certification approval issued pursuant to 35 Ill. Adm. Code 724 or 725.

This principle shall not apply if Region 5 determines that there may be an imminent and substantial endangerment to public health, welfare or the environment at a site, or portion thereof, where Illinois EPA has approved a remediation as having met the requirements of 35 Ill. Adm. Code 742. This principle shall not apply if the letter, permit or approval ceases to be in effect. If, following the issuance of the No Further Remediation Letter, permit or approval by Illinois EPA, conditions at the site previously unknown to Illinois EPA and/or Region 5 indicate that the response action undertaken is not protective of human health and the environment, Illinois EPA and Region 5 reserve the right to take necessary response action to protect human health and the environment.

B. Pursuant to this MOU, Region 5 approves the use of 35 Ill. Adm Code 740 for sites subject to RCRA or TSCA only at eligible sites. In this light, Region 5 acknowledges the use of 35 Ill. Adm. Code 740, in conjunction with the applicable requirements of 35 Ill. Adm. Code 731 or 732, for remediation of sites subject to RCRA Subtitle I, as long as the remediation meets the requirements of 35 Ill. Adm. Code 742.

VI. Reporting

Upon request, Illinois EPA will provide to Region 5 the following:

- (1) The name and location of sites with regard to which remediation applicants are seeking Illinois EPA review and approval pursuant to 35 Ill. Adm. Code 740; and
- (2) The Illinois EPA review status of applications, and the status of remediation applicants' compliance with plans or reports approved, disapproved, or approved with conditions, by Illinois EPA pursuant to 35 Ill. Adm. Code 740.

To the extent practicable, for those sites identified by the Illinois EPA pursuant to VI,(1), Region 5 will provide notice to Illinois EPA in an enforcement confidential manner when U.S. EPA is proposing to issue an environmental cleanup order under Section 3008(a), 3008(h), 3013, 7003, or 9003(h) of RCRA; or Section 16 of TSCA.

VII. Reservation of Rights

Notwithstanding any provision in this MOU, Region 5 and Illinois EPA reserve any and all rights or authority that they respectively have and nothing in any provision of this MOU limits or affects the authority or ability of either Agency to take any action authorized by law.

This MOU will be reviewed on an annual basis by Region 5 and Illinois EPA. In addition, at the request of either Agency, this MOU may be reevaluated and modified as appropriate.

VIII. Signatures

This MOU has been developed by mutual cooperation and consent, and hereby becomes an integral part of Illinois EPA's and Region 5's working relationship. The effective date of this MOU is July 1, 1997.

For the Illinois Environmental Protection Agency

Mary A. Gadeau
Director
Illinois Environmental Protection Agency

6/23/97
Date

For the U.S. Environmental Protection Agency

David A. Ulrich
Acting Regional Administrator
U.S. Environmental Protection Agency, Region 5

June 13, 1997
Date

(4F) A Rocky Boat: Navigating Through Brownfield Legal Issues

Thursday, September 4, 1997

3:00 p.m. - 5:00 p.m.

Description: Seasoned professionals and novices alike claim that navigating the maze of government rules and regulations is a major challenge. Listen to the experts discuss how to eliminate delays, untangle the bureaucracy, and move properties into productive reuse.

Location: Room 1203A

Speakers and Affiliation:

Mr. Kenneth A. Brown (Moderator)

National Association of Local Government Environmental Professionals

Mr. Robert J. Devaney, Jr.

GenCorp, Inc.

Mr. Michael R. Goldstein

Gunster, Yoakley, Valdes-Fauli and Stewart, P.A.

Mr. Seth D. Kirshenberg

Kutak Rock

MR. KENNETH A. BROWN

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. ROBERT J. DEVANEY, JR.

Mr. Devaney, Jr. is a graduate of the University of Pittsburgh. For more than ten years, Mr. Devaney, Jr. has been the director of environmental engineering/safety at GenCorp, Inc. His professional associations and memberships include the Air and Waste Management Association, the American Institute of Chemists, the American Public Health Association, the National Environmental Health Association, the New York Academy of Sciences, the American Association for the Advancement of Science, the American Management Association, the National Fire Protection Association, the Environmental Assessment Association, the Water Environment Federation, and the American Chemical Society. He has been a contributing author to articles in several professional journals, and his achievements include the design, development and implementation of safety and environmental programs to assess and remediate old industrial sites resulting in economic revitalization and environmental restoration.

MR. MICHAEL R. GOLDSTEIN

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. SETH D. KIRSHENBERG

Mr. Seth D. Kirshenberg is an Associate in the national real estate and finance group of the law firm of Kutak Rock in Washington, D.C. His practice focuses on assisting local governments to finance, reuse, and redevelop brownfields properties and closing military installations and downsizing Department of Energy facilities. Further, he works with Congress, the Administration and federal agencies to assist his clients. Mr. Kirshenberg serves as the Executive Director of the Energy Communities Alliance (ECA), a national organization representing local governments affected by the downsizing of Department of Energy facilities.

Previously, Mr. Kirshenberg served as the Director of Economic Development for the International City/County Management Association (ICMA), an organization of professional city and county administrators. He assisted local governments with brownfields, Superfund and military base reuse issues through direct consulting and representing them in the public policy arena.

Mr. Kirshenberg regularly speaks at national conferences on brownfields issues including property conveyance, environmental cleanup, and financing, and has published numerous articles on redeveloping federal facilities, brownfields, and Superfund. He recently co-authored several books including:

- *Brownfields Development: A Guide for Local Governments*, September 1997
- *Brownfields: Options and Opportunities — ICMA MIS Report*, June 1997

- *Military Base Reuse: A Navigational Guide for Local Governments*, March 1997
- *Cleaning Up After the Cold War: The Role of Local Governments in the Cleanup and Reuse of Federal Facilities*, 1996

Mr. Kirshenberg holds a Juris Doctorate degree from the Washington College of Law at the American University and a Bachelor of Science in business administration from the University of Florida. His bar affiliations include those of the Florida and the District of Columbia Bar.

**DOCUMENTS THAT SUPPORT
PANEL 4F: A ROCKY BOAT: NAVIGATING THROUGH BROWNFIELD LEGAL
ISSUES**

**Remediation and Redevelopment Project
GenCorp Inc. Lawrence Location
Innovative Approach**

Under the leadership of Robert J. Devaney, Jr., GenCorp Inc., an Ohio based corporation, has instituted a phased remediation and redevelopment project for the long-term economic revitalization of a significant mill complex in Lawrence, Massachusetts, an old industrial city. By proactively working with over twenty federal, state and local regulatory agencies and departments, a unique public/private initiative has been forged to enhance the economic, health, safety and environmental conditions within the distressed city. With the involvement of an Interagency Task Force, comprised of the U.S. Environmental Protection Agency, U.S. Army Corps of Engineers, and Massachusetts Department of Environmental Protection and assembled for its Lawrence project, GenCorp Inc. has reconciled many physical, technical and engineering site constraints with the different regulatory and permitting compliance requirements. The achievements of these efforts have been environmental restoration, economic redevelopment and other positive results, all accomplished with significant cost effectiveness. On-going since the mid-1980's, these evolving efforts rely on a commitment to seeking innovative approaches and applying them in partnership with the different public stakeholders under the spirit of the national and state Brownfields agendas.

