

Brownfields

Partnering For A Greener Tomorrow

Track Five: Redevelopment

PURPOSE OF THE TRACK

Successful redevelopment is a keystone of the brownfields program. Discuss how to put together successful real estate ventures, attract small and minority-owned businesses, develop waterfronts and former railyards, and address competing community interests. Learn how the brownfields program is redeveloping federal properties, assisting rural communities, and improving public transportation.

(5A) Leveling the Playing Field: Minority and Small Business Redevelopment

Friday, September 5, 1997

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

Description: Small businesses are the bedrock of healthy brownfields revitalization efforts. Yet, in the rush to attract new enterprises, small and minority-owned businesses often are overlooked. Learn about exciting new opportunities and programs designed to meet their needs.

Location: Room 2210A

Speakers and Affiliation:

Mr. John Rosenthal (Moderator)

Mr. Samuel A. Carradine, Jr.

Mr. John C. Chambers

Mr. Anthony W. Robinson

National Conference of Black Mayors

National Association of Minority Contractors
Guild, Inc.

Minority Business Enterprise Legal Defense and Education
Fund

MR. JOHN ROSENTHAL

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

MR. SAMUEL A. CARRADINE, JR.

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

MR. JOHN C. CHAMBERS

Mr. Chambers' practice with Guild, Inc./Brownfields Business Information involves litigation, counseling, and lobbying on a variety of environmental issues, including hazardous waste management, remediation, recycling, and corrective action; Clean Air Act permitting; environmental justice; green labeling; insurance coverage; Superfund; environmental due diligence; compliance audits; rulemaking petitions; citizen suits; as well as civil and criminal enforcement proceedings.

MR. ANTHONY W. ROBINSON

Attorney Anthony W. Robinson is president of the Minority Business Enterprise Legal Defense and Education Fund, Inc. (MBELDEF), which was founded and established in 1980 by former Maryland Congressman Parren J. Mitchell to act as a national advocate and legal representative for the minority business community.

Mr. Robinson is a member of the Maryland Bar, the United States Court of Appeals for the Fourth Judicial Court, and the United States District Court for the District of Maryland.

He received a Bachelor of Science in political science from Morgan State University and a Juris Doctorate from American University School of Law.

Mr. Robinson's area of specialization has been in civil rights, particularly employment discrimination, and in minority business legal and advocacy issues. He successfully handled major class action litigation involving the Baltimore City Police Department. Major landmark decisions include the following cases: Vanguard Justice Society, Inc. v. Hughes, 471 F. Supp 670, (D. MD 1979) (Vanguard I); Vanguard Justice Society, Inc. v. Hughes, (Unpublished, filed June 14, 1982, D. MD) (Vanguard II); and Andrew Clairborne v. U.S. Department of the Army (D. MD 1981).

In 1975, Mr. Robinson was co-founder of the Baltimore, Maryland, law firm of Singleton, Dashiell and Robinson, P.A. In 1976, he was appointed by the governor of Maryland to the Maryland State Inmate Grievance Commission, where he served as a commissioner for a period of 8 years and as chairman for 5 years. From 1976 through 1986, he served as special counsel to United States Congressman Parren J. Mitchell. He also served as a legal counsel for the United States Equal Employment Opportunity Commission from 1972 to 1975.

**DOCUMENTS THAT SUPPORT
PANEL 5A: LEVELING THE PLAYING FIELD: MINORITY AND SMALL BUSINESS
REDEVELOPMENT**

BROWNFIELDS '97

Community Participation in Brownfields Redevelopment

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Community Participation in Brownfields Redevelopment

JOHN C. CHAMBERS
MICHELLE A. MEERTENS

Brownfields redevelopment involves a collaborative process affecting the interests of a variety of stakeholders, including investors, developers, financial institutions, and community members. Though all these parties have significant vested interests in brownfields redevelopment, more attention has traditionally been paid to business interests. This focus is an understandable consequence of the need to encourage more business investment, but the interest of the community in the process of redevelopment is important and should not be overlooked.

The United States Environmental Protection Agency (USEPA) recognized the importance of community participation when it issued its Brownfields Action Agenda (Action Agenda) in January 1995.¹ The Action Agenda outlines USEPA's future plans and strategies to help states and localities carry out brownfields redevelopment. The Action Agenda delineates USEPA's intentions to clarify liability and cleanup issues, create partnerships and promote outreach, and conduct job development and training.² The main focus of the Action Agenda, however, is USEPA's Brownfields Economic Redevelopment Initiative (Brownfields Initiative). The Brownfields Initiative is a pilot program under which USEPA gives funding to states and local municipalities to assist them in conducting environmental assessments of selected brownfields sites. This process is forward looking and is designed as a prelude to the eventual cleanup and redevelopment of these brownfields sites.

One of the most important aspects of the Brownfields Initiative is the call for active community involvement. USEPA hopes to use the brownfields pilot program as a way to identify effective working models for meaningful public participation, which can then be implemented around the country.³ To this end, USEPA makes the adequate planning for, and actual participation of, the community one of the criteria it uses when it selects brownfields grant recipients. Before and after the grant is awarded, USEPA performs community involvement checks by telephone to get updates on the level of community participation at various brownfields sites around the country.⁴ USEPA also promotes public participation in the Brownfields Initiative by publicizing activities and providing assistance to local organizing groups so they can hold public dialogues and town meetings. This coordinated effort is significant because it recognizes the necessity of giving individuals a true voice in a process that will affect the future of their communities.⁵ According to USEPA officials, "[t]he U.S. EPA is committed to building partnerships with states, cities and community representatives to develop strategies for promoting public participation and community involvement in brownfields decision making."⁶

Although the Brownfields Initiative approaches community participation with renewed vigor, the concept of involving the community in the process of environmental remediation is not a new one. For example, there are provisions for public participation under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Federal law requires that USEPA provide public notice of plans for removal or remediation within a specified number of days and that it set aside an adequate period of time for public comment.⁷ In addition, technical-assistance grants are available for local communities to ensure that participation is knowledgeable

and meaningful.⁸ These provisions, however, have traditionally been underutilized. For instance, since 1988, USEPA has awarded only 151 technical-assistance grants to local communities.⁹ Many individuals and community leaders have charged that despite CERCLA's public-participation provisions, community involvement has been minimal.¹⁰ Thus, although the government has put forth the concept of community involvement in environmental restoration projects, it has never been manifested in its fullest potential.

The Brownfields Initiative makes active public participation paramount. The goal of this chapter is to examine community involvement in the Brownfields Initiative. It will discuss the concerns about the Brownfields Initiative, which have been expressed by communities near brownfields sites. It will also evaluate the effectiveness of the mechanisms for community involvement that have been used to date.

The Community Perspective: A Historical Grounding

During the past few decades, urban centers have undergone a huge transformation. Many of the large institutions and manufacturing companies that once employed a great percentage of the surrounding population are no longer in business or have relocated. The removal of these blue-collar jobs left many people out of work. Additionally, because many of them lacked the requisite educational background and training, they were unable to compete for skilled-service positions. The result was a dramatic increase in the level of unemployment. Correspondingly, poverty levels rose. Thus, the end of the industrial era played a major role in creating the conditions that are now a familiar part of the inner-city landscape.

Despite these depressed conditions, many urban residents maintain the hope for positive change to better themselves and their communities. One source of hope for revitalization and change has always come from the collaboration of developers, property owners, and financial backers with "a plan." The "plan" has often taken the form of new housing, retail stores, infrastructure, and even waste-disposal facilities or industrial factories. Too frequently, however, the plan for revitalization and change materializes without creating any benefits for the community. New facilities are built using outside labor, not labor from the community. If the new facilities are retail oriented, the community often patronizes the stores, but the stores infrequently give anything of benefit back to the community. If these newly constructed facilities include housing, they often serve to "improve" the community so much that they start a process of gentrification. This process ultimately pushes out the poor because they can no longer afford to live there. If the new facilities involve the placement of waste-disposal facilities or industrial factories, these operations are often the source of additional environmental hazards.

These historical experiences form the backdrop for the myriad of responses many urban communities have to the Brownfields Initiative. These responses are valid expressions of concern. Though the optimists in these communities see great potential for the Brownfields Initiative to generate positive change, the cynics remain skeptical about whether that potential will ever be realized. Some fear that the project will not only fail to produce any tangible benefits for their communities, but possibly harm them as well. If the Brownfields Initiative is to achieve its goal of revitalizing urban communities with active community involvement and participation, local-community concerns must be taken into consideration.

Community Concerns

Economic Development

One of the major concerns for urban communities is stimulating economic development. There is a widespread feeling that cities must begin to make better use of economic resources and become better able to compete to survive. Many people feel that urban residents can no longer afford to depend on big outside institutions to create low-skilled jobs. The industrial era has ended. Most large institutions and manufacturers have relocated their plants elsewhere, often abroad where labor is less costly. The majority of available work in the marketplace, therefore, is skilled labor. Consequently, many feel that community members must learn marketable skills to compete on an equal footing for these jobs. In addition, the community must learn to create and maintain its own businesses. These businesses should be owned and operated by community members. In this way, urban communities can begin to achieve greater economic self-sufficiency.

Many community leaders view brownfields as viable tools to help achieve economic self-sufficiency for urban communities. Brownfields redevelopment offers the opportunity to bring contracts and jobs into the community. These resources and opportunities can be helpful, provided they are given to the people of the community and not to outsiders. Unfortunately, many communities too frequently have had negative experiences with outside developers who have promised revitalization. Consequently, there is the fear that the Brownfields Initiative will become just another "get rich" tool for wealthy investors and developers. Positive-thinking community leaders, however, want to ensure that this does not occur.

One of the ways communities can reap economic benefits from the Brownfields Initiative is through jobs, skills training, and career development. Much of the work that accompanies a brownfields project is contract driven. The initial work is oriented toward environmental assessment. The later work is oriented toward planning, surveying, and construction. Communities want to ensure they will get first priority at receiving these jobs. In addition, many community leaders would like the brownfields project to provide them with funding so they can organize programs to give community members who currently do not have the requisite skills the proper training to enable them to work. If communities are given the proper education and skills, they can begin to take care of these sites themselves. Providing members of the community with concrete skills and experience is one tangible benefit the Brownfields Initiative can give to communities, which they can use long after the brownfields pilot project is complete.

Gentrification

Another concern many leaders in the community have voiced is the possibility of gentrification. Many communities that were once blighted and depressed have lived through "redevelopment" and "revitalization" that, while serving to better the neighborhood, also served to push out the poor because they could no longer afford to live there. "I see it happening now in West Oakland,"¹¹ commented Allen Edson, a community leader at the African-American Development Association in Oakland, California. Mr. Edson is an active participant in the area's local brownfields project. He was speaking

about a community in the San Francisco area currently undergoing redevelopment. The neighborhood, as he described it, is poor, mostly African-American, with an extremely high unemployment rate. According to Edson, the community is favorably located, very near San Francisco, and metro accessible. "[N]ow we're seeing young Asian families and young white couples beginning to move back into the area . . . and the people there are being pushed out. . . ."12

Communities in the urban center are not only aware of the gentrification effects of redevelopment, they are cognizant of the underlying factors that cause it to happen. For instance, Edson comments, "One other thing that I've noticed is that the target cities [of the Brownfields Initiative] are [located] on the prime real estate. Emeryville is on the Bay. Richmond is on the Bay. San Francisco, East Palo Alto, they're all on the Bay. Stockton is on the River. . . . So you have developers and real estate [people] speculating and chomping on the bit. . . . [Our] inner cities are under siege."¹³ In addition, he noted, because communities are frequently prevented from playing an active role in the process, they are helpless to affect it.

Though Edson admits that the Brownfields Initiative has been good at giving the community a forum in which to voice concerns, according to him, an active role in the process means more than just a chance to have views aired. The community must be given a real chance to participate on an active level. This chance to participate is something Edson claims he has not seen. According to him, the community is, and has been, at the bottom of the pecking order in the Brownfields Initiative. He says all the meetings to date have been dominated by developers, investors, and lawyers. In addition, he notes that all the money given out by the Brownfields Initiative so far has been given to the states, cities, and municipalities, not to the communities. From his point of view, the community has not yet seen any tangible benefit from the Brownfields Initiative and he fears the worst. What he would like to see is money or resources given to the communities for technical assistance so that they can begin to understand and control the process themselves, instead of being passive participants along for the ride. For community leaders like Edson, the only effective difference between brownfields redevelopment and any other redevelopment thus far is that the community is more aware of what is happening; but it is not necessarily more able to affect it.

Environmental Justice

Another primary concern for individuals who live in communities near brownfields sites is environmental justice. Studies have shown that, historically, a disproportionate amount of waste-disposal facilities and industrial factories have been located in neighborhoods of color. Many urban communities are located near more than one of these facilities. For instance, the community of Bay View/Hunter's Point, California, another brownfields community in the San Francisco area, is the location of not one, but two, Superfund sites in addition to its brownfields pilot site.¹⁴ Calling attention to these perceived injustices and finding ways to rectify them has been the aim of the environmental justice movement. The importance of environmental justice was recognized by President Clinton in his Executive Order 12,898, in which he stated that one of the goals of his administration was that "[n]o segment of the population, regardless of race, color, national origin, or income, as a result of U.S. EPA's policies, programs, and activities, suffer disproportionately from adverse human health or environmental effects, and that all people live in clean, healthy and sustainable communities."¹⁵

Many people in brownfields communities see the Brownfields Initiative as a way to rectify past environmental injustices. They would like to transform abandoned brownfields into productive greenfields. In the opinion of many community members, redeveloping a brownfields site to facilitate further industrial use does nothing to rectify past environmental injustice. The determination of the future use of a site is, therefore, a very important decision. Differences in circumstances and needs may color each decision. For instance, while one community may need or desire affordable housing, another may need or desire a community center, a recreational park, or office space. Despite minor differences in circumstances, however, most members of the environmental justice movement feel very strongly that brownfields sites should be redeveloped to support positive, environmentally clean uses. Although this goal is a worthy one, it often runs counter to the primary monetary interests of developers and investors, because it increases the level of cleanup required. This additional remediation has the effect of increasing the cost of a project that may have little potential for making a profit. Thus, there is often tension between the concerns of the community in obtaining the most environmentally safe and healthy use of the site and the concerns of developers in obtaining the largest possible profit.

Community Health and Cleanup Standards

Another primary area of concern for individuals living in communities near brownfields sites is community health and cleanup standards. The health of the community is a paramount concern for most local residents. No one wants to live in an area beset by health hazards. As noted above, however, a great number of urban communities exist in neighborhoods that are saturated with brownfields sites. An important concern for these communities is the proper cleanup of these sites and their return to an environmentally safe, non-health-threatening condition. The determination of cleanup standards, therefore, is very significant.

The cleanup standards set for a brownfields site dictate how environmentally safe it has to be before any redevelopment can take place. Most members of the community want the brownfields sites in their neighborhoods to be returned to the cleanest possible condition, regardless of the planned future use. They want the cleanup standards to be set high. Many community members, however, are extremely skeptical of the likelihood of this occurring. They fear that environmental standards will be lowered, not heightened, to decrease the cost of cleanup and to encourage investors to participate in brownfields redevelopment. They fear that their health and the future health of the community will be sacrificed in favor of cutting costs and making a profit.

Unfortunately, this fear cannot be alleviated by the application of a universal environmental standard of cleanup for all brownfields sites. The process of determining the appropriate standards is something that must be accomplished on a case-by-case basis. The final decision is made by whatever governmental municipality has authority over the site. Several factors contribute to the determination of the appropriate environmental cleanup standard. For instance, considerations of cost affect the determination of the appropriate environmental standard for a site. Because the grant funding currently being provided by USEPA is slated for environmental assessment purposes only, the actual cleanup costs must be absorbed by investors, developers, or the communities themselves. Given these considerations, the

amount of money available to conduct a cleanup will be limited. This, in turn, naturally affects how thorough a cleanup job can be undertaken. The present state of contamination is another factor that affects the determination of the appropriate environmental standard for a site. The more polluted the site, the greater the cost of cleanup. Last, the intended future use affects the determination of the appropriate environmental standard for a site. Not all future uses require an environmental cleanup to the site's original pristine state. Although many community members would like every brownfields site to be returned to this heightened level of cleanliness, this approach is not practical. Thus, there are several factors to be considered in the determination of the appropriate environmental standard for the cleanup of a brownfields site.

Regardless of these different factors, however, the determination of the appropriate environmental standards should not be made without representation from the community. It is safe to assume that the interests of business will always be represented. The interests of the community, however, will be represented only if community members are given the opportunity to participate up front and are properly equipped to engage in meaningful and knowledgeable interaction. To do this, however, "the community must understand the process itself," says John A. Rosenthal, Director of Environmental Justice at the NAACP National Office.¹⁶

One of the tasks Rosenthal frequently undertakes is conducting workshops and seminars on brownfields and brownfields-related issues for communities and community leaders around the country. According to him, one of the first things about which communities must be made aware are the ramifications of having a brownfields site in their neighborhood. The community must be informed of the risks posed by brownfields sites. Moreover, it must be informed of federal policies relating to brownfields sites, as well as the funding and technical-assistance resources available to help. Once a community becomes aware of the issues involved with brownfields redevelopment and begins to participate actively in the planning process, there is a greater chance that an acceptable agreement on cleanup standards can be reached.

Current Methods of Participation

There is no single method of public participation universally used in brownfields redevelopment. Each community, therefore, elicits public participation differently. Some of the more common methods of public participation, however, are the public dialogue and the working group.