Roles Local Governments Can Play In Brownfield Reuse

In order to effectively promote the reuse of brownfields, a local government needs to find a role in which it can have an impact. In some ways this can be difficult. The regulatory framework that determines the fate of many contaminated sites falls under the jurisdiction of federal and state agencies, most of the capital that will be needed to fund development is controlled by the private sector, and many decisions about site reuse will be in the hands of the property owner. Nonetheless, local governments are critical players in most successful brownfield projects. Roles that local governments can play include:

Brokering Reuse

Local governments can help to match sites with prospective reusers. This can be done both through general efforts to provide information (see Chapter 9) and by identifying specific potential reusers for particular sites. The city of Trenton, New Jersey, for example, was looking for a way to reuse a portion of a former electrical components factory. At the same time the city was working with a local swimming pool cover company that was considering leaving the area. The city was able to facilitate an agreement under which the company moved into the vacant factory.

Providing Funding

Local governments can use their own resources to fund portions of redevelopment costs. This funding is particularly useful if it is used for front end costs, such as assembly, assessment, remediation, and preparation of sites. By paying for assessment and remediation, Chicago, Illinois' Brownfield Pilot Program spurred private companies to invest in and reuse a number of brownfields. Other types of financial benefits, such as tax incentives, can also be used to encourage reuse. Cook County, Illinois, allows owners of some brownfield sites to pay reduced property taxes during remediation and redevelopment. (See Chapter 13 for more on Chicago and Cook County and Chapter 6 for more on local financial tools.)

Coordinating Other Public Funding Streams

Both state and federal governments have programs that can pay for some of the costs of brownfield reuse. Local governments can inform private sector parties about these programs, apply for programs that require local government involvement, and look for ways to integrate different funding sources. Creative use of state funding helped Lawrence, Massachusetts, to reuse the site of an old paper factory. By shifting the location of an already planned roadway by one hundred feet, the city was able to use state highway funds for demolition and improvements to the brownfield site. (See Chapter 6 for more on public funding.)

Acting as a Liaison With Environmental Regulatory Agencies

Local governments can serve as a link between private companies and community groups on one hand and state and federal environmental agencies on the other. They can also work with agencies to ensure that they handle regulatory issues promptly and in a way that reflects local concerns. For example, the redevelopment of a site in Louisville, Kentucky, was blocked by a lien EPA held on the property as a result of remediation costs the agency had absorbed eight

years earlier. After the city asked that the lien be released, EPA discovered that the statute of limitations had expired and forgave the lien.

Assuming Liability for Contamination

In some cases, it may make sense for local governments to agree to take on liability for remediation at sites where the perception of liability is preventing development. This can quickly remove the primary deterrent to reuse. Because it is potentially extremely costly, this step should be taken with a great deal of caution. Wichita, Kansas, found that redevelopment plans for much of its downtown seemed to have been derailed by the discovery of a groundwater plume. The city entered an agreement under which it divided responsibility for remediation costs with the principal responsible party (PRP).

Integrating Brownfield Development With Other Community Priorities

Local governments are uniquely able to look at a brownfield in the context of the community's broader plans and needs. Because of this, it can act to encourage redevelopment projects that fit into those plans. The city government provided financial support for the development of a shopping center with a full service grocery store in northwest Minneapolis, Minnesota. This delivered an important benefit to residents, who had previously had to drive outside the neighborhood or pay high prices at convenience stores. A local government can also identify high priority sections of the city and focus brownfield and other development efforts on those areas.

Involving Community Residents in Development Plans

Most local governments have the capacity to bring community residents into the reuse planning process. This can provide important benefits to a redevelopment project, and can help a local government to meet its obligations to its citizens. Dallas, Texas, will establish twelve to fourteen brownfield Citizen Advisory Focus Groups around the city to provide input into the city's brownfield effort.

Assisting in the Transfer of Property

Although most brownfields transactions are regular real estate transactions, the local government may be able to assist the developer through the process. By assisting with zoning or ensuring the proper permits are obtained in a timely manner, the property can become more attractive to prospective developers. Some local governments have worked with larger developers to streamline the permit and zoning process by working with the developer to create a standardized zoning and permit process overseen by municipal employees.

Answers To Commonly Asked Brownfields Questions

Question	Short Answer
What is a brownfield?	Generally, brownfields are defined as abandoned, idled, or under-used industrial or commercial facilities where expansion or redevelopment is complicated by <i>real or perceived</i> environmental contamination. Some federal, state, and local programs use other definitions.
How can a local government determine if there are brownfields within its jurisdiction?	There is no easy way to identify all the brownfields in a community. It is likely that any area with large numbers of older industrial facilities will have some brownfields. EPA and many state agencies maintain inventories of contaminated sites. Old industrial sites that are in arrears on taxes are likely to be brownfields. Developers will likely be able to tell whether contamination is an impediment to development in a community, and residents can often be helpful in identifying particular sites.
What benefits can brownfield development have for a community?	Brownfield redevelopment can increase local tax revenues and employment, particularly in areas where there is a shortage of quality sites for commercial and industrial development. By removing blight, brownfield reuse can provide a boost to the business climate and the morale of residents. In addition, redevelopment can remove threats to the health of community residents by speeding cleanup of contaminated sites. Furthermore, reusing these sites makes efficient use of existing infra-structure and provides an alternative to development of farmland and open space.
How can contamination act as an obstacle to development?	Contamination or perceived contamination at brownfields can impede reuse by increasing financing and development costs, creating uncertainty about costs and liability for remediation, adding to the time needed to carry out redevelopment, blocking access to capital, and prompting community concerns.
What roles can a local government play in the development of a brownfield site?	As with other economic development projects, local governments can play a variety of roles in the redevelopment of brownfield sites, including owning and developing sites, brokering reuse, financing development, involving the community, and others.
What departments within a local government typically take the lead in promoting brownfield reuse?	Often economic development, planning, and environment departments play a leadership role. Many communities have found that including a range of other departments, such as law or public health, and closely coordinating the activities of different departments, can make brownfield efforts more effective. Some communities have created special authorities to oversee brownfield related activities.

What information should the local government have before becoming involved with the redevelopment of a brownfield site?	Key information includes the size of the site, estimated current value of the property and value if it were clean, inventory and value of existing buildings and infrastructure, current use and zoning, potential future land use, owner and investor interest, presence on state and federal hazardous waste inventories and priority lists, environmental assessment data, estimated cost of cleanup, and land use on nearby sites.
What factors should be considered when deciding whether to reuse or demolish an existing structure?	Important considerations include integrity and adaptability of existing buildings and infrastructure, cost of demolition versus restoration, historical value, and zoning constraints.
What procedures can a local government use to acquire contaminated properties?	Brownfield properties can be acquired through many of the same means as other properties, such as eminent domain and tax foreclosure. Some special considerations, including the assessed value of a contaminated site and the risk of liability to the local government, need to be taken into account when acquiring brownfields.
What are potential reuse alternatives for brownfield sites?	Brownfields have been successfully reused for industrial, commercial, residential, recreational, and other uses.

Financing

Why are some lenders reluctant to finance redevelopment of contaminated sites?	Many lenders are concerned that contamination will endanger the value of their collateral, will make it difficult for them to foreclose or take other measures if the borrower is having difficulty paying back the loan, and will create a risk that they will be held liable for remediation costs.
How do banking regulators affect financing for brownfield development?	State and federal financial regulators require some lenders, including banks and savings and loans, to limit the level of risk in their lending portfolio. As a result, lenders may feel that they are unable to make loans for activities, such as the redevelopment of contaminated properties, that are perceived by regulators to be risky. Several regulatory agencies, including the Federal Deposit Insurance Corporation, the Comptroller of the Currency, and the Office of Thrift Supervision, have issued specific policies concerning environmental risk.
What can be done to reduce lenders' concerns about brownfield redevelopment?	Strategies for reassuring lenders include informing them about protections provided by federal and state laws, providing them with examples of lenders who have successfully made loans for brownfield reuse, and strategies such as environmental insurance that assure that money will be available to cover unexpected remediation costs.

What other incentives can the public sector provide for private involvement in brownfield development?	Many of the incentives that are used for other economic development projects, such as infra-structure development and tax abatements, are equally applicable at brownfield sites. In addition, some special incentives, including grants for preliminary environmental assessments and streamlining of regulatory processes, may be particularly useful for encouraging brownfield development.
Are there state or federal programs which could be used to support brownfield development?	A number of state and federal agencies provide grants, loans and tax incentives to developers of brownfields. In addition, many government programs, such as Community Development Block Grants, can be used to support brownfield redevelopment even though they are not explicitly brownfield programs.
What is an EPA brownfield pilot grant and how can a local government apply for one?	A brownfield pilot grant is an award of up to \$200,000 to a local, state, or tribal government that can be used activities prior to remediation. Eligible activities include identification, assessment, characterization, and remediation planning at brownfield sites. The grants are awarded through a competitive process. A local government interested in applying should obtain an application from EPA.
How can a local government identify other area organizations that are receiving federal funding to work on brownfield related issues?	There is no single source for identifying recipients of federal funding, but the regional EPA brownfield coordinator will be able to provide some information and suggest contacts at other federal agencies.

Insurance

What is environmental insurance and what impact can it have on brownfield redevelopment?	Environmental insurance policies protect participants in redevelopment of contaminated properties from contamination related risk. They can facilitate brownfield reuse by bringing added certainty to the development process. Premiums and deductibles both tend to be very high however, so insurance only makes sense under certain circumstances.
What role can local governments play in facilitating the use of environmental insurance policies at brownfields?	Local government strategies to facilitate use of insurance include brokering shared risk pools and agreeing to pay for a portion of the deductible provided in a policy.

Liability

Who is potentially liable for contamination at a brownfield site?	Federal law makes a range of parties, including owners and operators of properties and generators and transporters of hazardous wastes potentially liable for cleanup costs. Liability under state law varies.
Who is exempt from liability at brownfield sites?	Lenders who do not participate in the management of a property are exempt from liability in most cases. A provision in the 1986 amendments to the Superfund law also protects "innocent land owners" from liability under some circumstances, but this exemption is very difficult to invoke. Many state voluntary cleanup programs allow parties that remediate contamination at a site to obtain exemption from liability for contamination discovered later.
Can a local government be held liable for contamination at a property acquired involuntarily through tax delinquency, bankruptcy, or abandonment?	In some cases, a local government can be held liable for remediation costs at a property that was acquired involuntarily but this is very rare.
Can a local government provide effective assurance of protection from liability to private parties?	A local government can not exempt a party from liability for contamination, but it can work with state and federal officials to provide assurances that a party will not be held liable, and it can agree to assume remediation costs itself.
Which state or federal agencies need to be involved in the remediation of a contaminated property?	The state environmental agency needs to be involved in most significant environmental cleanups. The state agency will be able to provide information on whether US EPA or other agencies need to be notified
What federal or state laws and regulations apply to the redevelopment of a brownfield site?	The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund) and the Resource Conservation and Recovery Act (RCRA) are the two most important federal laws governing contaminated sites. Most states have state Superfund, environmental cleanup, and other laws that affect brownfields.
How do state programs such as voluntary cleanup affect redevelopment of a brownfield site?	State voluntary cleanup programs facilitate redevelopment of brownfields in a number of ways, including streamlined cleanup processes, alternate cleanup standards, liability assurances, technical guidance and financial support. Programs vary from state to state.

Technical Expertise

If the local government staff does not have the training and expertise to deal with environmental issues at a brownfield site, where can it go for assistance?	A local government has several options for obtaining expertise on environmental issues, including training current staff, hiring additional staff, relying on state or federal technical expertise, or contracting with outside consultants.
What factors should be considered when selecting environmental consultants?	Important considerations in assessing consultants include timeliness, competency, experience on similar projects, cost, willingness and capacity to give good advice, sufficient assets or insurance to stand behind their work, resources to carry out work quickly and effectively, capability to do remediation as well as assessment work, willingness to assume some project risks by contract, and ability to work well with and take directions from the client.

Cleanup Standards

How clean does a site need to be to be redeveloped?	Cleanup standards vary from state to state and from site to site.
What do the terms risk assessment and risk management mean?	Risk assessment is the scientific evaluation of potential threats caused by environmental hazards. Risk management is the set of actions taken to protect health and the environment based on information gathered during risk assessment.
How can consideration of risk affect environmental cleanup at a brownfield?	With specific information about what level of cleanup is needed to protect health and the environment, it is possible to design remediation measures that are more cost-effective than they would otherwise be. Many state hazardous waste laws permit cleanup standards based on risk.
How do plans for future land use affect environmental cleanup at a brownfield?	In many states, properties can be cleaned up to standards based on future land uses.
What measures can be used to control future land use at sites where cleanup standards based on future use are used?	Future land use controls generally fall into two categories: <i>proprietary controls</i> such as deed restrictions, and <i>governmental controls</i> such as zoning rules.

Innovative Technology

How can innovative environmental technologies affect redevelopment at a brownfield?	Innovative technology can make remediation at brownfield sites cheaper, faster, and more thorough.
What types of innovative technologies can be used at brownfields?	A wide range of technologies can be used, including assessment technologies such as ground penetrating radar, cleanup technologies such as bioremediation. Because environmental technology is such a rapidly advancing field, new methods are constantly being developed.

Community Relations

Why should a local government involve citizens in planning for brownfield development?	Early and effective citizen involvement in planning brownfield reuse can generate information and ideas about what will really benefit communities, ensure that all groups in the community have the opportunity to have they're voices heard in the planning process, and avoid unnecessary disputes and delays later.
What is environmental justice and how does it relate to brownfield redevelopment?	Environmental justice is the fair treatment and meaningful involvement of all citizens in environmental issues, regardless of race, ethnicity, or income.
How can a local government encourage citizen involvement in brown-field development planning?	Tools for promoting involvement include public meetings, newsletters, Internet sites, public access cable stations, and outreach to community groups

(4G) Trading Places: A Brownfields Redevelopment Role Play

Thursday, September 4, 1997

8:00 a.m. - 12:30 p.m. (Please note: this is a double-length session.)

Description: Look at brownfields cleanup and redevelopment issues in a new way. This double-length session will help stakeholders see the many sides of the issue. Brownfields real estate transaction scenarios involving publicly and privately owned properties will be the focal point of this extended session. Participants will be provided actual site histories and facts to build understanding of issues, then engage in smaller group discussions to come up with solutions.

Location: Room 1203C

Speakers and Affiliation:

Ms. Lori Boughton (Moderator)

U.S. Environmental Protection Agency, Office of
Enforcement and Compliance Assurance

The format of this session is intended as a role play exercise. Various stakeholders and attendees will participate in interactive scenarios.