Public Dialogues

The public dialogue is an effective method of eliciting community participation because it gives community members an opportunity—in a structured format—to interact and voice their concerns regarding brownfields redevelopment to USEPA, government officials, and other stakeholders. The National Environmental Justice Advisory Council (NEJAC), a subcommittee of USEPA, made extensive use of the public-dialogue format in the summer of 1996, in an attempt to encourage and elicit public participation in brownfields redevelopment. NEJAC held five major dialogues in selected cities near brownfields pilot projects across the country. These dialogues were held in Boston, Philadelphia, Detroit, Oakland, and Atlanta. The dialogues were day-long events structured in two tiers. First, citizens were provided with an opportunity to voice their concerns about brownfields redevelopment, as well

as their visions and ideas about comprehensive ways to revitalize their communities. Second, representatives from government agencies were asked to address how their respective organizations might assist the community in achieving these visions. Finally, the dialogue provided several structured opportunities for interactive discussion and debate. Many community leaders who attended the dialogues thought they were very successful. The discussions were well publicized beforehand and many members of the community attended. Furthermore, the atmosphere of the dialogues was respectful and the community members who spoke were made to feel that their views, opinions, and concerns were significant and worthy of consideration. It was in the course of the discussions that many of the above-mentioned issues and concerns were raised.

The success and effectiveness of the public-dialogue format in general, and the NEJAC public dialogues specifically, are demonstrated not only by how the dialogues have elicited community comment on several brownfields-related issues, but also by how they have elicited community comment on the very process of community participation itself. For instance, during the NEJAC public dialogues, several suggestions about how to improve community involvement were offered. USEPA has already made use of some of these ideas.¹⁷ Furthermore, in the wake of the dialogues, NEJAC published a report entitled *Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope*, which not only summarizes the proceedings but identifies recommendations for specific action on all the topics and concerns that were raised.¹⁸

In its report, NEJAC made several recommendations on the issue of public participation. For instance, NEJAC recommended the creation and support of structured mechanisms for community participation, such as public dialogues and community advisory boards at all levels of brownfields redevelopment (that is, national, regional, and local). NEJAC also encouraged the support and promotion of *substantive* public participation. Substantive participation, as defined by NEJAC, includes participating in relevant activities such as reviewing research projects and developing grant proposals. According to NEJAC, such involvement is necessary and much more valuable than merely having access to information or having an opportunity to provide comment. In addition, NEJAC recommended that innovative and nontraditional methods of outreach be used to disseminate educational information to the community. For example, in addition to the normal use of posters, and advertisements in local papers, community newsletters, and electronic mail, NEJAC recommended making use of existing social and cultural networks, such as schools, churches, and civic organizations. NEJAC also recommended holding meetings in more accessible locations, at more convenient times, and perhaps providing day care and transportation. Most importantly, however, NEJAC's report stressed that the community members must be educated enough to not only understand the process, but influence it.

Working Groups

Another method of soliciting public participation is the use of the working group. The working group consists of a small number of community leaders who work in close connection with USEPA and other government officials to represent the community's interests in the remediation and redevelopment process. Although the public dialogue is an effective way to achieve active community participation and discussion in a brainstorming format, because it usually involves a great number of people, it is not the most conducive mechanism for decision making. In contrast, the working group is a much more

flexible and efficient tool. Community leaders who participate in working groups represent the community by remaining in contact with its members and relaying their concerns and opinions back to the working group.

The working-group format is used by several brownfields projects around the country. For instance, in Bay View/Hunter's Point, California, a working group of approximately fifteen members comprises community leaders and officials from the USEPA and state and local governments. This group meets once a month to discuss current issues related to local brownfields development. The community members of this group regularly keep the larger community apprised of events and relay any arising needs or concerns back to the group for discussion or evaluation. According to community leaders, this format is an effective one for decision making and policy planning.

Conclusion

All parties acknowledge that the goal of community involvement in brownfields redevelopment is an important and worthy one. The traditional view that community participation is satisfied by a mere opportunity to review and comment on government decisions and policies is defunct. A question remains, however, about the level of community participation that USEPA's Brownfields Initiative can truly achieve. The public dialogues that took place during the summer of 1996 proved that successful community participation is possible. Yet, in the opinion of many (NEJAC included), this level of participation is not enough. The mere opportunity to air opinions and concerns early in the process does not amount to substantive community participation. Substantive community participation can be achieved only when the community is properly educated and given an active role in the actual planning and decision-making process. Although the groundwork for such participation exists in mechanisms such as working groups and advisory committees, their use in many brownfields projects is still formative. Additionally, many community leaders and citizens have varying degrees of optimism about their success. One thing is certain, however. The vision of a community driven and directed urban revitalization will be achieved only with great commitment and perseverance on the part of all stakeholders.

Notes

1. EPA-Administrator Announces Relief Package for Cities and Towns, EPA ENVTL News, Jan. 25, 1995, at 1.
2. The Brownfields Action Agenda, U.S. EPA web-site document, <http://www.epa.gov/swerosps/bf/ascii/action.txt>, at screen 1 (accessed July 25, 1996).
3. Answers to Frequently Asked Questions, U.S. EPA web-site document, <http://www.epa.gov/swerosps/bf/answers.htm#26>, at screen 1 (accessed July 25, 1996).
4. Telephone Interview with Katherine Dawes, Environmental Protection Specialist, USEPA Office of Solid Waste & Emergency Response (Aug. 7, 1996).
5. Exec. Order No. 12,898, 3 C.F.R. 859 (1995) ("Those who live with environmental decisions—community residents, State, Tribal, and local governments, environment groups, business—must have every opportunity for public participation in the making of those decisions. An informed and involved community is a necessary and integral part of the process to protect the environment.").
6. The Brownfields Action Agenda, U.S. EPA web-site document, <http://www.epa.gov/swerosps/bf/ascii/action.txt>, at screen 7 (accessed July 25, 1996).
7. 40 C.F.R. §§ 300.155, 300.415, 300.430, 300.435 (1995).

8. *Reform: of the Superfund Act of 1995: Hearings on H.R. 2500 Before the House Subcomm. on National Economic Growth, Natural Resources and Regulatory Affairs of the Comm. on Government Reform and Oversight*, 104th Cong. (1996) (statement of John C. Martin, Inspector General).

9. *Id.*

10. *Reform of the Superfund Act of 1995: Hearings on H.R. 2500 Before the House Subcomm. on National Economic Growth, Natural Resources and Regulatory Affairs of the Comm. on Government Reform and Oversight*, 104th Cong. (1996) (statement of Florence T. Robinson, North Baton Rouge Environmental Association, Louisiana Environmental Action Network, Mississippi River Basin Alliance Communities at Risk Network) ("The major stakeholder in the Superfund process has been denied meaningful participation and input in the decision-making process of Superfund. Public participation needs to come earlier, resources need to be provided to the community to effectively participate and communities need to be given access to and decision-making power regarding their sites. The entire process, from beginning to end must include community participation.").

See also Al Knight, *Mining and the Environment "Disaster" at Summitville Was after the EPA Arrived*, DENVER POST, Apr. 28, 1996, at E-01; Jennifer Oulette, *Superfund: A Call for Change, Responsible Care*, 249 CHEMICAL MARKETING REP., SR 10, 1996.

11. Telephone Interview with Allen Edson, African-American Development Association (Aug. 7, 1996).

12. *Id.*

13. *Id.*

14. Telephone Interview with Romel Pascual, Urban Habitat (Aug. 6, 1996).

15. Exec. Order No. 12,898, 3 C.F.R. 859 (1995).

16. Telephone Interview with John A. Rosenthal, Director of Environmental Justice, NAACP (Aug. 13, 1996).

17. Telephone Interview with Katherine Dawes, Environmental Protection Specialist, USEPA Office of Solid Waste & Emergency Response (Aug. 16, 1996). One of the recommendations offered at the public dialogues was to emphasize the adequate planning for, and actual participation of, the community as a criterion for receiving USEPA funds. USEPA incorporated this suggestion in its most recent round of grant awards by revising its grant-application brochure to clarify and explain its concept of community participation and by instituting telephone checks on levels of community involvement before and after the granting of a brownfields funding award.

18. The interim draft version of this document is available at the U.S. EPA web site, <http://www.epa.gov/sweroeps/bf/ascii/nejachm.txt> (accessed July 25, 1996).

(5B) Wet and Wild: Waterfront Revitalization Reusing Brownfields

Friday, September 5, 1997

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

Description: Wading through the challenges of waterfront cleanup and redevelopment can be a daunting task. Unique coastal zone issues and the ways in which communities have overcome them will be featured.

Location: Room 2210C

Speakers and Affiliation:

The Honorable John K. Bullard (Moderator)

Mr. Peter McInerney

Mr. James Ribbens

Mr. Doug Thiel

Mr. Kenneth Walker

U.S. Department of Commerce, National Oceanic and
Atmospheric Administration

City of Wyandotte, Michigan

State of Michigan, Department of Environmental Quality

BASF Corporation

U.S. Department of Commerce, National Oceanic and
Atmospheric Administration

THE HONORABLE JOHN K. BULLARD

Since 1993, John K. Bullard has been Director of the Office of Sustainable Development and Intergovernmental Affairs for the National Oceanic and Atmospheric Administration (NOAA) in the U.S. Department of Commerce.

Mr. Bullard has served as a principal liaison for NOAA Administrator D. James Baker to the President's Council on Sustainable Development (PCSD) and has represented NOAA and the Department of Commerce on the interagency steering committee for the Clinton Administration's Brownfields Initiative.

As a former Mayor of New Bedford, Massachusetts, Mr. Bullard has been intimately involved in the issues surrounding brownfields redevelopment. This involvement has intensified during his tenure at NOAA/Commerce, particularly because of the emphasis which the PCSD and its Task Forces has placed on brownfields issues as part of a comprehensive strategy to promote sustainable communities.

In addition to these activities, Mr. Bullard serves as a trustee of the New Bedford Harbor Trust, which is charged with the redevelopment of a major Superfund site in that New England coastal community.

MR. PETER MCINERNEY

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

MR. JAMES RIBBENS

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

MR. DOUG THIEL

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

MR. KENNETH WALKER

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

(5C) On the Right Track: Railyard Redevelopment

Wednesday, September 3, 1997

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

Description: Former railyards offer great opportunities for redeveloping large tracts of prime-location real estate. This panel will give developers, investors, and communities insight into getting railyards back on track.

Location: Room 1203B

Speakers and Affiliation:

Mr. David Clark

Ms. Wendy S. Saunders

Mr. Scott Slagley

The Burlington Northern and Santa Fe Railway

City of Sacramento, California

Commonwealth Atlantic Properties

MR. DAVID CLARK

David Clark is a professional engineer who, for the last 20 years, has been involved with environmental matters for the Burlington Northern and Santa Fe (BNSF) (formerly Santa Fe) Railway. He oversees cleanups of shops, derailments and lease sites on BNSF Railway properties in the western 30 states of the United States. His duties include managing the environmental aspects of all land sales and purchases.

MS. WENDY S. SAUNDERS

Ms. Saunders currently serves as Senior Management Analyst for the Sacramento City Manager. As a consultant to the City of Sacramento, Ms. Saunders assisted in the development of a series of mechanisms to facilitate redevelopment of Southern Pacific's Sacramento Railyard, a state Superfund site, including a Memorandum of Understanding with the California Environmental Protection Agency (CalEPA) Department of Toxic Substances Control regarding post-remediation responsibilities during the course of redevelopment.

Based upon issues drawn from the Southern Pacific experience, Ms. Saunders wrote the City of Sacramento's successful Brownfields Pilot Project application, and is responsible for its implementation.

Prior to work related to hazardous materials issues, Ms. Saunders served at the City of Sacramento's redevelopment agency as project manager for several catalyst downtown Sacramento redevelopment projects, including the \$100 million downtown plaza renovation and the \$40 million central library.

Ms. Saunders holds a master's degree from the University of California at Davis's Graduate School of Management.

MR. SCOTT SLAGLEY

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

(5D) The Best and Highest Use: A Brownfields Reuse Debate

Thursday, September 4, 1997

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

Description: A cleaned-up property in the middle of your town is a promise for the future. Making the most of it is both an opportunity and a challenge that can tear a community apart. A debate between those proposing competing uses will underscore the controversy.

Location: Room 1203B

Speakers and Affiliation:

Dr. Charles W. Powers (Moderator)

Mr. Hanan Bowman

Ms. Martha C. Brand

Ms. Deirdre Menoyo

Institute for Responsible Management

Mill Site Conversion Project

Leonard Street and Deindard

Conservation Law Foundation

DR. CHARLES W. POWERS

Charles W. Powers, Ph.D. is president of the Institute for Responsible Management, a non-profit organization in New Brunswick, New Jersey which is focused primarily on charting and facilitating information exchange among the more than 100 U.S. Environmental Protection Agency (EPA) brownfields pilots. Dr. Powers, who is also a professor of environmental and community medicine at the University of Medicine and Dentistry of New Jersey, has been addressing issues related to hazardous waste since 1984. He has created a series of national organizations which address both technological and social issues related to controversial problems in public health and the environment. He has been executive director of the Health Effects Institute, president of Clean Sites, Inc. chief environmental officer and vice president for public policy at Cummins Engine Company and has held faculty appointments at Yale, Harvard, Tufts, and Princeton universities.

MR. HANAN BOWMAN

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

MS. MARTHA C. BRAND

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

MS. DEIRDRE MENOYO

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

(5E) Attention Developers: Uncle Sam Wants You!!!

Thursday, September 4, 1997

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

Description: Federal facilities and brownfields share many common features. Representatives of federal agencies, community representatives, developers, and national policy experts will discuss the links between cleanup of federal facilities and brownfields.

Location: Room 2201

Speakers and Affiliation:

Mr. James Woolford (Moderator)

U.S. Environmental Protection Agency, Office of Solid
Waste and Emergency Response

Mr. Richard Gsottschneider

RKG Associates, Inc.

Mr. Seth D. Kirshenber

Kutak Rock

Mr. Robert T. McDaniel

City of Oak Ridge, Tennessee

MR. JAMES WOOLFORD

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

MR. RICHARD GSOTTSCHNEIDER

Mr. Gsottschneider has 25 years experience as a consultant to the real estate industry. He is an economist and financial analyst by training, and has worked on a variety of brownfields projects, including the reuse planning of 18 former military bases and the reuse of many older buildings in urban areas. Mr. Gsottschneider is currently working with the City of Lawrence, Massachusetts on an U.S. Environmental Protection Agency (EPA) funded Brownfields Initiative to evaluate redevelopment options for 25 million square feet of mill buildings.

MR. SETH D. KIRSHENBERG

Mr. Seth D. Kirshenber 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. Kirshenber 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. Kirshenber 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. Kirshenber 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. Kirshenber 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.

MR. ROBERT T. MCDANIEL

Mr. McDaniel serves as City Manager of Oak Ridge, Tennessee, the municipality which hosts the U.S. Department of Energy's (DOE) Oak Ridge Reservation (ORR). The ORR is a 35,000-acre complex with three major DOE facilities. The entire ORR lies within the city limits of Oak Ridge.

As city manager, Mr. McDaniel interacts frequently with the DOE on issues related to the cleanup and reuse of the ORR. He is responsible for many of the municipal services that will be needed as brownfields sites are developed, and eventually transferred to the city.

Prior to his service in Oak Ridge, Mr. McDaniel spent 17 years as a city manager in Texas, where he also has experience as an U.S. Environmental Protection Agency (EPA) administrator in Region 6 Dallas Office.

Mr. McDaniel serves on the Board of Directors of the Energy Communities Alliance, a consortium of local governments located adjacent to or near DOE sites.

**DOCUMENTS THAT SUPPORT
PANEL 5E: ATTENTION DEVELOPERS: UNCLE SAM WANTS YOU!!!**

Seth Kirshenberg
KUTAK ROCK
202-828-2400

Brownfields/Federal Facility Comparison		
Brownfields	Federal Facility (DOD and DOE)	
Abandoned, idled or under-utilized property	U.S. government owned property with the potential to become abandoned, idled or under-utilized	
Usually in an urban area	Both urban and rural	
Unknown Potentially Responsible Parties (PRPs)	Known PRP - a federal agency	
Local government actively involved in reusing the site	Local government actively involved in reusing the site at all closing bases and at many DOE sites	
Unknown level of contamination	Extensive Environmental Assessment required before the property is transferred	
Uncertain liability for new owner - Perception of potentially unlimited liability for future owner/financier	DOD - Certainty of liability for new owner - provide new owner with indemnification for contamination and economic loss on the site when the property is transferred (section 330) - DOE - liable for all contamination at the site	
Potential stigma associated with reusing property	Potential stigma associated with reusing property	
Little or no funding for remediation	Funding for remediation that is protective of human health and the environment	
Easily transferable (in most states)	Difficult timely process to transfer	
Reuse protects "greenfields" from being developed	Reuse protects "greenfields" from being developed	
Environmentally sound method to promote development in an area	Environmentally sound method to promote development in an area	
Usually a small facility or property	Usually a large facility or property	
Only regulated by federal government if potentially large amount of contaminants found on-site	Regulated transfer by federal and state government	

***Reuse of Department of Energy Brownfields:
Opportunities and Challenges for Local Governments***

**Robert T. McDaniel
City Manager
Oak Ridge, Tennessee**

The U.S. Department of Energy's Oak Ridge Reservation (RR) is a 35,000-acre complex located within the city limits of Oak ridge, Tennessee. Three major facilities--the Oak Ridge National laboratory, the Y-12 production plant, and the K-25 gaseous diffusion plant--are situated on the site. Approximately 9% of the ORR contains some level of radiological or chemical contamination.

In 1995 the DOE established a reindustrialization program at the K-25 facility, changing the name of the site to the East Tennessee Technology Park. The goal of the program is to lease buildings and equipment to private companies at a reduced rate., in exchange for cleaning up the buildings to "brownfields" standards. The program is intended to provide long-term job creation and reuse of facilities that otherwise would be left idle or undergo a costly decontamination and decommissioning program.

This presentation describes the potential opportunities for the reuse of federal facilities at the ORR from a local government perspective. The challenges associated with reuse, such as regulatory compliance, ownership, liability, and municipal service provision are also discussed. Recommendations for enhancing the local government role in the reuse of federal facilities are offered.