Ms. LORI BOUGHTON

[Biography was not available at time of printing. Please refer to conference addendum.]

(4H) Comfortable? A Look at Government Comfort and Assurance Issues

Thursday, September 4, 1997

3:00 p.m. - 5:00 p.m.

Description: How much comfort do federal and state comfort policies provide for brownfields cleanup and redevelopment? Investors, redevelopers, and lenders will want to hear leading authorities discuss enforcement comfort and assurance issues.

Location: Room 1204A-B

Speakers and Affiliation:

The Honorable Steven A. Herman (Moderator)

U.S. Environmental Protection Agency, Office of
Enforcement and Compliance Assurance

The Honorable Lois J. Schiffer

U.S. Department of Justice

Mr. Alan C. Williams

State of Minnesota, Office of the Attorney General

THE HONORABLE STEVEN A. HERMAN

[Biography was not available at time of printing. Please refer to conference addendum.]

THE HONORABLE LOIS J. SCHIFFER

[Biography was not available at time of printing. Please refer to conference addendum.]

MR. ALAN C. WILLIAMS

[Biography was not available at time of printing. Please refer to conference addendum.]

(4I) Smooth Sailing: Case Studies in Brownfields Success

Thursday, September 4, 1997

3:00 p.m. - 5:00 p.m.

Description: As a follow-up to navigating through brownfields legal issues, hear key stakeholders discuss the course they are following as they 'sail' through the maze of government rules and regulations and spotlight the successes achieved.

Location: Room 1201

Speakers and Affiliation:

Ms. Barbara Coler (Moderator)
The Honorable Rosemary M. Corbin
Mr. Richard A. Kirschner

State of California, Environmental Protection Agency
City of Richmond, California
Sunday Breakfast Mission

MS. BARBARA COLER

Ms. Coler received bachelor's and master's degrees in biological sciences from the University of Kansas. She was a research associate for the State of Kansas, primarily involved with environmental monitoring. Subsequently she was a consultant at the Savannah River Nuclear Production Plant in South Carolina. Ms. Coler has been with the Site Mitigation Program of California Environmental Protection Agency's Department of Toxic Substances Control (DTSC) since 1986. She is the chief of the Statewide Cleanup Operations Division of the Site Mitigation Program. She manages approximately 135 staff of the division who are housed in five regional office locations and headquarters. Her division is responsible for site identification and prioritization; review and validation of DTSC's "site" database; investigation and remediation of all DTSC sites (all state Superfund sites, Voluntary Cleanup Program and National Priority List sites except military facilities and limited special projects); all site mitigation revenue generation through cost recovery and case development, and development and implementation of the Voluntary Cleanup Program. The Voluntary Cleanup Program is the primary vehicle used by DTSC to foster brownfields redevelopment. In July 1996, she assumed management of the Expedited Remedial Action Program, a pilot alternative voluntary program which provides several creative incentives including liability incentives for responsible parties. She was team leader of the Quality Improvement Project which addressed the Brownfields Initiative, and completed DTSC's Prospective Purchaser Policy in July 1996. Ms. Coler is DTSC's primary coordinator on brownfields issues. She is the Chair of the Voluntary Cleanup Task Force for the nationwide organization, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) and has been the lead state person on issues regarding state/U.S. Environmental Protection Agency's (EPA) roles in Voluntary Cleanup Programs. She also represents California on ASTSWMO's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Committee.

THE HONORABLE ROSEMARY M. CORBIN

Rosemary M. Corbin has been the mayor of Richmond, California, since 1993. Prior to that she was a member of the Richmond City Council for eight years. During her tenure as an elected official, she has specialized in solid and hazardous waste issues.

Mayor Corbin represents Richmond on Contra Costa County's Hazardous Materials Commission and on a regional solid waste joint powers authority. She also serves on the Energy and Environment Committees of the League of California Cities, the National League of Cities, and the U.S. Conference of Mayors.

The nine San Francisco Bay area counties have joined together to plan for the disposal of hazardous waste and to reward businesses for efforts they have made to ensure a clean environment. Mayor Corbin chairs that effort.

Mayor Corbin is a librarian by profession with a specialty in government documents. She has worked at Stanford University, U.C. Berkeley, and Richmond and San Francisco Public Libraries. The American Library Association published a series of articles she wrote on foreign documents.

MR. RICHARD A. KIRSCHNER

Mr. Richard Kirschner was a former financial analyst for the DuPont Company. Through corporate downsizing and after 30 years of volunteering, Mr. Kirschner was appointed the executive director of the Sunday Breakfast Mission in 1994. The Mission has served the Wilmington, Delaware, community for 104 years, 365 days a year of supplying food and shelter to the homeless.

In 1995 the Mission decided to expand its continuum of care through the creation of Gateway House, with the hope of establishing single room residences for individuals who want to return to the mainstream of society. The Mission has purchased and is in the process of renovating an abandoned apartment building directly across the street.

Prior to the apartment building, there was a leather processing factory operating from 1868 to 1961. Because of this industrial use, the soil is contaminated with arsenic, PAHs, lead, and the building contains asbestos.

Mr. Kirschner's presentation will cover the issues around complying with the State of Delaware's environmental regulations.

**DOCUMENTS THAT SUPPORT
PANEL 4I: SMOOTH SAILING: CASE STUDIES IN BROWNFIELDS SUCCESS**

Richard A. Kirschner

Outline for Brownfields '97

- ° History of Sunday Breakfast Mission
- ° Expansion of continuum of care.
- ° Acquisition of property and building.
- ° Finding partners
- ° Environmental compliance *
- ° Hidden hazards
- ° Opening new doors.

* Slides depicting compliance

Environmental Cleanup in Oregon

Oregon Department of Environmental Quality

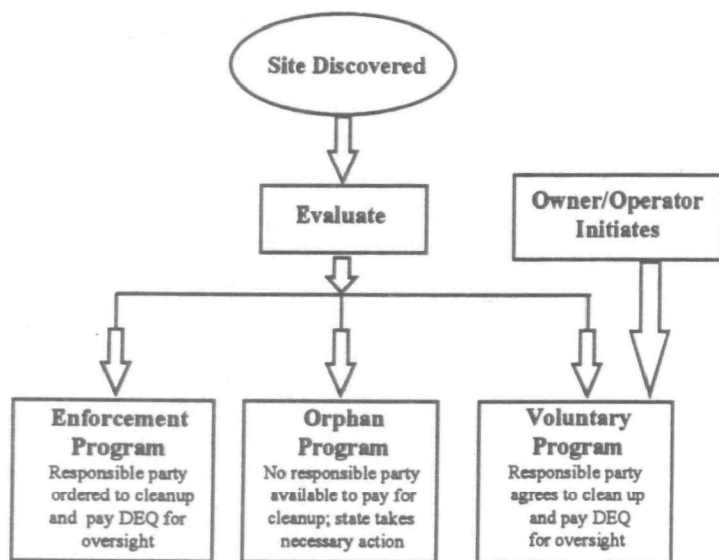
Environmental Cleanup: What is it and why you should care . . .

The environment can be contaminated in many different ways. A leak from an underground storage tank, a spill of toxic substances from a tanker truck, or poor waste management practices at a business, can lead to contamination of soil, groundwater or surface water.

These types of contamination threaten both human health and the environment and it is the responsibility of the Department of Environmental Quality (DEQ) Environmental Cleanup Program to manage these threats properly. Throughout the state, DEQ staff work cooperatively with owners, operators and government agencies to address releases of hazardous substances effectively and efficiently.

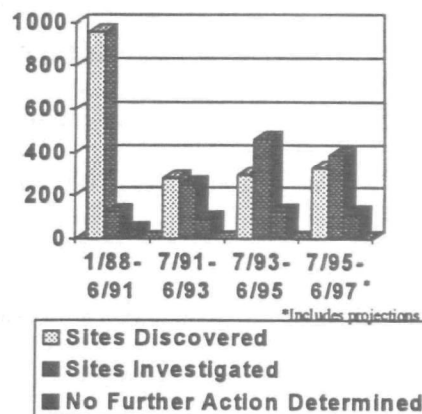
Routes to cleanup . . .

DEQ's Environmental Cleanup Program has three major avenues to accomplish cleanup and protect human health and the environment:



DEQ also administers a Dry Cleaner Program, an Underground Storage Tank Program and a Spill Program. In all of these cleanup programs, DEQ works with responsible parties and/or prospective buyers to develop cost-effective cleanup approaches which will protect human health and the environment.

How are we doing?



With a few exceptions, Oregon state law does not require that DEQ be informed of existing contamination. Therefore, the sites that are discovered reflect only those that DEQ is aware of. Investigations and cleanups can and do occur without DEQ's knowledge or oversight.

Examples of DEQ's efforts . . .

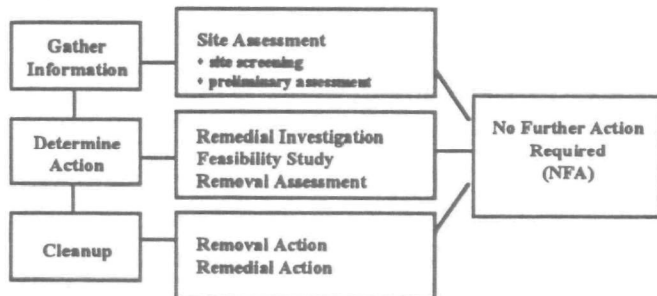
As a result of cleaning up or treating contaminated property, DEQ protects human health and the environment and facilitates the productive reuse of that property. Here are just a few of the sites DEQ is working on:

Due to DEQ's involvement . . .

- At a site along the northwest coast, 20 acres of valuable real estate will be redeveloped for mixed residential and commercial uses.
- In west-central Oregon, people living in 17 households no longer drink solvent contaminated water.
- At a site in southern Oregon, school children no longer play near leaking drums of hazardous materials.
- In southwestern Oregon, at a spill in the Yoncalla River, wildlife were relocated to protect them from contaminated habitat.
- At a site in the mid-Willamette Valley and through a cooperative relationship with a local government, 18 acres along the Willamette River have been developed into a municipal park.
- In south-central Oregon, the Sprague River, which contains endangered species, was protected from 3500 gallons of diesel fuel released from an accident involving a tanker truck.

How cleanups happen . . .

There are three major steps in the cleanup process: (1) gather site information; (2) determine the appropriate action for the site; and (3) clean up the contamination.



Gathering site information includes obtaining and evaluating available information about the site and determining priority for further action. A Site Screening is a desktop evaluation of available information and prioritization of the need for further action. A Preliminary Assessment is a more comprehensive evaluation which includes a site visit and may include sample collection from contaminated soil and/or groundwater.

Determining the appropriate clean-up action requires a more detailed analysis of information regarding the site. A Remedial Investigation is an in-depth study conducted to determine the extent of contamination and associated risks. The Feasibility Study identifies alternatives for managing the site including cleanup. For each remedial alternative, the feasibility study evaluates protectiveness, feasibility and cost reasonableness. A Removal Assessment identifies and evaluates interim cleanup actions necessary to address immediate threats to human health and the environment.

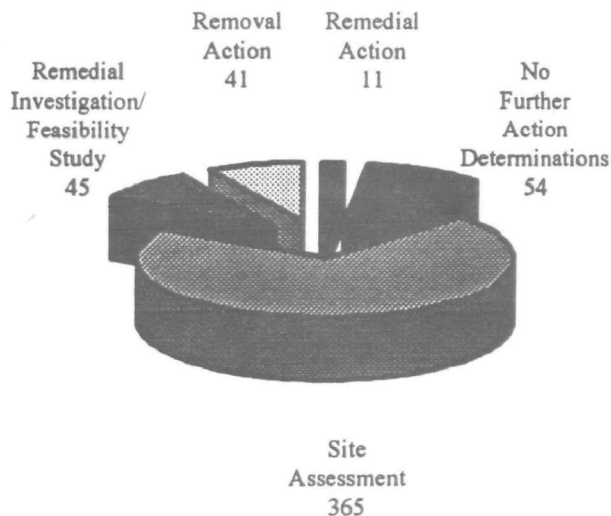
Cleanup can occur through a removal action and/or a remedial action. A Removal Action is performed when there is an imminent threat requiring an immediate or quick response to deal with contamination to remove or stabilize that threat. It may mean "digging and hauling" contaminated soil, or installing security fencing to limit human exposure to contaminants. A Remedial Action includes actions consistent with a permanent solution and is based on results of the feasibility study and public comments.

DEQ may determine at any point during the cleanup process that **No Further Action (NFA)** is required. Typically, this will occur after completion of the required removal or remedial actions. An NFA determination can be made earlier if the preliminary assessment or other information indicates that the contamination does not pose a threat to human health or the environment, is below "protective levels" under the law, and will not cause significant adverse impacts on the beneficial uses of ground water or surface water.

Who pays for Environmental Cleanup . . .

When it enacted the Environmental Cleanup Law in 1987, the Legislature intended that owners or operators pay for cleanup. The law requires DEQ to recover costs associated with its work at contaminated properties. "Cost Recovery" replenishes state funds so more cleanups may be completed. DEQ will pay for cleanup, using Orphan Site Funds, if the site is a high public health or environmental priority and if the owner or operator refuses to do so, or if they are financially unable to conduct the cleanup.

Snapshot of sites in DEQ's cleanup process in 1996 . . .



DEQ tracks site information in the Environmental Cleanup Site Information System (ECSI). ECSI is a permanent electronic tracking system which contains more than 1800 sites that are in various stages of investigation and cleanup. This database also includes sites where investigations have not yet occurred and sites where no further action is required.

For More Information . . .

regarding DEQ's Environmental Cleanup Programs
or the locations of and/or contacts within Regional Offices
contact (503) 229-5913 or 1-800-452-4011 (within Oregon)

or visit us at:

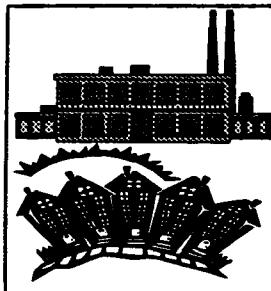
Oregon Department of Environmental Quality
Waste Management and Cleanup Division (8th floor)

811 SW 6th Avenue, Portland, Oregon 97204

or visit us on the Internet at:

<http://www.deq.state.or.us/wmc/cleanup/clean.htm>

CLEANING UP OREGON'S BROWNFIELDS



What is a BROWNFIELD?

A brownfield is a vacant or underutilized commercial or industrial property where environmental, economic and social obstacles hinder use and redevelopment.

Why should Oregon clean up its brownfields?