(5F) Roads Less Traveled: Brownfields and Transportation

Thursday, September 4, 1997

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

Description: Access to transportation for workers and consumers is a key to successful revitalization projects. Learn how to take advantage of transportation resources! Speakers will help you connect your brownfields project to transportation systems, processes, and opportunities available to every community.

Location: Room 2217

Speakers and Affiliation:

Mr. J. Randle Schick (Moderator)

State of Illinois, Department of Transportation

Ms. Elizabeth Collaton

Northeast-Midwest Institute

Mr. Douglas MacCourt

City of Portland, Oregon

Ms. Jacqueline Davis-Wellington

St. Louis County, Missouri

MR. J. RANDLE SCHICK

J. Randle Schick is an Assistant Chief Counsel for the Illinois Department of Transportation. He is a graduate of the University of Illinois School of Law. Mr. Schick was the 1996 chairman of the Environmental Law Section Council for the Illinois State Bar Association. He is a member of the Transportation Research Board's (TRB) Committee on Environmental Issues in Transportation Law and Task Force on Waste Management in Transportation. He is the recent author of *Risk-Based Cleanup Objectives, Land Use and Transportation* published by TRB.

MS. ELIZABETH COLLATON

Ms. Collaton brings ten years of experience in hazardous and solid waste issues to her current position with the Northeast-Midwest Institute as senior policy analyst for Pollution Prevention and Waste Reduction. She tracks state and federal policies affecting brownfields cleanup and redevelopment, as well as opportunities to develop "smart growth" policies at the local, state, and federal levels by analyzing the interplay of land use, transportation, and economic development decisions. She is co-author with Charles Bartsch of *Industrial Site Reuse, Contamination and Urban Redevelopment: Coping with the Challenges of Brownfields* (December 1994), *Coming Clean for Economic Development: A Resource Book on Environmental Cleanup and Economic Development Opportunities* (November 1995), and *Brownfields: Cleaning and Reusing Contaminated Properties* (January 1997). Ms. Collaton holds a bachelor's degree from McGill University, Montreal, Canada.

MR. DOUGLAS C. MACCOURT

Mr. MacCourt is the environmental manager for the City of Portland, Office of Transportation, where he advises city bureaus on environmental compliance. He has managed land use, environmental and natural resources issues in the planning, design and construction of transportation projects, and represents transportation interests in environmental matters to government agencies, legislative organizations and Native American tribes. He directs the Portland Brownfields Initiative to promote the redevelopment of contaminated property in the enterprise community of north and northeast Portland and in neighborhoods along the Portland waterfront. A graduate of Humboldt State University's College of Natural Resources and the University of Oregon Law School, Mr. MacCourt is a member of several state and national organizations developing regulatory and funding strategies for brownfields redevelopment and other environmental issues.

MS. JACQUELINE DAVIS-WELLINGTON

Ms. Davis-Wellington is currently a project manager with the St. Louis County Economic Council, St. Louis, Missouri, and the acting executive director of the Cornerstone Partnership, an educational facility in Wellston, Missouri designed to train economically disadvantaged, inner-city youth in machining and manufacturing technology. In her capacity with the Economic Council, Ms. Davis-Wellington provides municipalities and older commercial and industrial districts with technical assistance for redevelopment activities.

Ms. Davis-Wellington has fifteen years of construction, environmental, and redevelopment project management experience in both the public and private sectors. She holds a Bachelor of Science in business administration from Washington University in St. Louis and a Master of Science in urban policy analysis from Southern Illinois University.

**DOCUMENTS THAT SUPPORT
PANEL 5F: ROADS LESS TRAVELED: BROWNFIELDS AND TRANSPORTATION**



Portland Brownfields Initiative

Community Strategies to Recycle Land

A Pilot Project Sponsored by the U.S. Environmental Protection Agency's
Brownfields Economic Redevelopment Initiative

NORTH MARINE DRIVE
(Rivergate Industrial Transportation Corridor)

Portland, Oregon

1967-1994

Presented by Douglas C. MacCourt, Director
Portland Brownfields Initiative

City of Portland, Oregon
Transportation Engineering & Development
1120 SW Fifth Avenue, Room 808
Portland, Oregon 97204-1971

Phone: (503) 823-7052
Fax: (503) 823-7371
E-mail: dcm@syseng.ci.portland.or.us
Internet: <http://www.brownfield.org>

KEY PLAYERS

**Federal Highway Administration
Oregon Department of Transportation
Port of Portland
City of Portland**

FINANCING

**80% Federal
20% State/Local Match**

THE PROJECT

**Five-Lane Highway and Two Bridges to Replace
Deteriorating Two-Lane Roadway**

- **Phase I:
Enlarge Existing City Arterial &
Construct BNRR Overcrossing**
- **Phase II:
New Alignment & Highway Overpass
Through Industrial Property and Known Brownfields**

THE PURPOSE

- **Connect I-5 to Deep Water Ports in Rivergate Industrial Area**
- **Opens Over 3,000 Acres Industrial Zoned Land**
- **Estimated 9,000 New Family-Wage Jobs by 2008**
- **Remove Safety Hazard Around Railroad Bridge**
- **Improve Industrial/Commercial Redevelopment Opportunities on Alignment**

THE OBJECTIVE

- **Implement Preferred Alternative from NEPA DEIS/EIS Process**
- **Protect Adjacent Wetlands and Blue Heron Rookery**
- **Remove Bottleneck by Building New Road Through Contaminated Business**

PRELIMINARY ROADWAY ALIGNMENT

- **Environmental Impact Statement:**
Identification of Potential Concerns
- **Design Team Management**
 - Technical Advisory Committee
 - HAZMAT Team
- **Site Assessment**
 - Property Access:
State Statute and Written Agreements

LEVEL II ENVIRONMENTAL ASSESSMENT

Methodology/Considerations

- **Combined Environmental/Geotechnical**
- **Utilize Existing Wells/Split Samples with Property Owners**
- **Property Owners Install Wells with City Location Info**
- **Draft Reports to Property Owners for Review**

LEVEL IIA ENVIRONMENTAL ASSESSMENT

Results

- Hot Spots Identified
- Impact on Roadway Design Clarified
- Regulatory Issues Focused

LEVEL IIB ENVIRONMENTAL TASKS

- Test Impact of Fill on Migration of Contaminants
- Groundwater Recovery Model from Roadway Edge
- Modified Health Risk Assessment
- Risk Assessment for Human and Biological Receptors from Capping Hot Spots on One Property

DESIGN CONSIDERATIONS

- Limit Intrusive Work
- Building Longer/Higher Fills
- Use Separation Liners
- Alignment Modification
- Shallow Storm System/Utilities in Clean Fill
- All Excavation, Trees & Plants Remain on Property of Origin
- Concrete Plugs in Trenches

ACQUISITION OF PROPERTY

- Condemnation Protection for Local Government
- Appraise as if Clean
- Easement vs. Fee Simple Title
- Legal Documents

REGULATORY CONCERNS

- **Liability Exemption**
- **Exacerbation of Contamination**
- **Impact on Roadway from Future Cleanup Activities**

CONSTRUCTION CONTRACT CONSIDERATIONS

- **Address Bond Underwriters Concerns**
- **Contract Specs to Include:**
 - **Mandatory Pre-Bid Meeting for HAZMAT/Other**
 - **Health and Safety Issues an Anticipated Bid Item**
 - **Organic Material Retained on Property of Origin**
 - **Restricted Access Until Property Secure with Separation Fabric**
 - **Dust Control in HAZMAT Areas**

LESSONS LEARNED

- Value of Partnership Agreements on Brownfields Projects
- Understanding and Serving the Customers:
Constant Communication
- Viable and Proactive Legal/Regulatory/Technical Strategy
- Construction Specs to Control Problems
- Taking More Risk Encouraged More Creativity

THE PRODUCT

- Transportation Infrastructure as a Means to
Redevelop Brownfields
- Ripple-Effect on Private Investment
- Customer Service
- Model for Public Works Projects in Contaminated Areas
- Safer, Cleaner Environment

IMPACT OF N. MARINE DRIVE PROJECT ON RIVERGATE ACTIVITY

Rivergate Sales

<u>Period</u>	<u>Acres Sold</u>	<u>Rate</u>
1963 - 1993	508 acres sold	17 acres/year
1993 - 1996	172 acres sold	43 acres/year

Rivergate Sales and Leases (includes Marine Terminal Leases)

<u>Period</u>	<u>Acres Sold/Leased</u>	<u>Rate</u>
1963 - 1993	766 acres	25 acres/year
1993 - 1996	237 acres	60 acres/year

Private Investment 1993-96

Land Sales/Leases:	\$28 million
Improvements:	<u>\$288 million</u>
Total:	\$316 million

Land Price Appreciation

<u>Year</u>	<u>Land Price/Acre</u>	<u>% Change from Prev. Yr.</u>
1990	\$75,000	
1993	\$86,500	15.3%
1994	\$92,500	6.9%
1995	\$125,000	351.4%
1996	\$141,570	132.6%

Developer/Institutional/REIT Interest "Spec Market" Development in Rivergate Since 1994

Spieker Properties	27 acres (new development)
Security Capital	7 acres (purchase of existing project)
Harsh Investment	7 acres (new development)

PacTrust	6 acres (new development)
Mabek	6 acres (new development)

(5G) Planning for Success: How Redevelopment Planning Processes Can Work for Your Town

Thursday, September 4, 1997
10:30 a.m. - 12:30 p.m.

Description: This panel provides the keys to unlocking the doors of redevelopment planning. Learn how to position your project in the confusing array of local, regional, state, and federal planning processes to gain community support and financial backing.

Location: Room 1201

Speakers and Affiliation:

Mr. James C. Schwab (Moderator)

Mr. Ed Gilliland

Mr. Paul Raetsch

Ms. Joan Roessler

American Planning Association

National Council for Urban and Economic Development

U.S. Department of Commerce, Economic Development
Administration

U.S. Department of Transportation

MR. JAMES C. SCHWAB

James C. Schwab, AICP, is a senior research associate for the American Planning Association (APA), and from 1992-1996 was the editor of APA's research newsletter, *Environment & Development*. Since 1990, he has been the editor of another APA newsletter, *Zoning News*. He is the author of *Deeper Shades of Green: The Rise of Blue Collar and Minority Environmentalism in America*, published in 1994 by Sierra Club Books, and of the 1993 Planning Advisory Service Report (No. 444) published by APA, *Industrial Performance Standards for a New Century*. He has also written several newsletter and magazine articles on the subjects of brownfields and sustainable development, and is currently the principal investigator for APA's Casey foundation-funded research project on neighborhood collaborative planning.

MR. ED GILLILAND

Ed Gilliland is the Director of Publications and Advisory Services for the National Council for Urban Economic Development (CUED). He has ten years of economic consulting experience with cities, counties, quasi-public agencies, multi-jurisdictional coalitions, and private clients. He has focused on strategic and comprehensive planning, economic development, downtown revitalization, public/private partnerships, financial analysis, funding strategies, transportation economics, economic impacts, and land use. He has published case studies for the funding and redevelopment of properties in blighted areas. Mr. Gilliland holds a Master of Business Administration from the University of Virginia, Darden Graduate School of Business Administration.

MR. PAUL RAETSCH

Paul Raetsch is the chief of the New England Division of the U.S. Department of Commerce, Economic Development Administration (EDA), Philadelphia Regional Office. Mr. Raetsch also served as a member of the Economic Development and Jobs Working Group of the President's Council on Sustainable Development.

Mr. Raetsch is responsible for managing all of EDA's Economic Development Assistance Programs in the New England region. This includes working with over 50 regional, county, state, city or Indian economic development planning agencies. He also has overall policy guidance responsibility for the Economic Development Planning grant program in the Philadelphia region. This involves working with approximately 100 urban, state and regional planning organizations throughout the northeast. Mr. Raetsch manages the Technical Assistance, Defense Adjustment, Public Works infrastructure and Economic Adjustment grant programs for the region. Each year over \$15 million are awarded to economic development assistance grants designed to help communities overcome economic and employment problems in New England.

Prior to holding this position, he was the chief of the Planning and Technical Assistance Division in the Regional Office. He also served three years as the U.S. Department of Commerce's Deputy Representative of the Secretary.

Mr. Raetsch has taught political science courses in urban policy and development, American government, introduction to political science, public administration, and public policy analysis for Rutgers University, the University of Southern Colorado and Burlington County College.

Mr. Raetsch earned both a Bachelor of Arts in political science and a Master of Regional Planning from the Pennsylvania State University.

Ms. JOAN ROESSLER

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

**DOCUMENTS THAT SUPPORT
PANEL 5G: PLANNING FOR SUCCESS: HOW REDEVELOPMENT PLANNING
PROCESSES CAN WORK FOR YOUR TOWN**

PLANNING FOR SUCCESS
Can Redevelopment Planning Work for Your Town - An Evolution
September 4, 1997
Brownfields '97, Kansas City, Missouri

Paul Raetsch
Economic Development Administration
Philadelphia Region
Curtis Center, Suite 140 South
Independence Square West
Philadelphia, PA 19106
(215) 597-1072
EPA may reproduce this paper for the Brownfields '97 binder

Plan: Method or scheme of action, procedure, or arrangement; project, program, outline or schedule. *Webster New Collegiate Dictionary.*

Comprehensive Plan: The physical manifestation of putting down on paper the hopes, dreams and goals a community hold for itself. It functions much like a road map; it is a means to an end. *Michael Chandler.*

Planning: Visualizing a better future and going after it. *Martin Meyerson.*

Scholars debate “when” planning began in this country. Penn’s 1682 Plan for Philadelphia is usually cited as the first city plan. Daniel Burnham’s Plan for Chicago in 1909, an offshoot of the City Beautiful movement, is often cited as the beginning of modern metropolitan regional planning in the United States, even though it was not formally adopted by the City and had been commissioned by the Commercial Club. Hartford is credited with having created in 1907 the first permanent planning board in the United States. Cincinnati became the first city to formally adopt a comprehensive plan with a legal connection to zoning. Perhaps what is most important is not when planning started in the United States, all cities were planned. They were just planned differently. For instance, throughout the first century, the private sector did the planning. However, it is important to understand general trends in planning in this country.

Urban planners in most cities have been concerned with “redevelopment planning” and, more recently, with forming “public private partnerships.” To put this in context, we should remember that when this nation became free, cities lost their independence. The “public” was not involved in urban planning and development. Penn’s Philadelphia and other towns and villages in colonial America were planned because they were municipal corporations. The owners of the towns had them planned with large squares and public places. The quaint Colonial villages we love were planned and built by municipal corporations. After the Treaty of Paris in 1783 and the adoption of the Constitution in 1789, cities in effect became creatures of the states, and were powerless to control or regulate land use decisions. The Constitution was silent on cities, towns, townships and counties. It was up to the states to give their political subdivisions power. Since most of the country shared Jefferson’s well known disdain for cities, the states did not offer any powers to the cities. Iowa Chief Justice John Dillon coined “Dillon’s Rule” which stated that all cities’ charters and powers are given and taken by the states. Thus planning and land regulation, which would control private market decisions, were not powers held by America’s cities.

The first national effort to overcome “Dillon’s Rule” for municipal planning was initiated by the Commerce Department in 1928 under Secretary Hoover (rather surprising considering his political philosophy extolling free markets). The Department proposed a Standard City Planning Enabling Act for adoption by the states. This model ordinance suggested that cities set up separate Planning Commissions, outside of the city political structure. Thus while planning would be separate from political factions, it would also be separate from potential strength. The states fairly rapidly adopted local planning legislation, but by the late 1950’s most cities had moved their independent Planning Boards into Commissions appointed by and often reporting to the Mayor and Council. Planning Departments evolved to staff the planning functions. And planning and

zoning were usually separated. Should planning commissions be independent? Should professional planners be independent? Should planners remain out of politics? Can they?

We have experienced an evolution in the ideology of planning. Cities were creatures of the states, and the state was not interested in interfering with the private economy. The American patriots fought hard to win freedom and liberty. Their legacy and philosophy was that government had no role in interfering with private business decisions. Laissez Faire carried on almost uncontested as a political philosophy well into the twentieth century. The 1912 case of *Eubank v City of Richmond*, in which the court affirmed a setback requirement, is cited as the first Supreme Court case affirming the concept of land use regulation. In 1926 the Court established the constitutionality of zoning in *Village of Euclid v Ambler Realty*. It had taken 150 years from the Declaration of Independence for the basic building block of enforceable planning and zoning to be established. Americans do not want our personal economic liberties constrained by the state. It is at least partly a result of this attitude that we now face the major problem of redevelopment planning, particularly "brownfields."

In 1943 the National Resources Planning Board (NRPB) was abolished by Congress, with a prohibition that no federal agency could assume its national planning functions. Thus ended a ten year experiment at national planning that has not been attempted since. The state planning programs that had been established and funded by the NRPB all were ended by the states soon after the federal funding disappeared. Again, planning lost because it was seen as interfering with private decisions. The planning concept, to include land regulation and development restrictions, was not truly accepted in this country until Section 701 of the Housing Act of 1954 was enacted. For the first time the federal government provided financial support for general purpose planning. The Act required that communities prepare a Comprehensive Plan that included at a minimum; a land use plan, a thoroughfare plan, a community facilities plan, a public improvements program and zoning and subdivision ordinances. However, the Comprehensive Plan element of federal urban programs became an optional portion of Community Development Block Grants. If communities decided to fund planning, the function was retained. If planning was considered either a luxury or excessive interference in the private market, comprehensive planning functions and programs were deleted or weakened. Urban Renewal planning evolved into Model Cities planning, the true beginning of Redevelopment Planning.