- Contaminated sites can pose health and safety risks to the surrounding community and degrade the quality of Oregon's natural resources
- Redeveloping brownfields helps manage growth by:
 - making use of the existing infrastructure
 - discouraging development of uncontaminated properties
 - preserving farmland and pristine rural areas
- Reused industrial sites enhance the community by providing jobs and increasing the tax base
- Neighboring properties are also affected by these unsightly locations and by the stigma of contamination, which often leads to declining real estate values



What are the barriers to redeveloping brownfields?

- Fear that the cost to investigate, control pollution or clean up contamination will be high relative to the property's potential value
- Lack of information about the existence or extent of contamination
- Concern about liability for past contamination discourages potential purchasers
- Uncertainty about regulatory processes, time-frames and the level of cleanup required
- Difficulty of obtaining financing for sites with unquantified risk



**For more information, contact
Alan Kiphut at (503)229-6834
Or, to be directed to a DEQ office in your area
call Waste Management and Cleanup
Information at (503)229-5913**



How does DEQ help brownfield redevelopment?

Ensures that cleanups protect human health and the environment:

- Performs site assessments to determine the extent of contamination
- Offers an effective Voluntary Cleanup Program which provides oversight of cleanup efforts outside of the enforcement mode
- Cleans up high priority "orphan" sites when owners can't afford to or are not known

Identifies and removes redevelopment barriers:

- Provides liability relief to buyers through Prospective Purchaser Agreements
- Supports flexible approaches to cleanup, from "cookbook" standards and generic remedies to site-specific risk-based decisions
- Performs cleanup oversight that is responsive to the time lines and other requirements of individual development projects
- Oregon cleanup law provides liability protection for lenders in most cases

Forms partnerships to facilitate the reuse of brownfield properties:

- Provides technical assistance to local governments
- Coordinates with community groups, businesses and government agencies working on cleanup projects
- Works with other parties to form redevelopment financing strategies



DEQ's Brownfield Redevelopment Projects

DEQ has been involved in a wide variety of brownfield projects, ranging from small rural industrial sites to a community-based revitalization of a multi-property area. Some projects turn unused properties into new businesses, while others provide urban greenspaces. The Astoria Millsite Project is a good illustration.

Focus: Astoria Millsite Project

When operations ceased at this former plywood mill in 1991, the owners planned to address the contamination through DEQ's Voluntary Cleanup program. Further investigation revealed more severe environmental problems and the costs eventually exceeded the owners' ability to pay for cleanup. Having determined that the site was a high environmental priority, DEQ used its orphan site funds to mitigate the worst threats.

The City of Astoria began working with DEQ early on in the restoration of this 20-acre site located in a developed area near the Columbia River. The City plans to purchase the property for mixed residential and commercial development. As a part of the purchase agreement, the City expects to reimburse the State for a substantial portion of the cleanup costs, which will, in turn, provide DEQ funds to clean up additional sites.



OREGON'S PROSPECTIVE PURCHASER PROGRAM

The Department of Environmental Quality uses Prospective Purchaser Agreements as a tool to facilitate the cleanup and productive use of properties contaminated with hazardous substances.

Investment in properties with existing contamination can be uncertain because of the strict liability scheme under state and federal laws. Prospective Purchaser Agreements benefit buyers by limiting their liability, and benefit the State and local jurisdiction by facilitating the cleanup, returning the property to productive use, and allowing the purchaser to provide *substantial* public benefits to the community.

Who is a Prospective Purchaser?

A prospective purchaser can be an individual, business, government body, or any other entity with the interest and ability to purchase contaminated property, where the contamination was neither caused nor aggravated by the "prospective purchaser."

What is a Prospective Purchaser Agreement?

A Prospective Purchaser Agreement (PPA) is a legally binding agreement between the Department of Environmental Quality (DEQ) and a prospective purchaser, which limits the purchaser's liability to DEQ for environmental cleanup at the property.

How do I know if I want a PPA and what are the benefits of having one?

If you are thinking about buying property that you know or suspect to be contaminated with hazardous substances, you may be interested in a PPA. The liability protections clarify and limit your responsibility to the State for the existing contamination. PPAs often make obtaining financing for the property purchase easier. Also, PPAs can be passed on to subsequent owners who will benefit from the protections provided for in the agreement, so long as they adhere to its terms.

If I just purchased a contaminated property, and didn't cause the contamination, can I still enter into a PPA?

No. PPAs must be negotiated and finalized before the property is purchased.

If I'm buying contaminated property, do I automatically get a PPA from DEQ?

No. Every property presents a unique set of circumstances, therefore, not all properties are appropriate for PPAs. As a starting point, the *minimum* requirements in the law are:

- ◆ the prospective purchaser isn't responsible for cleaning up existing contamination at the property;
- ◆ there is contamination at the property and the law requires that it be cleaned up;
- ◆ the prospective purchaser's proposed use for the property will not make contamination worse or interfere with necessary cleanup; and
- ◆ a *substantial* public benefit will result from the agreement.

What is a *substantial* public benefit?

The law provides the framework for DEQ's evaluations by listing examples of substantial public benefit, including:

- ◆ generation of *substantial* funding or other resources to be used for environmental cleanup at the property
- ◆ commitment to perform *substantial* environmental cleanup activities at the property
- ◆ development of the property by a governmental entity or non-profit to address an *important* public purpose

These are typical "substantial public benefits" that are generated as a result of the PPAs DEQ has negotiated. However, DEQ evaluates each PPA individually to determine substantial public benefit. There is a wide range of potential "substantial public benefits" and DEQ encourages prospective purchasers to be creative.

How do I apply for a PPA? Is there an application fee?

You complete the Prospective Purchaser Application and submit a \$2,500 deposit to DEQ to begin formal negotiation of the agreement. The steps:

- ◆ Begin the process by contacting DEQ's Prospective Purchaser Program Coordinator to obtain the **program packet** and schedule an initial assessment meeting.
- ◆ During the **initial meeting** DEQ staff will ask questions to determine whether a PPA is appropriate for this property.
- ◆ If you and DEQ decide to move forward, you must first submit an **application** along with a **\$2,500 deposit**. The deposit is required for DEQ to start working on the PPA; it does not ensure that a final agreement will be reached.
- ◆ You then **begin negotiations**, share technical information about the contamination of the property, and strive to reach an agreement which meets the needs of both you and the State. If, as part of the PPA, you agree to conduct the cleanup actions at the property, you will do so through DEQ's Cleanup Programs.
- ◆ When the PPA is completed, or negotiations cease, any balance remaining from the deposit is refunded.

How long does it take to get a PPA?

Average time to complete a PPA is 6 - 8 weeks. The length of time depends on: (1) how much DEQ knows about the contamination at the property; (2) whether DEQ needs to modify the standard PPA language to accommodate unique circumstances; and (3) the number of PPAs DEQ staff is currently working on.

What happens after the PPA is finalized?

You have an obligation to properly record the PPA and related documents in the appropriate County office, and must meet all of the conditions of the PPA. Failure to do either of these may void the PPA and the liability protections it provides.

Other Questions? Call Prospective Purchaser Program Coordinator, Karin Koslow at 503-229-6461 for a program packet which includes an application and other program information. For toll free call 1-800-452-4011.