Shifts in federal direction towards planning took a major leap forward with Lyndon Johnson's Great Society programs. Section 204 of the Model Cities and Metropolitan Development Act provided for Metropolitan Planning Agencies to review local projects for conformance to regional plans. Thus was born the A-95 Review requirements which were designed to strengthen regional planning agencies. This mandate became a victim of the Reagan "New Federalism" drive to get government off our backs and end the power of "planners, middlemen and grantmen." Johnson also created the Economic Development Administration in 1965 with a requirement that all projects be consistent with a locally developed Overall Economic Development Program (OEDP). An incentive was included in the legislation to encourage regional economic development planning by multi county Economic Development Districts (EDD). Funding was provided for the EDD planning activities, and extra funding provided for projects that resulted from that regional planning process. This program was targeted under both the Nixon and Reagan federalism

philosophies, but it survived. The EDA survived primarily because EDA consistently supported local planning efforts, resulting in strong local support. The EDA planning program was designed as a planning and implementation partnership, aimed at showing that planning should be implemented and that its priorities should be controlled by local decision makers. The EDA, and its companion Appalachia Regional Commission, planning programs have survived because of those two elements: local priorities, and control and results through implementation.

As we near the end of the century, we planners are faced with a dilemma. Over two dozen existing federal programs have a planning requirements or provide federal assistance to prepare a plan. Almost all are directed at single and specific purposes, many are focussed on redevelopment. All were created in part to fulfill Meyerson's charge for planning to "visualize a better future and go after it." What is missing from the listing seems to be federal support for the comprehensive planning needed to coordinate these many separate visions. To carry out the work of a planner, a person must believe that there is a "common purpose" or "public good" that we can define and strive for. We are optimists, we believe that we can do good. Our values tell us that freedom is opportunity, not just the absence of restraint, and that planning and regulation are necessary to provide opportunity for all, to provide for "common purpose." But whose definition will we pursue, whose vision is right? We must consider brownfields, environmental justice, neighborhood gentrification, and finally citizen empowerment.

One reason that federal funding for comprehensive planning disappeared may be that the federal vision was not what each of our communities perceived as their own common good or ideal. Regional planning and review was eliminated as a federal mandate because this seemed to violate the concept of Federalism. However, redevelopment planning is occurring at the municipal and neighborhood levels. Planning Commissions are making choices, determining future investments, controlling development, providing infrastructure and, in accordance with an original text book definition of planning, "allocating scarce resources within their boundaries." We can be optimistic because planners are being heard, their recommendations are considered.

A final debate that has not stopped since Alan Altshuler suggested it in his 1965 The City Planning Process, is the degree that planners should be involved with the political process. Few believe that planning can be isolated from politics, few would want it to be. Plans and planning recommendations can only be implemented by decisions made through the political process. The fact that so many specific planning programs are funded at the federal level should not disturb us. The federal interests in specific issues justifies federal assistance to assist states and localities address those issues. The key to achieving the better future that we believe can be reached is to convince elected officials of those decisions.

Of all the lessons learned from the Overall Economic Development Program process required by the Economic Development Administration, the clearest is this: local officials must be involved in the planning process, and that this involvement assures success of the program. Regional and local planning programs that seem to flounder, with the stereotypical plans that "sit on the shelf" are those that have become isolated from local officials and the private sector leadership. However, there is a problem. Not all planners or planning commissions see involvement as a strength. Almost all students that I have challenged to review local plans have met with great

resistance from local officials. In New Jersey, local comprehensive plans are mandated by state law, and must be updated every five years. Yet rarely will local elected officials or planning board members share the plans. They are available only in the Planning Board offices, if then. If this is typical throughout the nation, then we in the profession have a problem. The best way to educate elected officials on the wisdom of our vision is if the public agrees with us. Our function is to lead, and we must lead with the general public as well as trying to convince elected officials. The public must see the "good" in the public good. In EDA we are now accepting the plans developed under the Empowerment Zone concept as meeting the OEDP requirements. I am convinced that the "empowerment" in the planning process is the most important element of the EZ/EC initiative, the most significant effort at redevelopment since Model Cities.

Planning will continue into the next century, and I am convinced that redevelopment planning and implementation must become more aligned. As resources get scarcer, planning will focus on problems that need to be addressed. Our challenge is to make sure that individual problems are seen and challenged in a comprehensive manner. And this approach must be at the local as well as multi jurisdiction level.

(5H) Uncle Sam's Attic: A Treasure Trove of Federal Properties

Thursday, September 4, 1997

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

Description: Heightened government downsizing is providing an unparalleled opportunity to target underutilized and/or excess federal property for productive reuse in support of community redevelopment and rehabilitative initiatives, like Brownfields and EZ/EC. Find out about these properties and what the federal government is doing to facilitate reuse.

Location: Room 2218

Speakers and Affiliation:

Mr. Brian Polly (Moderator)

U.S. General Services Administration

Mr. John Martin

U.S. General Services Administration

MR. BRIAN K. POLLY

Brian K. Polly is the Assistant Commissioner for Property Disposal at the General Services Administration (GSA). Before his appointment in January 1995, Mr. Polly was the Assistant Commissioner for Procurement and Public Utilities, also at GSA. Prior to joining the GSA in 1986, he served as the Procurement Executive and the Director of Contracts Management at the U.S. Environmental Protection Agency.

Mr. Polly formerly served as the Director of the Contracts Division of the Joint Cruise Missiles Project (JCMP). He was also the Director of Plans at the Programs and Policy Division of JCMP and the Acquisition Policy Advisor to the Director of the JCMP.

Before joining JCMP, Mr. Polly held various positions within the major weapon system acquisition field with the Naval Materiel Command, the Naval Sea Systems Command, and the Naval Ordnance Systems Command.

Mr. Polly has been certified as a contracts manager by the National Contracts Manager Association. He also is a program member of the Procurement Executive Council and a past member of the Civilian Agency Acquisition Council, the Small Business Innovation Task Force, and the Policy Committee of the Federal Executive Institute Association. Mr. Polly is a member of the Defense Environmental Response Task Force (DERTF) chaired by the Deputy Under Secretary of Defense for Environmental Security. Mr. Polly holds a Master of Public Administration from Northern Colorado University and a Bachelor of Arts from Millersville State College.

MR. JOHN MARTIN

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

(5I) A Piece of the Action: Redevelopment Jobs Forecast

Wednesday, September 3, 1997

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

Description: Environmental jobs represent one of the fastest growing employment sectors in America. Brownfields redevelopment is creating jobs today and will be a major factor in the workforce of the future. Meeting the training and workforce development needs of tomorrow will be focus of this panel.

Location: Room 2203

Speakers and Affiliation:

Mr. Irwin Pernick (Moderator)

Ms. Lorrie Louder

Ms. Sherry Nikzat

Ms. Kizetta Vaughn

U.S. Department of Veterans Affairs

Port Authority of St. Paul, Minnesota

City of East Palo Alto, California

United Brotherhood of Carpenters Health and Safety Fund
of America

MR. IRWIN PERNICK

In his current position as associate deputy assistant secretary for policy in the U.S. Department of Veterans Affairs (VA), Mr. Pernick supervises a multi-disciplinary staff responsible for conducting policy analyses and cross-cutting high priority special studies on VA health care, benefits, and management policy and program plans and objectives. As counselor to the VA Secretary from 1989-92, inter alia, he launched an effort to increase assistance to homeless veterans and coordinated VA's interagency representation in the areas of homelessness, substance abuse, and AIDS. One of VA's homeless assistance endeavors, the Comprehensive Work Therapy program, will be a centerpiece in VA's participation in Brownfields. Prior to coming to VA, Mr. Pernick spent more than 26 years as a foreign service officer with the Department of State, where he focused on political-military, political, and public affairs questions and worked on issues bearing on Canada, Western and Eastern Europe, the Middle East, and East Asia.

MS. LORRIE LOUDER

Lorrie Louder is the director of industrial development for the Saint Paul Port Authority, responsible for the amendment of all Port Authority activities relative to new industrial business park development (brownfields), industrial site remediation, provision of financing for expanding manufacturing companies in the City and Metro East, customized job training, client contact with all Saint Paul manufacturers, and provision of a range of business services to Saint Paul manufacturers (site selection, real estate development consulting, assistance through city regulatory processes, customized job training).

Previously, Ms. Louder held the position of deputy director for the Office of Real Estate Management for the Massachusetts Division of Capital Planning and Operations. Her responsibilities included real estate disposition activities for a portfolio of state-owned properties and developer negotiations regarding reuse of these properties. Ms. Louder also served as director of the Neighborhood Revitalization Division at the Minneapolis Community Development Agency. She was responsible for industrial redevelopment and soil remediation activities, commercial and single family/multi-family residential projects, small business financing, and property management.

Ms. Louder holds a master's degree from University of Minnesota as well as an undergraduate degree from Boston College, Chestnut Hill, Massachusetts. Ms. Louder is also certified by the National Development Council in Real Estate Development and Business Credit Analysis.

MS. SHERRY NIKZAT

Sherry Nikzat has been with the U.S. Environmental Protection Agency (EPA) for the past seven years. Ms. Nikzat was the first EPA brownfields coordinator for the Region 9 office and is currently on loan to the City of East Palo Alto as part of the EPA Brownfields Initiative. Her position in East Palo Alto, where she serves as the Environmental and Economic Development Coordinator, is collaboratively funded by EPA and the U.S. Department of Housing and

Urban Development. Prior to working for EPA, Ms. Nikzat spent five years with the U.S. Department of Labor, working in unemployment insurance and job training programs.

MS. KIZETTA VAUGHN

Kizetta Vaughn, Director of Environmental Justice for the United Brotherhood of Carpenters (UBC) Health and Safety Fund of America, administers their NIEHS Minority Worker Training Program and other environmental justice programs sponsored by the UBC. On behalf of the Carpenters and the International Brotherhood of Painters and Allied Trades, Ms. Vaughn has been successfully involved, during the past 2½ years, in creating construction skills pre-apprenticeship training programs, including environmental worker training, in approximately 25 U.S. urban centers, for economically disadvantaged inner-city youth. She is a former Public Housing Authority Executive Director and has extensive working experience in providing housing and employment services for low-income families.

**DOCUMENTS THAT SUPPORT
PANEL 5I: A PIECE OF THE ACTION: REDEVELOPMENT JOBS FORECAST**

Job Training in East Palo Alto

The San Francisco Office of the U.S. Environmental Protection Agency (U.S. EPA) and the City of East Palo Alto are forging new relationships with DePaul University, Opportunities Industrialization Center West (OICW) and private industry to provide technical training and employment opportunities for disadvantaged youths in East Palo Alto.

The program includes "piloting" an initial training and job placement program in which DePaul University will provide 60 hours of hazardous material worker training for approximately 30 youths. An additional 180 hours of training will be devoted to lead and asbestos abatement and conducting underground storage tank cleaning and removal. Funding for the DePaul training was provided by U.S. EPA's Headquarters office through an existing grant that the university has with the National Institute of Environmental Health Sciences. This training will be expanded by a week to include Allies Staffing training for hydroblasting for storage tank cleanup, safety awareness, proper use of personal protection equipment and proper lifting techniques. As part of this training, U.S. EPA staff will provide training on the Agency's program for responding to releases of hazardous substances that present serious threats to human health and the environment. Through OICW, the trainees will also receive training that will help prepare them to enter the workforce and provide them with limited general education requirements. Allies Staffing will administer a drug testing and monitoring program and provide physicals for the students. At the end of the training program, students will be certified to fill entry-level positions in the hazardous materials cleanup field. The classroom training will be followed by 90-days of paid on-the-job training during which time students will be assigned to do environmental work at sites in the area.

Background

This job training and placement program is an integral part of U.S. EPA's national Brownfields initiative. "Brownfields" sites are abandoned, idled or underused industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination. Frequently, these properties, once the source of jobs and economic benefits to the entire community lie abandoned for fear of the contamination and liability it implies.

The Ravenswood Industrial Area in East Palo Alto was identified in May 1996 by U.S. EPA as a high priority regional Brownfields pilot project. Past efforts to redevelop the 130-acre complex were hampered by the perception that there was widespread contamination at the site that could cost up to \$30 million to clean up. Earlier, in 1996, U.S. EPA's Region 9, in partnership with the California Regional Water Quality Control Board and the City of East Palo Alto, conducted a comprehensive soil and groundwater investigation at the Ravenswood Industrial Area that showed that contamination there

was far less than originally expected. Though no official cost estimates have been developed, the Regional Water Quality Control Board staff believe that the actual cleanup costs are more likely in the \$2 million to \$5 million range.

Current Status

The classroom portion of the job training program will begin on August 11 and end on September 19. Following this training, the 30 students will begin 90 days of on-the-job training (OJT) under the employment of Allies Staffing, an out-sourcing job placement firm that specializes in environmental cleanup services. Allies Staffing will put these students to work during the 90 day OJT period. This will allow students the opportunity to apply what they have learned in the classroom to a real-world situation. At the conclusion of OJT, graduating students wishing to seek more permanent employment will be available for hire by end-users to fill entry-level or other technical positions.

Contacts

For additional information on this program, contact the following:

Sherry Nikzat
City of East Palo Alto
(415) 853-3100

Thomas Mix
U.S. Environmental Protection Agency
(415) 744-2378

Craig Jenkins
OICW
(415) 462-6300

Jim Tutor
Allies Staffing
(707) 748-0233

PANEL PRESENTATION OUTLINE

Background information on the Carpenters' Health & Safety Fund's experience and involvement in the NIEHS funded Minority Worker Training Program:

MWT program has been conducted by the Carpenters Health and Safety Fund for the past 3 years and has provided environmental worker training coupled with pre-apprenticeship construction skills training to over 300 minority youth between the ages of 18-25. The Carpenters Union working in conjunction with the International Brotherhood of Painters and Allied Trades have created program partnerships in four target cities during this time: Los Angeles, Memphis, New Orleans, and Minneapolis. Recently, Oakland, CA was included. Through collaborative programming with each city's union affiliates, public housing authorities, Private Industry Councils, community colleges and/or Historical Black Colleges, local union signatory contractors, the MWT program provided community outreach, recruitment and assessment, life skills counseling, remedial education and GED training or testing, basic construction skills training, lead abatement, asbestos abatement or hazardous waste worker training and direct entrance into the unions' apprenticeship programs.

Specific Program Elements Essential to Ensure a Modicum of Success:

- Involvement in community planning
- Formation of partnerships, specifying partners' responsibilities and commitments of resources
- Identification of potential employers during planning process
- Involvement of partners in recruitment, assessment and selection of Program participants
- Development and implementation of thorough life skills training program
- Development of mentorship program
- Development and implementation of strategic marketing/public relations program

Why connect the MWT program to community economic development initiatives and how:

- Program marketing and to whom
- Connecting community human and financial resources involved in Brownfields redevelopment activities

(5J) Done Deals That Work

Thursday, September 4, 1997

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

Description: Real estate and development experts share their successful experiences. Come hear what it takes to close the deal on a variety of different properties. See real examples of brownfields redevelopment through the eyes of the people who make them happen.

Location: Room 1202A-B

Speakers and Affiliation:

Mr. Ned Abelson (Moderator)

Ms. Beth Barton

Mr. Todd S. Davis

Mr. Joseph M. Manko

Goulson & Storrs

Updike, Kelly, and Spellacy, P.C.

Hemisphere Corporation

Manko, Gold, & Katcher

MR. NED ABELSON

Ned Abelson is a Director at Goulston & Storrs in Boston, where he concentrates his practice on environmental law. He provides general representation concerning environmental matters to the firm's brownfields, real estate and corporate clients, and handles the environmental aspects of the many different transactions in which they are involved. A considerable amount of his practice involves property subject to the Massachusetts Contingency Plan (the "MCP"). Mr. Abelson is a member of the American Bar Association Brownfields Task Force and the Liability Subcommittee of the Massachusetts Brownfields Advisory Group. He also is a member of the Chicago Brownfields Forum Model Loan Package Group, which developed a model brownfields documentation lending package, and is chairman of the Environmental Subcommittee of the International Council of Shopping Centers ("ICSC"), for which Mr. Abelson regularly reviews proposed amendments to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and federal brownfields legislation. He currently co-chairs the Boston Bar Association Recycling Task Force and is a participating member of the Massachusetts Environmental Justice Network. Mr. Abelson regularly writes articles concerning environmental matters and has spoken on hazardous waste issues at seminars given by ICSC, NAIOP, the U.S. Environmental Protection Agency (EPA), PLI, Associated Industries of Massachusetts, Massachusetts Continuing Legal Education, the Boston Bar Association, and other organizations. Mr. Abelson graduated magna cum laude from Brown University and received his law degree from the University of Pennsylvania. He is a member of Phi Beta Kappa.

MS. BETH BARTON

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

MR. TODD S. DAVIS

Todd Davis is President of Hemisphere Corporation, a company that acquires and redevelops environmentally distressed real estate. Mr. Davis also is a partner in Benesch, Friedlander, Coplan & Aronoff LLP and is the co-chairman of the firm's Environmental Practice Group. Mr. Davis is an author of an extensive treatise on redeveloping brownfields sites nationally, entitled *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property* (American Bar Association 1997). He is also vice chairman of the American Bar Association's Brownfields Task Force.

MR. JOSEPH M. MANKO

Mr. Manko was U.S. Environmental Protection Agency's (EPA) Region 3 general counsel from 1973 to 1975, and has practiced environmental law ever since. He teaches environmental law at the University of Pennsylvania and University of Vermont Law School, is the chairman of the Pennsylvania Environmental Council and a member of Pennsylvania 21st Century Environmental Commission. He has negotiated dozens of brownfields transactions and cleanup liability protection agreements with regulatory agencies in Pennsylvania and New Jersey and EPA's Regions 2 and 3. Mr. Manko also lectures and has written a number of articles on state and federal brownfields policies.

**DOCUMENTS THAT SUPPORT
PANEL 5J: DONE DEALS THAT WORK**

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THE MASSACHUSETTS CONTINGENCY PLAN: A PRIVATIZED WASTE SITE CLEANUP PROGRAM THAT WORKS

Ned Abelson

July 22, 1997

The Massachusetts Contingency Plan (the "MCP") is a leading example of a privatized waste site cleanup program. The MCP in largely its current form became effective October 1, 1993, and can be found at 310 CMR 40.0000 et seq. This program has become a national model, and in 1995 received one of the Innovations Awards given by the Council of State Governments. These awards are given to recognize "the best and most creative practices in state government which have the potential to be adopted by other states."

Both the regulated community and the people at the Massachusetts Department of Environmental Protection (the "DEP") who implement the MCP would agree that the new program has largely been a success and is a better way of addressing the cleanup of hazardous waste sites. Set forth below is a description of the problems that led to the creation of the current MCP, the program that was developed in response to those problems, a summary of several highlights from the program, as well as issues in the current system that need further attention, and a brief status report regarding Brownfields programs in Massachusetts.

Note: This article was first published in connection with the RTM Communications Brownfields Conference in Washington, D.C. on April 17 and 18, 1997 entitled "Financing New Opportunities in the Redevelopment of Brownfields and Implementing Environmental Risk Management in Financial Transactions."

The Problem

In 1983, Chapter 21E of the Massachusetts General Laws was enacted. This statute is the Massachusetts equivalent of CERCLA, and was enacted in response to the public's demand that the state address the cleanup of oil and hazardous material disposal sites in Massachusetts.

Unfortunately, the public did not provide the state with the resources necessary to accomplish this and so in short order a significant backlog of cases developed. The state was unable to oversee many of the sites that were brought to its attention, and only the worst sites got much attention at all. Political connections became more important than usual (even in Massachusetts), and the merits of a particular location became less important.

From a transactional perspective, two problems were particularly significant. First, as noted above, if a site did not have significant contamination issues, then getting the agency's attention was very difficult, if not impossible. Second, the notification provisions in the statute and in early versions of the MCP were interpreted both by the DEP and the private bar as meaning that if any oil or hazardous material were identified at a site (i.e., one part per billion would be enough), then notification to the DEP was required. As buyers, sellers, and lenders became more sensitive to issues involving oil and hazardous waste, the number of site assessments performed increased, and so did the number of sites for which notification to DEP was required. The backlog continued to grow and, as time passed, things only seemed to be getting worse.

A Solution

Amendments to Chapter 21E were enacted in 1992 and revisions to the MCP were implemented in 1993, all with the aim of privatizing the waste site cleanup program to the extent feasible. The concept was simple: the government did not have the resources to address each and every site, and many of the sites in the MCP system were not significant enough for it to make any sense for the government to address them. Further, there was general agreement that many of the least contaminated sites were so mildly affected that they should not be in the MCP system at all.

Now, instead of needing input from DEP, a property owner, tenant, lender, or other interested person can turn to their Licensed Site Professional. These individuals, often referred to as LSPs, are licensed by an independent Board of Registration, have their own professional organization and, most importantly, issue

opinions regarding cleanup end points and recommendations concerning how to proceed at specific sites pursuant to the regulations. These opinions have become accepted in commerce, and are relied on now both by private parties and the agency. As a result, DEP's limited resources are focused on the most significant sites, on site discovery efforts, and on policy issues. (In fact, DEP has been able to focus so much effort on policy issues that those in the private sector have begun to have difficulty keeping up with the flow of policy documentation emanating from DEP.)

The 1993 MCP also provides a number of means by which to exit the system once a disposal site has been reported. Essentially at any point in the system, once applicable risk based cleanup standards have been met (which, in some cases, means that no cleanup is required), a completion statement can be filed with the agency and at that point there is no need to proceed further through the MCP. In addition, the regulations include incentives to take advantage of these exit possibilities sooner rather than later.

As a result of putting the new MCP in place, many more site are moving through the system and private parties have the ability to affect and in some cases control the timing of the relevant work. The result is that the backlog of sites has been reduced dramatically, the type of site entering the system makes more sense, and things for the most part seem to be working.

Additional Highlights

1. **Notification Requirements.** One of the problems with the previous Massachusetts waste site cleanup program was the ridiculously low notification thresholds that applied, regardless of the nature of the contamination and regardless of the nature of the site. This problem has been addressed in both regards under the current MCP. Instead of an absolute rule that everything has to be reported, there are now "Reportable Concentrations" and "Reportable Quantities" specified in the regulations for a long list of hazardous materials and different types of oil. In addition, there are different reporting standards for different locations, and the regulations differentiate between these locations based on the sensitivity of the area from the perspective of a potential environmental receptor.

2. **Incentives for Early Action.** As noted above, the MCP now includes several incentives to take early action. Certain fees apply only after specified time periods have run, and the regulations include the opportunity to take action before those time periods have run so as to avoid the need to pay the otherwise applicable fee. In addition, there are means by which private parties may take risk reduction measures early in the process to address contamination issues. Here the incentives

include that if doing so eliminates the risk associated with the site, then it may be possible to close out the site after having done so. If that is not the case, however, the party responsible for the site still gets “credit” for having taken this action when later in the process it is necessary to classify the site, which essentially involves prioritizing the site based on a score sheet set forth in the regulations. Further, although an application of sorts must be filed before taking these preliminary risk reduction measures, more often than not specific comment is not received back from DEP and the private party is able to proceed following the expiration of the applicable presumptive approval period. This time period is ordinarily twenty-one days.

3. **Risk Based Cleanup System.** The MCP is now largely a risk based system. All sites do not have to be cleaned up to background or residential standards. Three different types of risk characterizations can be used to assess the level of risk at the particular site. The first is more conservative and general. It involves the use of “cookbook” numerical standards, which are based on specific regulatory provisions. These provisions describe how to determine which category the site is in, based on its proximity to environmental receptors, and how to use tables in the regulations, which set forth the relevant concentrations of oil and hazardous materials that need to be satisfied in order to conclude that the site does not present a significant risk. A second method of risk characterization is provided pursuant to which particular numerical standards can be modified based on site specific information. There is also a third risk characterization approach that is entirely site specific but much more involved, which can be worth the effort in some cases, particularly if the site were not likely to pass muster using the more simple risk characterization approaches.

4. **Activity and Use Limitations.** Another innovation in the MCP program is the use of Activity and Use Limitations (“AULs”). AULs are title restrictions that restrict the use of a site and are imposed voluntarily by the property owner. The reason the property owner is inclined to do so is that, in exchange for putting the AUL of record, the owner will not have to cleanup the site to more conservative, residential standards. AULs provide notice of the existence and location of contamination at the property, as well as any use restrictions that are required based on that contamination in the opinion of the LSP for the site.

Although initially in the real estate community there was a fair amount of resistance to their use, now both land owners and lenders have become sufficiently accustomed to AULs that they are not deal breakers simply due to their existence. Rather, the question is (as it should be) what is the nature of the contamination at the site that is the reason for the AUL.

5. **Flexibility.** One further benefit of the current MCP is its flexibility. The ability to use exit ramps from the program at different times has been described above, as has the ability of a private party to select which risk characterization method to use. In addition, the regulations rely on the LSP's judgment at each step in the process to determine the scope and the nature of the work to be performed to comply with the relevant regulatory requirements. This is the case with respect to initial reports, more detailed site investigation reports, remediation feasibility analyses, and completion statements filed with the agency. Similarly, the exact nature of the restrictions, obligations, and permitted activities set forth in an Activity and Use Limitation is also left to the LSP. As a result, one of the most important things to do in bringing a site through the MCP process is to be sure to be aware of all of the available options at each step so that the best decisions can be made regarding how to proceed.

Remaining Problems

1. **Conservative LSP Decision Making.** So far, so good - it may even sound too good to be true. Well, the MCP isn't perfect and, in fact, there are a number of areas where improvement is possible. First, because LSPs have been given so much responsibility under the new program, many private parties feel that LSPs are now more conservative in their decision making than before. That in and of itself is fine, but property owners feel that the costs associated with that conservative decision making are not necessarily appropriate. Naturally, DEP often feels that LSPs are not conservative enough, and so there is a healthy tension here. One obvious yet important result from all of this is that it is always very important to carefully select the LSP with whom you work.

2. **Complicated Regulations.** All of the flexibility in the new regulations has also come at a price. The 1988 MCP was about 1/8th of an inch thick, while the current MCP more closely resembles the Boston phone book. The regulations are now much more complicated. Because of this alone, consulting costs endured by property owners for both LSPs and attorneys have increased. In many cases, this additional cost may actually be worth it, in that by relying on these consultants, a private party can move through the system much faster than before and, as a result, save considerably in other areas of a project which may be time sensitive. Nonetheless, there is no doubt that the regulations now are more complicated than before.

3. **Regulation Changes.** The regulations also change frequently, at least so far. Most of these changes are for the better, but it is still unsettling to LSPs,

attorneys, and their clients to need constantly to be aware of what proposals are floating around, when draft regulations are becoming final, and if the latest and greatest in fact is. As a result of feedback from the regulated community, at this point DEP is actually planning to try not to change the regulations too much in the near future. Skeptics would anticipate this will mean that the same regulated community will then begin pointing out specific changes that are needed, and that is probably true. In any event, this problem does illustrate the nature of the process of trying to improve the regulations.

4. **Audits.** LSPs are not free to simply interpret the MCP as they please and go on their merry way. Appropriately, the MCP includes provisions pursuant to which the DEP may audit the work of LSPs that has been submitted. No one argues with the merits of that.

Initially, the MCP provided that DEP could audit a site for five years from when the site was closed out. This means that if it takes several years to close the site out, the audit window was quite long, particularly from when the work may have started.

The five year audit period quickly led to many complaints from the private sector. The problem was that if closing out the site did not really mean that the site was closed out, then the parties to a transaction would be left with too much uncertainty as to the final status of the site. Lenders were even more anxious about this possibility. DEP, on the other hand, wanted to be sure that it would be able to get to all the sites it in fact wanted to audit, and was concerned that it would not have enough personnel to accomplish this; thus, the five year window.

As it turns out, one of the recently enacted amendments to the MCP changes the audit window from five years to two. DEP found that it was not auditing much of the work that was submitted that was more than two years old, and so felt comfortable giving that up. Private parties were happy with the change, but had suggested that instead one year would be more appropriate.

Massachusetts Brownfields Efforts

A little more than two years ago, Massachusetts launched a pilot Brownfields redevelopment program known as the Clean Sites Initiative. This program was developed by several state agencies, including the Executive Offices of Economic Affairs and Environmental Affairs, the Department of Environmental Protection and the Office of the Attorney General, all working with a number of private sector representatives. The Initiative attempted to encourage the redevelopment of

contaminated sites in designated Economic Target Areas by limiting potential liability under Chapter 21E (the Massachusetts Superfund Statute) by means of a Covenant Not to Sue.

Under the Massachusetts program as it currently exists, the applicant, who must be a potential buyer or tenant, must agree that known contamination will be assessed and remediated as required by the MCP. Once these steps have been taken, the state agrees not to sue the new owner or tenant if more contamination is found. The covenant does not, however, bar claims brought by third parties other than the Commonwealth, and it does not relieve the new owner or tenant from responsibility for new releases that occur after the initial cleanup has been completed and the Covenant Not to Sue has taken effect. Passive releases, such as the leaching of contaminants from drums previously buried at the site by others, are generally not considered “new releases” under the program, and the Covenant protects against them.

1. **Eligible Projects.** Currently for a project to be eligible, it must be located within an Economic Target Area, as designated by the Massachusetts Economic Assistance Coordinating Council. Thirty-three areas have been designated to date, and a list of them is available as part of the Clean Sites Initiative application package. Copies of the package are available from the Massachusetts Office of Business Development and from DEP Regional Service Centers.

A project not located within a designated Economic Target Area may still be eligible if the Department of Economic Development determines that the project presents an “exceptional economic development opportunity”. In practice, this standard has been fairly easy to satisfy, and the relevant determination has focused on whether jobs will be created.

In order to be eligible, the relevant project must also involve the reuse or redevelopment of a contaminated property for commercial or industrial activities. Thus far, residential projects have not been included in the scope of the pilot program.

As noted above, the applicant must be a prospective owner or tenant of the relevant property, and cannot be a Potentially Responsible Party (a party with potential liability under Chapter 21E) with respect to the cleanup of the site. As part of the application, the applicant must certify that it is willing and able to ensure that the site will be addressed pursuant to the requirements of Chapter 21E and the MCP.

Applications are submitted to the Massachusetts Office of Business Development, where they are first reviewed. The forms are then reviewed by DEP and the Executive Office of Environmental Affairs. The application materials note that the agencies have established the goal of processing applications within thirty calendar days of receipt. This time-frame assumes that a complete application is submitted initially. The agencies' intent here is laudable in that the agencies are specifically attempting to allow applicants to learn whether they will receive a Covenant before taking title or executing a lease concerning the subject property. Practice indicates, however, that there is still a fair amount of value to be gained by chasing the application once it lands at the state's offices.

2. The Covenant Not to Sue. Once an application has been approved, the Office of the Attorney General will issue a Covenant Not to Sue as part of a form agreement. In addition, DEP will issue a Certificate of Completion promptly upon receipt of a Response Action Outcome ("RAO") Statement under the MCP, which indicates that a Permanent Solution has been achieved. An RAO Statement is the equivalent of a completion statement that is filed with DEP by the private party upon satisfying the relevant requirements of the MCP.

The Covenant covers those releases that are fully described in the RAO Statement. As noted above, it does not cover any subsequent, new releases of oil or hazardous materials. The Covenant is void if any false statements or certifications are contained in the application or if the applicant fails to perform any obligations contained in the RAO Statement.

The Certificate of Completion that is issued confirms that DEP has received the RAO Statement for the site. It does not imply DEP's approval of the adequacy of the cleanup actions taken at the site, and it does not block DEP's ability to audit the site pursuant to its authority under the MCP. In addition, there are two reopeners that apply to the Covenant:

- a. Before the cleanup is completed, if DEP finds that response actions have not been conducted in substantial and material compliance with the MCP, or
- b. After the cleanup is completed, if DEP finds that the response actions that were performed did not meet the standard of care in effect at the time they were performed.

Further, if a DEP audit finds violations of applicable MCP requirements, DEP will make a decision regarding whether these violations warrant reopening the

Covenant. If that happens, the Covenant holder will have an opportunity to correct the identified violations to keep the Covenant in effect.

The Covenant can be obtained prior to the submission of an RAO Statement concerning the property if the cleanup proceeds in substantial compliance with the MCP, any past fees or costs are paid, and the applicant ensures that the steps necessary to achieve the RAO Statement are completed.

3. Status of the Massachusetts Clean Sites Initiative. The state agencies that put together the Clean Sites Initiative program assembled a group known as the Brownfields Advisory Group, which staff made up of private sector representatives from the following areas: real estate and development, business and industry, the lending community, the environmental justice movement and neighborhood groups, as well as representatives from the environmental engineering and legal fields and municipal representatives. The charge of this group includes evaluating and improving the existing program, creating financial assistance mechanisms and clarifying liability issues, all in an effort to encourage further Brownfields redevelopment in Massachusetts.

The output from the Brownfields Advisory Group was a report, which included draft financing legislation for Brownfields projects and a number of suggestions regarding the liability provisions in Chapter 21E. Subsequently, the financing proposals were filed with the Massachusetts legislature as draft legislation.

In addition, there are now at least three Brownfields legislative proposals before the legislature in Massachusetts. These proposals have been submitted by Representative Peter Larkin, Governor William Weld and Attorney General Scott Harshbarger. All three attempt to encourage the redevelopment of Brownfields, although their specifics differ, in some cases significantly. At present, it appears likely that the legislature will at least seriously consider these proposals and may in fact pass something this year. Predicting exactly what will happen in the Massachusetts legislature is, of course, more uncertain than any hazardous waste problem encountered to date.

4. Analysis. Many private parties initially argued that the Massachusetts Clean Sites Initiative did not go far enough, particularly with respect to liability concerns. For example, some argued that the Initiative provided no real benefits because the Commonwealth merely agreed not to sue the private party if the private party satisfied the requirements of the MCP (i.e., in that case, there would be no reason to sue). Nonetheless, the program does represent a good first step. In addition, in some cases, the program can provide very real protection. An example

would be when contamination is found later even though the contamination was not found during the initial environmental site assessment, provided the appropriate standard of care was followed in performing the initial assessment.

Perhaps the better view is to consider that the Clean Sites Initiative in its current form can be used as one of several risk reduction and credit enhancement techniques in connection with a Brownfields project, rather than viewing the program as the only solution for one of these sites.

**PERFECTING THE MODEL:
ANALYSIS OF OHIO'S LARGEST PRIVATE
BROWNFIELD REDEVELOPMENT**

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Kevin D. Margolis**

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PERFECTING THE MODEL: ANALYSIS OF OHIO'S LARGEST PRIVATE BROWNFIELD REDEVELOPMENT

Todd S. Davis
Kevin D. Margolis**

There are an estimated 130,000 to 450,000 contaminated commercial and industrial sites ("brownfields") around the country, according to the U.S. Government Accounting Office.¹ The sheer enormity of the brownfields dilemma has drawn this issue into the national spotlight, provoking the U.S. Conference of Mayors to declare the situation an emergency. No community is immune. However, despite the recent attention devoted to this issue and the rise of voluntary cleanup programs in 30 states across the nation, few significant brownfield redevelopment projects have been completed.

Hemisphere Corporation was founded by a group of environmental attorneys to acquire and redevelop brownfield sites. Since early 1996, Hemisphere has acted in the capacity of environmental team leader on Ohio's largest private brownfield redevelopment. This project can serve as a model for sophisticated brownfield redevelopment transactions across the nation.

Hemisphere's project responsibilities included:

- coordinating all environmental work;
- negotiating all regulatory issues with state officials;
- securing low interest public financing;
- negotiating significant private financing with traditional lending sources;
- orchestrating environmental insurance coverage; and
- coordinating public relations associated with the project.

Project History

The project entails redeveloping a 19-acre site located in a northern suburb of a major Ohio city. Numerous attempts to investigate and redevelop the site had been made over the period of approximately 15 years. Before entering the project, five environmental consulting firms had previously conducted both Phase I and Phase II environmental site investigations at the property. These costly environmental investigations each led to the conclusion that the environmental issues at the site involved too great a cost to resolve and created too great a risk of future environmental liability. As a result, the site remained an underutilized industrial property in a largely residential and commercial retail area. In essence, the environmental issues relating to the site precluded any serious attempts at site redevelopment.