DEQ'S BROWNFIELD SITE ASSESSMENT PILOT PROJECT BENEFITS TWO OREGON COMMUNITIES

Summary of Project Period July 1, 1996 to June 30, 1997

THE PROJECT:

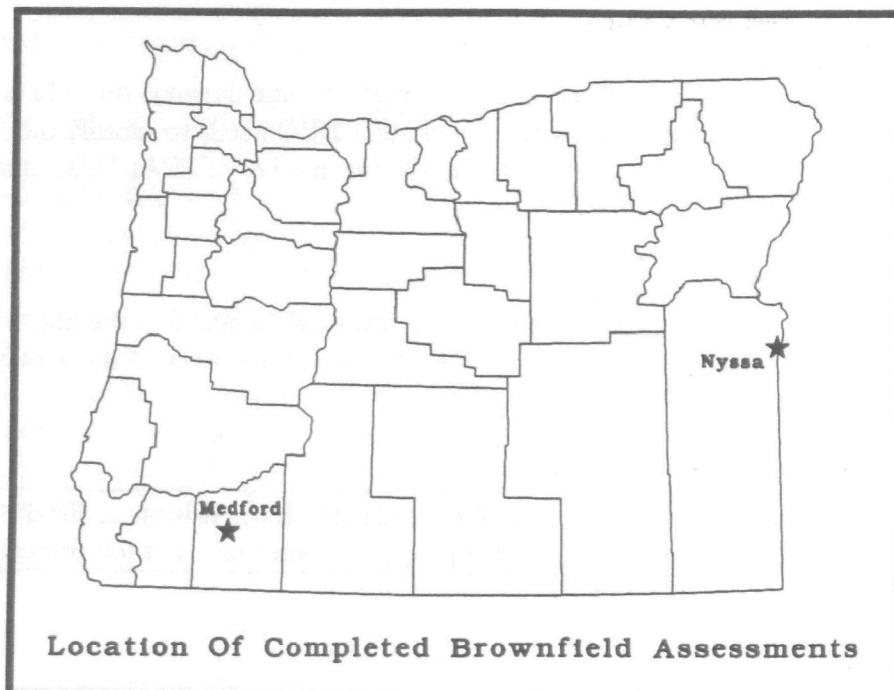
The Oregon Department of Environmental Quality (DEQ) has just completed the first year of its Brownfield Site Assessment Pilot Project (Pilot). The purpose of the pilot is to determine the demand for and potential effectiveness of an expanded Brownfield evaluation program and to assist redevelopment efforts at the local level.

WHAT IS A BROWNFIELD:

Brownfield sites are considered to be vacant or under-utilized commercial or industrial properties with known or perceived contamination of hazardous substances that has affected the sale and/or redevelopment of the site.

THE ASSESSMENTS:

The pilot provided limited funding for assessments at properties owned by a government entity (City, County, State, Tribe, Port, etc.) or a non-profit organization. Eligibility was limited to sites where there had been no prior EPA involvement or where contamination was not only petroleum. Potential applicants and other interested parties were notified of the project in August, 1996. DEQ received applications for seven sites. Five of the sites were ineligible due to private party ownership or petroleum contamination. The remaining two were awarded funding and brownfield assessments were completed. Both sites are former landfills which are owned by the City of Medford and the City of Nyssa. There was little known about contamination at the sites including no indication of whether or not a problem existed. This perceived contamination had already hindered re-development at the Medford site.



THE RESULTS OF A COOPERATIVE EFFORT:

At little or no cost to the cities, the assessments identified areas of contamination not previously known. Both projects involved partnering with, the respective City, DEQ, EPA, and the Oregon Economic Development Department (OEDD). In the Medford project, a prospective purchaser was also involved. In both instances, all parties contributed to the overall success of the pilot. Contributions included the use of equipment, sample analysis, and the sharing of information. Both projects were truly a cooperative effort

HOW DID NYSSA AND MEDFORD BENEFIT:

Through the pilot, both communities gained more certainty regarding the level of contamination at their sites. They are now able to plan future development considering this contamination and possibly bring more parties to the table to investigate and/or clean up a site which may otherwise lay idle and abandoned.

PILOT PROJECT CONTACTS:

For more information regarding the pilots, please contact:

Nyssa Pilot

Gordon Zimmerman, City Manager, City of Nyssa - 541-372-2264

John Dadoly, Oregon DEQ - Pendleton - 541-278-4616

Medford Pilot

City Manager, City of Medford - 541-774-2000

Claudia Johansen, Oregon DEQ - Medford - 541-776-6010 ext. 228.

HOW CAN MY COMMUNITY BENEFIT FROM THE PROGRAM:

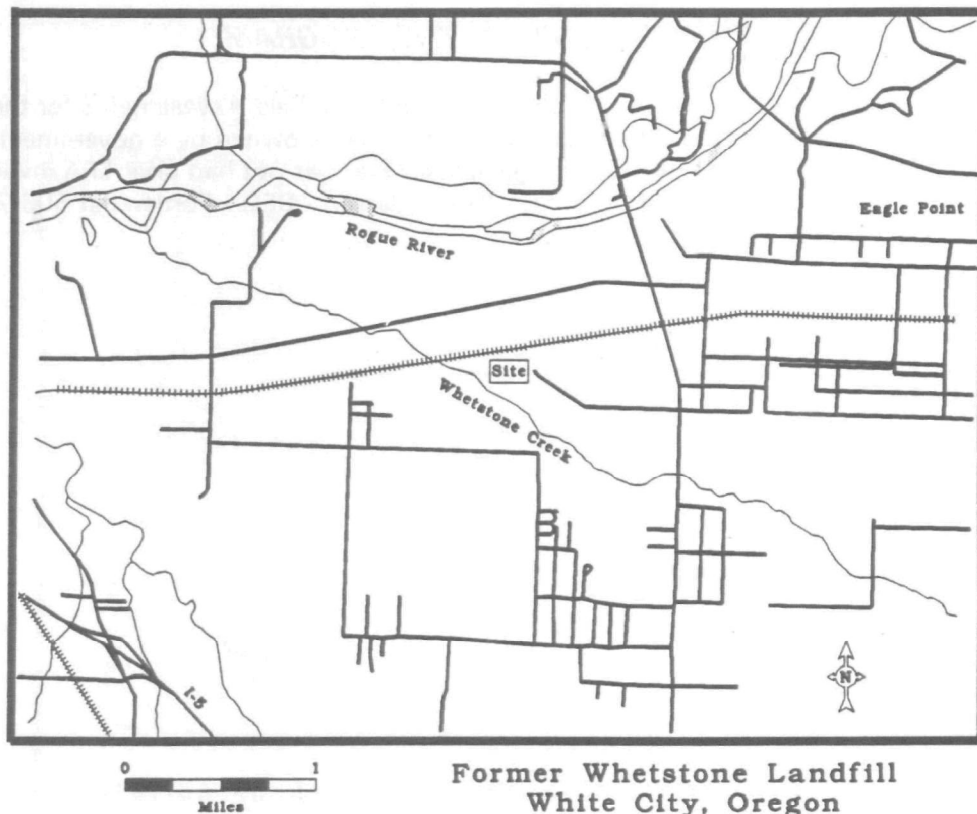
DEQ has received funding to complete up to eight additional Brownfield Assessments for the period of July 1, 1997 through June 30, 1998. If you know of a site that is owned by a government entity (City, County, State, Tribe, Port, etc.) or a non-profit organization that has not had prior EPA involvement or contamination is not just petroleum, please contact Dick Pedersen - DEQ - Portland at 503-229-5332, or David Bennett - EPA - Seattle at 206-553-2103.