With the enactment of Ohio's Voluntary Action Program (the "VAP"), the development team reconsidered acquisition and redevelopment of the site. The more flexible approach to environmental cleanup, termination of future environmental liability through the issuance of a Covenant Not To Sue, and financial incentives provided by the VAP contributed to a new environment for the project team to move forward with a plan for site acquisition and redevelopment.

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^{**}Todd S. Davis and Kevin D. Margolis are principals in Hemisphere Corporation, a company dedicated to acquiring and redeveloping contaminated property. They are also partners in the Environmental Practice Group of Benesch, Friedlander, Coplan & Aronoff LLP, a large full-service law firm based in Cleveland, Ohio. For copies of their book, *Brownfields: A Comprehensive Guide to Redeveloping Contaminated Property* (American Bar Association 1997), please call (800) 285-2221.

Environmental Issues

By any definition, the site would be referred to as a brownfield site. Since 1914, the site had been used by a variety of commercial and industrial businesses. A large manufacturing building on the site was abandoned years ago by a bankrupt manufacturing company. The building foundation of a burned out metals refurbishing manufacturer rested near this abandoned structure. Former tenants at the site included a plastics manufacturer, an asphalt plant, warehouses and several machine shops. While a few tenants still occupied several older structures on the property, the vast majority of the site was vacant and underutilized.

Historically, the site, in part, was used to dump foundry sand, construction debris and other fill materials. The primary environmental issues at the site included:

- historical fill material (foundry sand deposited throughout the site that contained lead and other heavy metals);
- perched groundwater in several well-defined areas of the site impacted by solvents and dissolved metals; and
- asbestos contained in building materials throughout the site.

Current plans for redevelopment anticipate converting the site into a major commercial shopping center with a number of significant tenants. The total anticipated size of the project is approximately 320,000 square feet. These development plans call for the developer to invest approximately \$30 million in demolition, environmental remediation and construction activities at the site. This redevelopment will create nearly 400 full-time and part-time jobs at the developed site. Additionally, approximately 350 tradespersons will be involved in different aspects of site work and construction.

Risk-Based Remediation Activities

Based on the litany of previous environmental site investigations, anticipated cleanup costs associated with the project were estimated to be in the range of \$8 to \$13 million. Under the VAP, the environmental team utilized a risk-based approach to remediation. This risk-based approach demonstrated that remediation could be conducted through both engineering and institutional controls, resulting in savings of approximately \$8 million in anticipated remediation costs.

Creative Financing and Investment Incentives

Financing of the project calls for a sophisticated public/private partnership. Hemisphere secured a \$5.3 million low interest loan for all remedial activities provided by two different Ohio public agencies: the Ohio Water Development Authority and Ohio EPA's Water Pollution Control Loan Fund. The public funds are available at a low interest rate and will be subordinated to the first major private brownfields loan provided by one of Ohio's largest construction lenders. The financial mix will include approximately 20% equity, 20% low interest public financing and 60% traditional private financing. This blend of investment demonstrates a significant investment by the developer and appropriate level of encouragement by governmental authorities, while still providing adequate security to the traditional lending source on the project. Further, it allows the government to leverage its limited investment funds dedicated to brownfields redevelopment by a factor of nearly 6 times. This type of coordinated financing effort should serve as a model for future brownfield redevelopment projects.

Other financial incentives available with the project include a \$500,000 income tax credit to the developer. Additionally, the project will take advantage of a guaranteed 10 years of tax abatement on the increased value of the real estate due to the remediation.

Hemisphere coordinated and manuscripted a package of environmental insurance to cover all contractors working on the project during the development process. This package of insurance will also

incorporate environmental liability coverage to address the threat of contingent liabilities both during and after the development process.

Dramatic Results

The results of the project will be dramatic. These results include:

- a release of liability from the state of Ohio in the form of a Covenant Not To Sue;
- an indication from EPA of its intent not to “second guess” Ohio environmental regulators in the form of an EPA “comfort” letter;
- significant financial incentives for the project in the form of low-interest loans and tax abatement; and
- the creation of 400 full-time and part-time jobs and 350 construction jobs.

A dedicated development team and a creative plan can make available new opportunities through state voluntary cleanup laws, which will undoubtedly encourage the successful redevelopment of brownfield sites. Thus, developers and property owners need not view these projects as “environmental nightmares,” but rather as merely another brand of sophisticated real estate transaction.

ENDNOTE

1. U.S. Government Accounting Office, *Community Development – Reuse of Urban Industrial Sites*, (GAO/RCED- 95-172) (June 1995).

DO YOU OWN CONTAMINATED PROPERTY?

REAL ESTATE SERVICES

No commercial real estate transaction should be closed without a careful analysis and understanding of potential environmental liabilities. In fact, many commercial properties simply cannot be transferred due to associated environmental problems.

Barriers to transferring these distressed properties are a result of:

- Tremendous costs to property owners who want to resolve their environmental liabilities but cannot because of overwhelming legal and environmental remediation expenses.
- Complex and confusing federal and state regulatory and liability schemes that property owners have difficulty understanding.
- Lending institutions' refusal to provide financing for acquisitions or development of properties that have a risk of environmental liabilities.
- Fear that transferring the property to a buyer not qualified and prepared to address environmental issues will result in liability to the seller years in the future.



ACQUISITION OF ENVIRONMENTALLY DISTRESSED REAL ESTATE

Hemisphere acquires environmentally distressed property from owners who will be unsuccessful in the traditional real estate market. Hemisphere's principals are nationally recognized experts in redeveloping brownfields sites.

ENVIRONMENTAL WORKOUTS

Many environmentally stressed loans or transactions need a partner to bridge the environmental gaps. Hemisphere can provide capital and form strategic alliances to successfully restructure transactions blocked by environmental liabilities. Hemisphere also can provide environmental gap financing for remediation projects on qualified properties.

DO YOU NEED THE RIGHT STRATEGIC PARTNER?

BROWNFIELDS CONSULTING SERVICES

On a selective basis, Hemisphere will partner with property owners, professional service firms, acquisition groups and other stakeholders to deliver critical leadership and business advice in structuring the best possible brownfields redevelopment strategy. Literally, Hemisphere's principals "wrote the book" on successfully completing brownfields transactions entitled *Brownfields: A Comprehensive Guide To Redeveloping Contaminated Property* (American Bar Association 1997). This treatise addresses all legal, financial, and scientific aspects of the brownfields redevelopment process, including a detailed discussion of all state voluntary cleanup programs. Hemisphere's practical experience provides invaluable insight in anticipating and overcoming barriers typically associated with brownfields transactions. We have demonstrated this experience as an advisor in the following capacities:

PROPERTY POSITIONING

For a number of years, Hemisphere has served as the national brownfields disposition advisor for a large public manufacturing company in transactions across the United States. Hemisphere's team consults with the company's top executives and real estate professionals to quantify and aggressively manage environmental liabilities in the most cost-effective manner practicable. Our involvement has not only saved the company millions of dollars in proposed environmental consulting fees and remediation costs but also has facilitated the sale and lease of many previously "unmarketable" facilities.



ENVIRONMENTAL BUSINESS ADVISOR

Hemisphere served as the Environmental Team Leader for Ohio's largest private brownfield redevelopment. This project involved the redevelopment of a 25 acre industrial site into a 287,000 sq. ft. retail shopping center. Despite studies conducted by 5 previous consulting firms, environmental concerns had precluded this development for nearly 15 years. During this engagement, Hemisphere's responsibilities included:

- Creating a project strategy to address all environmentally related development issues
- Managing all environmental consulting firms
- Negotiating all environmental regulatory issues with relevant governmental authorities
- Securing public financial incentives including low-interest public financing and tax abatement
- Negotiating financing with the project's primary lending institution
- Orchestrating environmental insurance coverage
- Coordinating the public relations program

Hemisphere's flexible team-oriented approach can be the key to your brownfields business needs.

NOW AVAILABLE

From the ABA Section of Natural Resources, Energy, and Environmental Law

BROWNFIELDS

A Comprehensive Guide to Redeveloping Contaminated Property

Todd S. Davis and Kevin D. Margolis
with a preface by Vice President Al Gore

Redeveloping abandoned and contaminated property known as "brownfields," is instrumental to the economic revitalization of our nation's cities. Whether you are a property owner, developer, regulator, lender, state or local government official, real estate or environmental lawyer, you have a stake in the redevelopment of brownfields.

This new book, from the ABA Section of Natural Resources, Energy, and Environmental Law, takes a comprehensive look at the complicated issues surrounding brownfields redevelopments. Timely and practical, the book provides you with insight into key issues and outlines effective strategies for implementing brownfields redevelopment. It also includes a detailed examination of all recently enacted state Voluntary Cleanup Programs.

The book is divided into four parts. Part 1 explains critical background information to put the "brownfields issue" in context. Part 2 details the most important legal, business, financial and political issues associated with redeveloping contaminated real estate. Part 3 discusses both the basic science and the newly emerging risk-based science used to appropriately and cost-effectively address contaminated property. Finally, Part 4 offers a detailed look at the most important elements of each state Voluntary Cleanup Program.

1997 6 x 9 728 pages paper

PARTIAL TABLE OF CONTENTS

Defining the Brownfields Problem ■ Overview of Federal and State Law Governing Brownfield Cleanups ■ The Clinton Administration's Brownfields Initiative ■ Doing the Brownfields Deal ■ Acquisition Considerations for Brownfields Properties ■ Valuing Brownfields ■ Creative Financing Strategies for Redeveloping Brownfields ■ Deductibility of Environmental Remediation Costs ■ Environmental Insurance in the Brownfields Transactions ■ Hiring the Right Laboratory ■ Rebuilding Communities through Brownfields Development ■ Science of Brownfields ■ Role of Risk Assessment in Redeveloping Brownfield Sites ■ Remediation Strategies for Brownfields Redevelopment

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**"Real World" Insights Into
Brownfield Transactions: Case Histories**

Joseph M. Manko, Esquire

Brownfields '97
Partnering for a Greener Tomorrow

Kansas City, MO
September 4, 1997

I. Background.

A. Defining a Brownfield.

1. Abandoned, idle or underutilized industrial and commercial facility.
 - a. often located near rivers or railroads.
 - b. contaminated by prior usage.
 - c. balancing cleanup costs with locational value (can it be "bought right"?).
2. Extent (General Accounting Office (GAO)) Estimates.
 - a. 425,000 to 450,000 sites.
 - b. CERCLIS covers 37,000 sites (but see NFRAP, infra).
 - c. \$650 billion cleanup costs.
3. Usage changes.
 - a. heavy industry no longer needed.
 - b. commercial reuse potential.
 - (1) power/strip centers.
 - (2) office buildings/campuses.

B. Impact of Environmental Law.

1. Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) - 1980.
 - a. Strict liability as "responsible persons."
 - (1) current owners of operators (§107(a)(i)).
 - (2) former owners or operators "at the time of disposal" (§107(a)(2); See, U.S. v. CDMG Realty Co., 96 F.3d 706 (3d Cir. 1996).
 - b. Limited defenses (§§107(b)(3) and 101(35)) - the "innocent owner."
 - c. N.Y. v. Lashins Arcade Co., 91 F.3d 353 (2d Cir. 1996): "in connection with a contractual relation."
2. State Superfund Laws.
 - a. Pennsylvania - Hazardous Sites Cleanup Act (HSCA) (mirrors CERCLA for responsible persons) - 1988.
 - b. New Jersey - Spill Compensation and Control Act (strict liability for persons "in any way responsible") - 1976.

C. Economic Impact.

1. Loss of municipal real estate tax base (and jobs).
2. Targets for vandals, arsonists, thieves and graffiti artists.
3. Retard the gentrification and revitalization of a blighted area.
4. Directs developers to "plow under greenfields."

II. Problems in Redeveloping Brownfields Prior to Brownfield Legislation and Policies.

A. Liability.

1. Cannot get a lender to lend since lender may become liable and collateral is "iffy."
 2. Generally no seller to indemnify and/or clean up.
 3. Insurance coverage unavailable ("pollution exclusion clauses" - PA vs. NJ).
- B. How Clean is Clean?
1. Lack of federal or state standards (in PA) (cf, ISRA in NJ).
 2. Technology can detect beyond what remediation can achieve.
- C. Government Protection.
1. Unavailable without statutory authority.
 2. Fear of enforcement on voluntary cleanups.
 3. Searching for ways to give cleanup liability protection.
 - a. no further action (NFA) letter from state.
 - b. consent order and agreement (CO&A) -- using enforcement tools.

III. New Brownfield Programs.

- A. Federal (EPA).
1. Prospective Purchaser Policy - 1989.
 - a. looks good on paper; not so good in practice.
 - (1) *Publicker* site (see attached articles).
 - (2) *Hatboro* water system.
 - b. expensive and time consuming - can EPA do better?
 - c. "new" policy (July 3, 1995) - is it helping?

2. Lender liability.

- a. Fleet Factors - power to control borrower.
- b. EPA Guidance Memorandum; Kelly v. EPA, 15 3d 1100 (D.C. Cir. 1994), cert. denied, 25 F. 3d 1088 (D.C. Cir. 1994), cert. denied, American Bankers Ass'n v. Kelly, 115 S.Ct. 900 (1995).
- c. Congress' September 30, 1996 action (Asset Conversion, Lender Liability and Deposit Insurance Protection Act ("Lender Liability Act")).
- d. EPA Guidance Memorandum: Policy on Interpreting CERCLA Provisions Addressing Lenders and Involuntary Acquisitions by Government Entities, 62 Fed. Reg. 36423 (July 7, 1997).
- e. Michigan v. Tiscornia, 44 ERC 1951 (6th Cir. 1996)

3. Highlights of 1995-6 Brownfield Policies.

- a. \$10 million for 50 demonstration projects (e.g., *Phoenix Steel* site).
- b. Policy Towards Owners of Property Containing Contaminated Aquifers, 60 Fed. Reg. 34,890 (July 3, 1995).
- c. Guidance on Agreements with Prospective Purchasers of Contaminated Property, 60 Fed. Reg. 34,792 (July 3, 1995).
- d. "Comfort" letters (4 types) (*Reeds Van Service*).
- e. CERCLIS pruned (removing sites where "no further remedial action planned) (NFRAP).
- f. certain tax incentives also offered.

B. Pennsylvania (DEP).

1. Senate Bill 11

2. Acts 2, 3 and 4: overview.
 - a. Act 2.
 - (1) three cleanup standards.
 - (a) background (*Rhoads Metals*).
 - (b) statewide health standards.
 - (c) site specific (*Baer*) and special industrial areas.
 - (2) three protection programs.
 - (a) NFAs.
 - (b) buyer/seller CO&As - only affords a covenant not to sue; no contribution protection (covers multi-party situations).
 - (c) cleanup liability protection letters (§5).
 - i) grants DEP's covenant and third party contribution protection.
 - ii) simple letters, but;
 - iii) only issued when remediation is complete.
 - (3) funding (Acts 2 and 4).
 - b. Act 3.
 - (1) lenders (sample letter attached).
 - (2) IDAs and RDAs (not covered by federal Lender Liability Act - *Berwick*).
 - (3) trustees.
 - c. Act 4.

3. Limitations.

- a. at this time, no federal release (DEP is working with EPA on a memorandum of understanding ("MOU") - federal legislation (probably needed).
- b. reopeners.
- c. too long to wait - amend §5 to allow protection once remediation obligation is in enforceable vehicle (e.g., CO&A).
- d. Multi-site agreements (*Penn Fuel Gas*).

C. New Jersey.

- 1. Limitations in ISRA.
- 2. Pending legislation.

IV. Structuring the Deal.

A. Contractual Protection.

- 1. Stages of protection: letter of intent to agreement of sale.
 - a. due diligence period.
 - (1) access.
 - (2) adequate time.
 - (3) right to opt out.
 - b. seller's cooperation.
 - (1) buyer/seller agreement.
 - (2) Act 2.
 - c. seller's identity is critical (governmental "seller:" defense restoration (*PIDC*), bankruptcy, trustee, etc.).

- d. types of contractual protection.
 - (1) representations, warranties and covenants.
 - (2) indemnities.
 - (3) releases.
 - (4) exclusive or non-exclusive remedies?
 - (5) escrows.
 - (6) conditions to closing.
 - (a) governmental protection letter.
 - (b) execution of buyer/seller agreement.

B. Environmental Assessment.

- 1. Multiplicity of uses.
 - a. contractual document (attachment to agreement of sale).
 - b. cost recovery (supra).
 - c. governmental cleanup liability protection - only protected for contaminants disclosed (and then remediated).
- 2. Hire the best environmental consultants/contractors.
- 3. Hire the best environmental attorney.

C. Potential Funding.

- 1. Federal and state grants and loans (*Penn's Landing*).
- 2. Other responsible persons.

V. Unregulated Contamination and Obligations.

A. Property Management Issues.

1. Indoor air quality.
 2. Interior contaminants.
 - a. transformers (PCBs).
 - b. asbestos containing materials (ACM).
 - c. lead paint.
- B. Disclosure Obligations.
1. Statutory (site-specific or non-residential statewide health standards require deed disclosure).
 2. Common law (Strawn v. Canuso in New Jersey).
 3. Financial disclosure (SEC, financial statements).

VI. Conclusions.

- A. A good environmental team is a must.
- B. Put a "happy face" on the project.
- C. When needed, get political support (e.g., *Publicker*).
- D. Need for legislative help.
 1. Federal brownfields legislation.
 - a. politics at play.
 - b. tied into or separate from CERCLA re-authorization.
- E. Need for EPA to be more "worldly" in applying brownfields policies (*Renaissance* properties).
- F. Need for states and EPA to sign MOUs.
- G. Location, Location, Location.

CORPORATE LEGAL TIMES

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The National Monthly on Managing In-House Corporate Legal Departments

FEBRUARY 1996

Seaport From Brownfield – And at a Bargain Price

Holt's Dream for Philadelphia Site Comes True With EPA Help

BY MARK BUTLER



SEVEN YEARS and a commitment of \$4.3 million ago, Thomas J. Holt Sr. called his attorneys and said he had an option to buy a 40-acre piece of Philadelphia's beleaguered waterfront.

He intended to build a marine terminal to coax shipping up the Delaware River, revive the city's seaport heritage, bolster its sagging economy and expand his own considerable port holdings on the Pennsylvania and New Jersey sides of the river.

Holt, a one-time stevedore who operates the nearby Packer Marine Terminal and owns Holt Hauling and Warehouse Systems in Gloucester City, N.J., had big plans for the old Publicker Industries site—a \$250 million, world-class seaport for cargo and cruise ships. Eventually, perhaps, a hotel. And jobs ... as many as 500.

To an aging East Coast city mired in a recession, those were sweet words indeed—if Holt could pull it off.

It took seven years, but Holt did it. He is the proud owner of what was once one of the most polluted industrial sites in America and he has paid what will amount to approximately 20 percent of the cleanup cost.

Through an agreement with EPA, Delaware Avenue Enterprises, a subsidiary of Holt Cargo Systems Inc., took possession of the site Jan. 9. The land had been held in trust for several years. "It was not so much a risk but a challenge as to how long it would take," Holt says.

TURNING WASTED LAND INTO \$\$\$

Increasingly, developers and government agencies alike are looking closely at U.S.

cities and their dilapidated industrial land and seeing potentially productive, tax-producing sites.

In Philadelphia, Holt climbed out on a limb by seeking to develop the site, and the government responded by agreeing to protect him—for a large payment—from legal action to clean up the Publicker land once he assumed ownership through the utilization of a Prospective Buyer Agreement.

At a time when pristine land and money can be scarce, these agreements have become increasingly common. In 1987, though, Holt was pretty much on its own.

"This is a movement whose time has finally come," says Joseph M. Manko, a partner at Manko, Gold & Katcher, Bala Cynwyd, Pa., a former EPA official and Holt's legal counsel for the project. "If we had started this today, it wouldn't have taken seven years."

For more than a century, Publicker operated a liquor and industrial alcohol manufacturing plant at the site where Skol Vodka, Old Hickory Bourbon and Inver House Scotch were made. When the distillery shut down, the site became a chemical storage facility. In 1986, Publicker sold the site to Overland Corp., which shortly thereafter declared bankruptcy and abandoned the facility.

In 1987, a major fire at the site drew the attention of the EPA, which conducted an emergency cleanup to reduce the risk of future fires and explosions. That same year, Holt hatched his plan. Two years later, Publicker was placed on the Superfund National Priorities List.

To date, the EPA has spent more than \$18 million to remove hazardous materials, including asbestos, and clean up the site. Before it's done, the federal agency estimates that it will spend several million more.

On a recent raw winter day, with a tangle of rusted pipes and tanks as a backdrop, city, state and federal officials gathered at the Publicker site in the shadow of the Walt Whitman Bridge to announce the deal and to

honor Holt for being, in the words of Philadelphia Mayor Ed Rendell, "among the very best entrepreneurs in the Delaware Valley."

Manko was among the VIPs standing before the cameras that day.

"I have to tell you that it was a good feeling," says Manko, who concentrates his practice in environmental law. "But I also kept thinking, 'Now, we've got to get the [construction] permits...'"

By comparison, clearing the way for demolition and construction should be easy.

OPPORTUNITIES, NOT EYESORES

It's never easy to be a pioneer. In 1987, Prospective Purchaser Agreements were untested federal regulations designed to spur the revitalization of America's urban centers while protecting developers from legal action in the cleanup of a site's environmental problems.

Increasingly, officials are looking at these "brownfield" sites as opportunities, not eyesores. Brownfields have also garnered support from government officials because they can preserve green belts and park land.

"We're committed to a common sense approach to liability issues at these sites," EPA Regional Administrator Peter H. Kostmayer noted in prepared remarks. "It makes more sense to clean up sites in urban areas and return them to productive use, rather than force business to develop pristine 'green field' sites in the suburbs and exurbs."

In addition to the \$2 million he paid to purchase the land, Holt has agreed to pay EPA and the Pennsylvania Department of Environmental Resources (DER) a total of \$2.3 million so he won't be held liable for the hazardous waste left by the former property owner. The money goes toward offsetting cleanup costs. Meanwhile, EPA has filed suit against Publicker in federal court seeking additional funds to clean the site.

The agreements are gaining support around the country, although Kostmayer says that in EPA Region 3, which includes Pennsylvania, they are being used more widely. They had gained critical support in Washington recently as well, although with the recent shift in power, it remains unclear how the agreements will fare.

"They certainly are growing in number," says Kostmayer, a former member of

THE NATIONAL LAW JOURNAL

Business Watch

MONDAY, OCTOBER 21, 1996

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Interest in Brownfields Abounds Despite Problems

A hot market exists for these polluted sites, although the federal program to spur development is largely untested.

BY MARIANNE LAVELLE
NATIONAL LAW JOURNAL STAFF REPORTER

THE CHEMICAL TANKS that once leaked or sizzled beneath Philadelphia's Walt Whitman Bridge are gone. But ships are not yet bustling cargo into the port that was envisioned nine years ago for this strategically located but long-forsaken land on the Delaware River.

Cleanup of the explosive mix that made this one of the nation's most dangerous sites occurred only because of recent government efforts to reduce the legal risks for purchasers of such abandoned industrial real estate. But the still-fallow state of the property is testimony to the obstacles that plague such projects, despite federal and state officials' efforts to revive similarly barren urban tracts, known as brownfields.

An estimated 500,000 acres of unused, polluted brownfields exist across the United States—some owned by companies in bankruptcy, others abandoned by solvent corporations and still others taken over by local governments after real estate tax liens were levied.

The federal program attacking the brownfields problem began in 1993, but its pace has accelerated in the past year as the Clinton administration has touted it as a key element of its economic as well as environmental policy.

"The brownfield initiative encourages businesses and communities to turn old polluted sites into homes for safe and sustainable businesses," President Clinton said this year.

Under the program, the Environmental Protection Agency is, on a case-by-case basis, working out agreements with

prospective purchasers of contaminated property to insulate them from EPA lawsuits for cleanup. The agency also is giving grants to cities to help them study the potential for brownfields development.

And since 1994, more than 20 states have passed legislation to encourage the purchase and redevelopment of environmentally troubled land by lowering cleanup requirements, granting waivers from liability or offering tax or other incentives to purchasers.

No Public Consensus

But no government program seems capable of fully erasing the stigma that originally orphaned this polluted land.

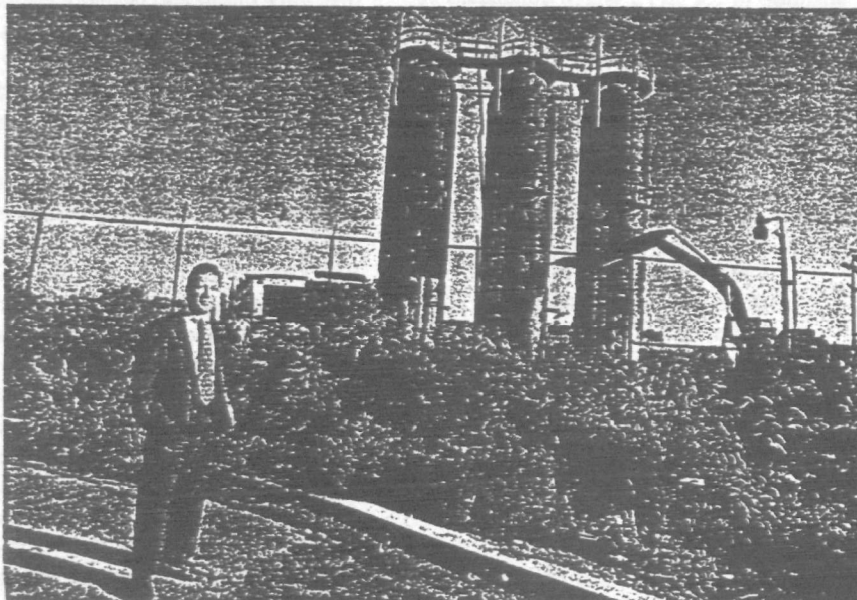
"We're still short of a public consensus to carry the day on the old questions of 'How clean is clean?' and what level of liability is appropriate for new purchasers and lenders," says Jennifer L. Hernandez, of the San Francisco office of Washington, D.C.'s Beveridge & Diamond.

In other words, federal and state officials are willing to accept that many of these properties will never be pristine. Regulators may agree that innocent purchasers of land should not pay for the predecessors' misdeeds, but they are uncertain how to waive liabilities without freeing owners of proper responsibilities.

The site on Philadelphia's waterfront illustrates both the program's promise and its problems. Publiker Industries Inc., a Greenwich, Conn.-based alcohol and chemical manufacturer, once produced Skol Vodka, Old Hickory Bourbon and alcohol-based cleansers and solvents there, but ultimately shut down the distillery and began using the location to store chemical waste. In 1986, Publiker sold the plant to a firm that went bankrupt after two demolition workers were killed in an explosion. The site was then placed on the Superfund list of priority cleanup sites, deemed by the EPA to pose a "potential catastrophic threat to public health and the environment."

Despite the site's obvious problems, Thomas J. Holt, owner of Holt Cargo Systems Inc. of Gloucester City, N.J., wanted to buy the property to expand his port business across the Delaware River.

Such a move might have seemed folly under the 1980 Superfund law, which holds all past and present owners and operators of property strictly liable for cleanup, whether or not they contributed



Test Case: Joseph M. Manko negotiated with the EPA to obtain the first waiver of liability ever for his client, an innocent purchaser of this Pa. brownfield site.

to the pollution. But the Holt company's attorney, Joseph M. Manko, of Bala Cynwyd, Pa.'s Manko, Gold & Katcher, knew that the law has always given the EPA flexibility to negotiate waivers of liability for innocent purchasers. The agency had never used that authority, however, as Mr. Manko found in years of effort to work out an such an agreement.

Sealing the Deal

Only after the Clinton administration's brownfields initiative began in 1993 was Mr. Manko able to seal a deal. The Holt company, which had purchased an option to buy the property for \$2 million in 1987, would pay the EPA and the Pennsylvania Department of Environmental Resources a \$2.38 million premium in exchange for a waiver of cleanup liability, a sum determined by the EPA to reflect the property's increased value due to the government's work at the site. Cleanup began, and local politicians praised the program as one that would rejuvenate the city's port.

Not everyone was happy, however. Publicker, the company liable for most of the \$18 million cleanup of the mess that accumulated during its stewardship, protested to the EPA that the waiver violates the Superfund law. The EPA settled with Publicker, but cleanup stalled again when Congress slashed the agency's funds in the 1995 budget battle.

The Holt company, anxious to move forward with the long-delayed port facility, stepped in to finish up. Now, Mr. Manko says he is negotiating with the EPA yet again: the agency is assessing the quality and the cost of the work that the Holt company did and will apply that amount to offset the \$2.3 million premium the company owes to the EPA.

Mr. Manko says it has been a long and frustrating process for his client: "If [he] could build a port some other place, he would have." But he believes that much

of the difficulty stemmed from being the first test case, in addition to the high level of contamination at the site.

Red Hot

Despite the problems, developers and investors seem undeterred in their attempts to purchase brownfields. "There's a red-hot market out there—a very active industry looking for contaminated property with the specific purpose of buying it at a discounted price, fixing it up and reselling it," says Daniel Riesel, of New York's Sive, Paget & Riesel.

Many sites are in ideal locations—with waterfront or highway access—made unattractive only by pollution. The market appears healthy, even though government liability waivers do not protect property owners from suits by neighbors or prior owners who retain liability.

Mr. Riesel says the most important factor spurring the market has been government acknowledgment that, as he puts it, "You don't need to clean up an industrial park to the level...necessary for a residential area."

Nonetheless, even industrial uses may require a significant investment in cleanup, says Ms. Hernandez. One of her clients is the city of Emeryville, Calif., which just approved a major facility expansion for Chiron Corp., a biotechnology firm, on contaminated land. "The concept that you can put a biotech clean room for a laboratory on something 'dirty' is no more acceptable than putting it in the middle of the moon," she says. Ms. Hernandez, after working on many projects, says she had concluded that the legal and economic issues raised by brownfields development are identical to those that come up in a real estate deal.

"Lenders want to know if the property is going to be clean enough to have value to serve as security for a loan," she said. "All the talk about liability reform and Superfund reform...is not that critical to

the success of the brownfields program."

According to Mr. Riesel, brownfields property purchasers also need to consider the community aspects of redevelopment: "An issue often overlooked is public reception to having the site redeveloped with less than total cleanup. Developers should also anticipate that communities might prefer converting an industrial site into parkland, rather than another commercial use."

Seed Money

Some think that development could be accelerated by a program like the \$2 billion brownfields tax incentive that President Clinton proposed last spring. Because that program was not enacted, the EPA has since taken a more modest approach to spurring brownfields development, working out individual deals and providing seed money to assess contamination at abandoned inner-city sites.

On Oct. 1, EPA Administrator Carol Browner announced 16 new grants to cities totaling \$2 million, bringing to 76 the number of pilot brownfields projects being funded by the EPA.

The EPA also will sponsor its second national conference on brownfields opportunities and the regulatory and financing possibilities on Oct. 21-22 in St. Louis. Steve Kidney, editor of a Washington, D.C.-based newsletter called *The Brownfields Report*, co-sponsor of the EPA conference, says that despite the difficulties, brownfields development is hot.

Noting that Pennsylvania Gov. Tom Ridge and New Jersey Gov. Christine Todd Whitman are among those who have championed brownfields development, he said that "politically, on the national level, this is an ideal issue, particularly for the Clinton administration but also for moderate Republicans." ■

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Seaport From Brownfield – And at a Bargain Price

Holt's Dream for Philadelphia Site Comes True With EPA Help

BY MARK BUTLER



SEVEN YEARS and a commitment of \$4.3 million ago, Thomas J. Holt Sr. called his attorneys and said he had an option to buy a 40-acre piece of Philadelphia's beleaguered waterfront.

He intended to build a marine terminal to coax shipping up the Delaware River, revive the city's seaport heritage, bolster its sagging economy and expand his own considerable port holdings on the Pennsylvania and New Jersey sides of the river.

Holt, a one-time stevedore who operates the nearby Packer Marine Terminal and owns Holt Hauling and Warehouse Systems in Gloucester City, N.J., had big plans for the old Publicker Industries site—a \$250 million, world-class seaport for cargo and cruise ships. Eventually, perhaps, a hotel. And jobs ... as many as 500.

To an aging East Coast city mired in a recession, those were sweet words indeed—if Holt could pull it off.

It took seven years, but Holt did it. He is the proud owner of what was once one of the most polluted industrial sites in America and he has paid what will amount to approximately 20 percent of the cleanup cost.

Through an agreement with EPA, Delaware Avenue Enterprises, a subsidiary of Holt Cargo Systems Inc., took possession of the site Jan. 9. The land had been held in trust for several years. "It was not so much a risk but a challenge as to how long it would take," Holt says.

TURNING WASTED LAND INTO \$\$\$

Increasingly, developers and government agencies alike are looking closely at U.S.

cities and their dilapidated industrial land and seeing potentially productive, tax-producing sites.

In Philadelphia, Holt climbed out on a limb by seeking to develop the site, and the government responded by agreeing to protect him—for a large payment—from legal action to clean up the Publicker land once he assumed ownership through the utilization of a Prospective Buyer Agreement.

At a time when pristine land and money can be scarce, these agreements have become increasingly common. In 1987, though, Holt was pretty much on its own.

"This is a movement whose time has finally come," says Joseph M. Manko, a partner at Manko, Gold & Katcher, Bala Cynwyd, Pa., a former EPA official and Holt's legal counsel for the project. "If we had started this today, it wouldn't have taken seven years."

For more than a century, Publicker operated a liquor and industrial alcohol manufacturing plant at the site where Skol Vodka, Old Hickory Bourbon and Inver House Scotch were made. When the distillery shut down, the site became a chemical storage facility. In 1986, Publicker sold the site to Overland Corp., which shortly thereafter declared bankruptcy and abandoned the facility.

In 1987, a major fire at the site drew the attention of the EPA, which conducted an emergency cleanup to reduce the risk of future fires and explosions. That same year, Holt hatched his plan. Two years later, Publicker was placed on the Superfund National Priorities List.

To date, the EPA has spent more than \$18 million to remove hazardous materials, including asbestos, and clean up the site. Before it's done, the federal agency estimates that it will spend several million more.

On a recent raw winter day, with a tangle of rusted pipes and tanks as a backdrop, city, state and federal officials gathered at the Publicker site in the shadow of the Walt Whitman Bridge to announce the deal and to

honor Holt for being, in the words of Philadelphia Mayor Ed Rendell, "among the very best entrepreneurs in the Delaware Valley."

Manko was among the VIPs standing before the cameras that day.

"I have to tell you that it was a good feeling," says Manko, who concentrates his practice in environmental law. "But I also kept thinking, 'Now, we've got to get the [construction] permits...'"

By comparison, clearing the way for demolition and construction should be easy.

OPPORTUNITIES, NOT EYESORES

It's never easy to be a pioneer. In 1987, Prospective Purchaser Agreements were untested federal regulations designed to spur the revitalization of America's urban centers while protecting developers from legal action in the cleanup of a site's environmental problems.

Increasingly, officials are looking at these "brownfield" sites as opportunities, not eyesores. Brownfields have also garnered support from government officials because they can preserve green belts and park land.

"We're committed to a common sense approach to liability issues at these sites," EPA Regional Administrator Peter H. Kostmayer noted in prepared remarks. "It makes more sense to clean up sites in urban areas and return them to productive use, rather than force business to develop pristine 'green field' sites in the suburbs and exurbs."