Brownfield Assessment of the Former Whetstone Landfill White City, Oregon

Project Overview

The Oregon Department of Environmental Quality (Department) Western Region Site Assessment Program under a Cooperative Agreement with EPA, conducted an assessment of the former Whetstone Landfill. The former Whetstone Landfill is located west of White City, Oregon along Antelope Road approximately 7 miles north of Medford, Oregon. The site is part of a 200 acre parcel of land owned by the City of Medford. It is approximately $\frac{3}{4}$ of a mile from the Rogue River along Whetstone Creek. The landfill was in operation from 1940 to 1955 as a military landfill. It continued as a municipal landfill until the mid 1960's. Most recently the area has been used for cattle grazing. The industrial park had not been selected by a large manufacturer due to the presence of the landfill.

The assessment was conducted by the Department under a pilot Brownfield project with EPA funding. The purpose of the pilot was to determine the demand for, and potential effectiveness of an expanded Brownfield evaluation program and to assist redevelopment efforts at the local level. Brownfield sites are vacant or under-utilized commercial or industrial properties with known or perceived contamination of hazardous substances that has affected the sale and/or redevelopment of the site.



What We Did

The project began with a scoping meeting in November 1996 attended by the City of Medford, the Department, Oregon Economic Development Department and a prospective purchaser. This was followed by a site visit in February 1997 and sampling events in February and April 1997. The final report was completed in June 1997. Surface water, sediments, and subsurface soil samples were collected from several locations within the landfill and Whetstone Creek. Groundwater samples were also collected.

What We Found

The investigation was focused on accessible areas of the former landfill close to the active disposal area, not covered by concrete rubble. Two areas of buried ash were found to contain Dioxin at levels above industrial cleanup standards. One sample was collected from a thick layer of waste suspected to be log deck waste. The sample contained benzo(b)fluoranthene, also above industrial cleanup standards.

The Next Step

Due to the presence of contamination in buried ash and log deck waste, further investigative work is recommended before any decisions regarding cleanup and future development of the property can be made. Additional soil sampling is needed to determine the extent of contamination already identified.

After the contamination is addressed, development of the portions of the site outside of the landfill active disposal area may be possible. It is not recommended that development occur within this area due to potential stability and contamination concerns.

For more information or a copy of the report, please contact:

City Manager, City of Medford, 541-774-2000

Claudia Johansen, Oregon DEQ - Medford, 541-776-6010 ext.228

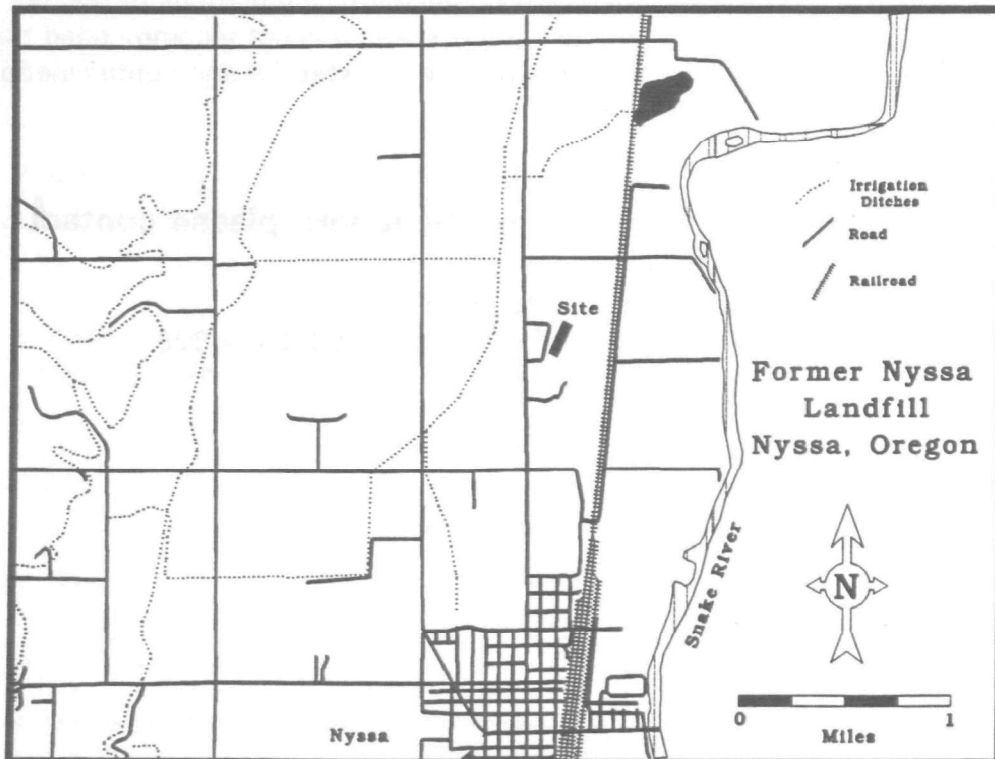
Brownfield Assessment of the Former Nyssa Landfill Nyssa, Oregon

Project Overview

The Oregon Department of Environmental Quality (DEQ) Eastern Region Site Assessment Program, under a Cooperative Agreement with EPA, conducted an assessment of the former municipal landfill located near the City of Nyssa. The purpose of the assessment was to assess the current or potential threat posed by wastes at the site and to identify possible environmental impediments to the development of the site as an industrial park.

The former Nyssa Landfill is located along Arcadia Avenue approximately 1.75 miles north of Nyssa, OR. The site is part of a 13 acre parcel of land owned by the City of Nyssa. The site is located approximately $\frac{3}{4}$ of a mile from the Snake River. The landfill was in operation from the 1960's until approximately 1972, when all activities at the site ceased.

The assessment was conducted under a Brownfield Site Assessment project. The purpose of the project was to determine the demand for and potential effectiveness of an expanded Brownfield evaluation program and to assist redevelopment efforts at the local level. Brownfield sites are considered to be vacant or under-utilized commercial or industrial properties with known or perceived contamination of hazardous substances that has affected the sale and/or redevelopment of the site.



What we did

The project began with a scoping meeting in December 1996, which was attended by representatives from the City of Nyssa, DEQ, OEDD and EPA. The meeting was followed with a site visit in January 1997, and completed with a sampling event in March 1997. Surface and subsurface soil samples were collected from ten locations within the landfill. The final report was completed in June 1997, and is available to the public.

What we found

Pesticides were detected in all soil samples collected at the site. There appears to be no obvious pattern to the distribution of the contaminants. Of the eleven pesticides detected at the site, six were detected at concentrations above the State of Oregon Cleanup Standards. They are: lindane; heptachlor epoxide; endosulfan I; pp'-DDE; dieldrin; and p,-DDT. Some pesticide concentrations were more than 100 times the applicable Oregon Soil Cleanup Standard.

What is the next step?

Due to the presence of pesticide contamination in soil throughout the landfill area, further investigative work is recommended before any decisions regarding clean up and future development of the property can be made. Additional soil sampling is needed to determine the extent of soil contamination. A limited groundwater investigation involving the installation of on-site wells and possible testing of nearby private wells for pesticide contamination is also recommended.

After cleanup, development of the portions of the site may be possible.

For more information, please contact:

Gordon Zimmerman, City Manager, City of Nyssa, 541-372-2264
John Dadoly, Oregon DEQ - Pendleton, 541-278-4616