In addition to the \$2 million he paid to purchase the land, Holt has agreed to pay EPA and the Pennsylvania Department of Environmental Resources (DER) a total of \$2.3 million so he won't be held liable for the hazardous waste left by the former property owner. The money goes toward offsetting cleanup costs. Meanwhile, EPA has filed suit against Publicker in federal court seeking additional funds to clean the site.

The agreements are gaining support around the country, although Kostmayer says that in EPA Region 3, which includes Pennsylvania, they are being used more widely. They had gained critical support in Washington recently as well, although with the recent shift in power, it remains unclear how the agreements will fare.

"They certainly are growing in number," says Kostmayer, a former member of

Congress himself. "We have done four in the region." In the last session of Congress, however, the Clinton administration had proposed legislation that would have made obtaining an agreement easier but the bill didn't make it through. "If we simply had the language, we could churn out more."

"I think this initiative holds special appeal for the new Republican majority in Congress," says EPA Regional Administrator Peter H. Kostmayer.

Around the country, thus far, 17 brown-field deals have been signed, Kostmayer says, creating an estimated several thousand jobs and making more than a thousand acres of once-fallow land productive again.

Kostmayer, a Democrat, is confident that the agreements will enjoy substantial Congressional and Republican support this year.

"I think this initiative holds special appeal for the new Republican majority in Congress," he says. "It's job-development oriented, not at government expense, and [the cost] is shifted back into the private sector."

"We're really talking about the No. 1 issue in the country and that's putting people to work," he adds. "In Philadelphia, this one agreement will mean 700 permanent jobs and about 200 temporary [construction and demolition] jobs."

Meanwhile, EPA has plans to award Philadelphia \$200,000 which is earmarked to begin site selection and environmental assessments on as many as 10 new brown-field sites in the city, Kostmayer says. Funds are expected to be allocated for similar work in Pittsburgh as well.

INSURANCE AGAINST SUITS

Getting the Publicker agreement was anything but easy, however, because when Holt began the process, the Prospective Purchaser Agreement "was an unknown procedure that turned out to be a quagmire, which, seven years later, works," Manko says.

For Holt, though, going this route was the only way to get the final papers signed.

The agreements are designed to help EPA plan for the costs of cleanup. The prospective buyer pays a negotiated amount over and above permit costs in return for a covenant in which the government agrees not to sue the buyer for site-related cleanup issues. This sort of "insurance policy" also provides protection against suits from third parties. Absent such an agreement, new owners could be held jointly and severally liable for cleanup costs under CERCLA, even though they did not contribute one ounce of toxics to the site.

For Holt, the timing was of two-fold importance. "We had an option to buy the site as-improved and everything on it," says Manko. "Every day, people were stealing pipes, copper, everything they could."

The government was unimpressed by that dilemma and for the next several years Holt had to get approval on the deal from a host of federal and state agencies.

Some said it was too early—that there was no history of Prospective Purchaser Agreements to follow. Others wanted strict appraisals. Others were concerned about environmental hazards.

Holt offered to pay to clean up the site himself then, saying that he could do it faster and cheaper. Frustration was pushing Holt to do nearly anything to complete the deal, which appeared to hold advantages for all parties involved.

But the government would not be rushed. Brian M. Nishitani, assistant regional counsel for the EPA, explains it this way:

"We knew very little about the environmental damage at the site. There were no other models, certainly none as complex. It was the level of contamination and the type of proposal...it was not just the EPA that was involved here."

"Publicker took us over six years and there are a couple of sites in this region that were done in six to 12 months," he says.

Nishitani says, "It's very difficult for the government as a whole to assess the site and [determine] to what extent we can allow the developer to come in and do the work."

LAND COSTS WERE ESCALATING

Nonetheless, Holt persevered and ultimately cleared a number of major hurdles. If all goes well, the first ships should dock there in within five years.

The reward was not without its trials, Holt says.

"It got extremely frustrating in the last several months," he says. An effort at that time to bring legalized gambling was driving the cost of real estate at an alarming rate. "I was concerned that I would find myself competing against someone who wanted to use the site for a different purpose than I wanted."

"The value of raw land for a casino is \$2 million an acre," he says. "I didn't want to wind up paying an exorbitant price that would kill the project."

Manko, believes that sheer determination on Holt's part was the catalyst that finally got the deal signed.

"I think you can say that my client exhibited a high degree of patience," he says. "He wanted to build a port in 1987 not in 1994."

CLT

EDITOR'S NOTE

THIS IS the first of a series of stories focusing on companies in the Delaware Valley area and attorneys who service them. The region has a diverse array of companies and has an active business litigation docket in the Delaware courts.

(5K) Brownfields Over the Border

Wednesday, September 3, 1997

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

Description: Brownfields problems do not stop at the borders of the United States. Around the world, developed nations are beginning to face up to the same tough issues that we here in North America are dealing with. Share your views with brownfields stakeholders from Canada, the Netherlands, and Germany and learn first hand from their revitalization experiences.

Location: Room 2201

Speakers and Affiliation:

Mr. Dale Medearis (Moderator)

U.S. Environmental Protection Agency, Office of
International Activities

Ms. Beth Benson

Toronto Waterfront Regeneration Trust

Mr. Thomas Grohe

International Building Exhibition Emscher Park

Mr. Evert Verhagen

Project Westergasfabriek, Amsterdam

MR. DALE MEDEARIS

Dale Medearis has a bachelor's degree in international relations from the University of Redlands, a master's degree in government administration from the University of Pennsylvania, and is currently pursuing an additional graduate degree in geographic science. During the period 1994-1996, as a Federal Chancellor's Fellow of the Alexander von Humbolt Foundation and a John J. McCloy Fellow of the U.S. Council on Germany, he studied and evaluated land use management and contaminated site cleanup in Germany and the European Union. In his present assignment as special assistant to the Assistant Administrator in the U.S. Environmental Protection Agency's (EPA) Office of International Activities, he coordinates the international elements of EPA's Brownfields program by analyzing the applicability of Dutch, English, German and other OECD 'best practices' models in the U.S. Mr. Medearis also has coordinated EPA's environmental assistance programs in Eastern Europe and Asia, worked on state and federal environmental technology cooperation in EPA's Region 3 office, and he represents the City of Alexandria at the Northern Virginia District Planning Commission as a volunteer.

MS. BETH BENSON

In her capacity as a project director at the Waterfront Regeneration Trust, Ms. Benson is working with landowners, banks, the insurance sector, developers, community representatives, and regulators to help implement cost-effective solutions to assist in the restoration and reuse of brownfields sites found along the north shore of Lake Ontario. She is currently managing the development of an area-wide soil and groundwater management strategy for Toronto's port lands, an area of 425 acres situated on the shoulders of downtown Toronto.

Prior to joining the Waterfront Regeneration Trust in 1993, Ms. Benson was at the City of Toronto's Department of Public Health where she was involved in site remediation, air quality, drinking water and polychlorinated biphenyl management issues.

Ms. Benson's graduate work at the University of Toronto dealt with the environmental fate of radioactive Cesium-137 in arctic ecosystems.

MR. THOMAS GROHE

Since the start of the International Building Exhibition Emscher Park (IBA) in 1989, in Germany's Ruhr region, Mr. Grohe has been responsible for supervising soil remediation, economic redevelopment, and "ecological oversight," of contaminated industrial areas. At IBA, Mr. Grohe has endeavored to merge economic restructuring with environmental revitalization by promoting "a new industrial landscape" for Germany's Ruhr area. Key features of this new industrial landscape include "consensus oriented" long-term regional land use and economic cooperation, public/private partnerships, as well as an emphasis on concentrated investment at targeted "landmarks."

MR. EVERT VERHAGEN

Mr. Evert Verhagen is a senior project manager for the district council Westerpark of the City of Amsterdam.

He has worked as an assistant to the manager in Amsterdam's notorious high rise area, Bijlmermeer. In 1986 his book on Bijlmermeer was published.

He started working for the district as the manager for public works in 1990. He is now responsible for the Westergasfabriek project. This derelict gas factory in the center of Amsterdam will be decontaminated, the grounds will be turned into a park, and the historical buildings will be a home to the Dutch cultural avant garde.

**DOCUMENTS THAT SUPPORT
PANEL 5K: BROWNFIELDS OVER THE BORDER**



Emscher Park

Emscher Park, Germany

Ecological and urban renewal of urban areas

Abstract

The International Building Exhibition Emscher Park was established in 1989 as a structural programme of the Land North-Rhine/Westphalia scheduled to run for ten years. Its task is to achieve the ecological and urban renewal of the northern Ruhr district. Its aim is to 'tidy up the Ruhr district's backyard'. This highly depressed area in the Ruhr was in danger of being permanently excluded from future social and economic developments. Within the framework of a rapid and short-lived industrialization, industrial estates (coal-energy and chemical plants) were established, which have now been transformed into derelict industrial sites. The International Building Exhibition aims to initiate and supplement thinking on the Emscher Park area. The basic principles include the creation of a sustainable project, a limited number of master plans with key concepts underpinning a clear hierarchy of operational projects, and a large number of working groups to foster and develop the innovations.

Policy Goals

The economic recovery of this extensive industrial area is central to the policy goals of the project and, is intrinsically linked to the capacity for stimulating the restructuring of the environment, using the word in its broadest sense of natural and urban environments.

Project Status

Seven master plans have been developed: Emscher Landscape Park; landscape and environmental recovery of watercourses; leisure area on the Rhein-Herne Canal; industrial legacy; activities in the park; innovations in relation to housing; and development of social and cultural activities. Currently 92 projects are being developed and implemented on five sites in the area between Duisburg and Kamen.

Background Information

The Emscher Park Building Exhibition is not an exhibition in the classical sense, but a process with many activities. In this process of structural change, the International Building Exhibition is working together with many bodies on a broad basis: with the local authorities, industry, associations, pressure groups and the people. The councils of the 17 local authorities of the Emscher region voted to join the building exhibition at its creation. In this complex framework, the IBA GmbH acts as a coordinator. The IBA is institutionalized in the Steering Committee and in the Board of Trustees. The Committee decides on the admission of projects to the exhibition, and the Trustees bring together representatives from public life who promote the Building Exhibition and support its initiatives.

Implementation

Strategy

In order to renew and upgrade the northern Ruhr district a structural programme was set up in 1989 to last for ten years. This programme aims to ensure that innovative ideas are generated. Ideas are transferred into feasible plans which are subsequently implemented. Thus a number of master plans are developed, as well as a great number of operational projects and working groups to foster and develop the innovations.

Activities

The 17 local authorities of the Emscher region and various groups that cooperate on the project are currently developing and implementing 92 projects in the following fields:

modernization of coal mining settlements and construction of new housing, with a focus on quality of life and environmental issues;

Working in the Park': developing new corporate buildings on derelict land, to enable the creation of new economic poles;

preservation and re-use of industrial monuments as witnesses of history;

landscaping of the Emscher area into a park connecting all 17 urban areas, with pedestrian and cycle paths, and thematic areas;

ecological restructuring of the Emscher river and its 350 km of tributaries.

Partners

The responsibility for the individual projects remains with the 'developers', which in most cases are the local authorities and in some cases private companies or pressure groups. No additional funds have been made available to finance the projects of the IBA Emscher Park. The project is financed from the existing aid programmes of the Land combined with structural development aid from national government and the European Union. These programmes are focused on urban renewal and business and housing aid, as well as funding for training schemes. It is hoped that this fusion of funding mechanisms and the interlinking of investment schemes will enhance policy impact.

Analysis

Results

The Emscher Park project displays many highly innovative facets in terms of working methods, project objectives, and contracting authorities' contract specifications. Many of the projects are close to completion.

Barriers and Conflicts

Public participation has been a continuing concern of contracting authorities, although the mobilization of local residents varies greatly between the different projects.

Lessons Learned

The entire Emscher Park project contains a wealth of innovative elements that may serve as an example to areas with similar industrial histories. These include:

- increased public awareness of the historical significance of their surroundings;

- successful land use planning based on multi-disciplinary working involving planners, economists, ecologists, architects and artists;

- planning process goals set to attain a realistic optimum, rather than utopian ideal.

Further information

IBA Emscher Park

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References

Innovations for the improvement of the urban environment; a European overview; Dublin 1993.

Urban environment and Sustainable Development; success stories; Heidemij Advies BV, Arnhem NL.

Acknowledgments

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TIME AND SPACE ON THE WESTERGASFABRIEK IN AMSTERDAM, HOLLAND

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TIME AND SPACE ON THE WESTERGASFABRIEK IN AMSTERDAM, HOLLAND

A. Mental maps

In 1974 Gould and White published a study about mental maps. It dealt with how people perceive and experience their world. Upper middle class inhabitants of Los Angeles, for instance, had a completely different knowledge about places within their city than, for instance, black inhabitants of Avalon or Hispanics of the Boyle Height district.

In my opinion Brownfield projects are about mental maps. So my story about the Westergasfabriek in Amsterdam to be held on the Brownfields conference will deal with how we put our project on the map.

The Westergasfabriek was a closed off derelict factory site in the city centre. Situated in the heart of a former working class area nobody went there because there was nothing to go to. Yes, there were fifteen beautiful buildings but they were forgotten in this unknown and uncharted area. Our project brought the place to life, we gave it a heart and tried to give it a soul. And the mental map of the people who went there forever changed. And as a result the area started to change.

A mental map is not made up by what is, but by what happens.

So we made happenings possible, we let the buildings to a wide variety of cultural activities. Striking a delicate balance between avant garde, and popular culture, fashion shows and fun fairs, we put the Westergasfabriek on the map. Not only in Amsterdam or the Netherlands, but also the cultural mental map of Europe and hopefully starting the 4th of September 1997 on the mental map of a lot of interested Americans.

B. The project

To understand the project it is essential to have a sense of the scale and the goals of the project. You have to know something of the history. After that we will deal with what we did to put it on the map; and how we intent to keep it there.

The Gas factory site

The site of the former Westergasfabriek covers 13.5 hectares. There are a total of 22 buildings on the site, 13 of which are listed as industrial monuments. The buildings occupy more than 16,000 m² of floor space.

Project goals

The project has the following goals:

- we want to preserve a proper green infrastructure within the urban area;
- we want to reuse the industrial monuments;
- we want to improve the living conditions in the adjacent old working class neighbourhoods;
- therefore we want to create new jobs;

and:

- we want to give Amsterdam an extra impetus in the area of culture and tourism.

We do this by:

- using the site and the buildings for a new purpose, according to a triple theme of park, culture and activity.

C. The things that where

The British Imperial Continental Gas Association began in 1883 to construct a new gasworks on the periphery of Amsterdam, right outside Haarlemmerpoort. The new plant, the second in Amsterdam, was called the 'Westergasfabriek'.

Almost all the buildings were designed by the architect Isaac Gosschalk and date from the period 1883-1885; some buildings were also added later. Gosschalk followed the 19th-century

fashion of imitating the architecture of the past by designing his buildings in 'neo'-Holland Renaissance style. The exterior of the buildings is richly, if eclectically, decorated, with details taken from a variety of different architectural styles ornamenting the facades.

In addition to the creative use of various different styles of architecture, the complex is laid out in a very rational and well-conceived manner, especially in the way the various buildings are positioned with respect to one another. The use of material is also functional and progressive: Gosschalk used steel supporting structures and roofs which in several places have deliberately been left visible. A hard German brick was selected instead of the usual Dutch variety because it would retain its pigmentation much longer.

Gosschalk's aim in building the Westergasfabriek was '...to wed the strictest utilitarian demands of manufacturing to shapes which are pleasing to the eye.' The result was a unique combination of architectural attractions, picturesque groupings of building masses and exceptionally subtle and refined details, measured by both Dutch and international standards. The complex can be considered a milestone when it comes to integrating industrial building and architectural design.

When the gas production process changed at the beginning of the 20th century, a number of new buildings were added, such as the Watergasfactory now called the Transformatorhuis, and an extra gasholder. Gas production ceased in the 1950s with the transition to blast-furnace gas. Thereafter the buildings were used 'temporarily' by the Municipal Power Company, which left the site for good in 1992.

Demolition

Thirteen of the buildings on the site were saved from demolition in 1989 when they were listed as historic buildings.

One of these buildings was of course the foundations of what had once been the 'biggest gasholder in Europe', a unique building measuring 15 m in height and covering 3000 m² of floor space; a veritable cathedral of the industrial age.

Another is the Zuiveringsgebouw, once described in an English-language architectural guide as 'one of the most surprising buildings from the age of the 'neo' styles'. Of all the buildings on the site, this one appeals most to the imagination.

C. What is

1. Call for ideas

At the end of 1991, the district council decided to issue a call for ideas: anyone with a good idea for using the Westergasfabriek buildings was invited to submit it. The 331 (!) responses were judged on their originality and creativity. A special committee selected four plans from those submitted. These plans were scrutinised on their feasibility. The decision was made to give a cultural destination to the area.

2. Temporary use

The district council had already decided in 1992 to lease the buildings to interested parties for the time being on a temporary basis. The emphasis was to be on culture in the broadest sense of the word. Their intention was to avoid a situation in which the buildings would be vacant for a long period of time while the city itself suffered a critical shortage of structures such as these. The use of the buildings became a huge success: it soon became clear that there was much interest in most of the buildings. In the four years since the decision to lease them out, over 300 performances, exhibitions and concerts have been held on the site.

At the moment, sixteen of the buildings are usually being let to some outside party. There is even a waiting list for some of the buildings. A number of them - for example the Gasholder and one of the purification halls, are used for short-term projects. Since October 1992, these too

have served as venues for the widest possible variety of events.

The Transformatorhuis has been leased to the Amsterdam Theatrical Society for two years now. DasArts, part of the Amsterdam drama school, is located in three smaller buildings on the west side of the site. Peter Sellars, the famous American drama director is now working with DasArts. One of the two purification halls is occupied by a film studio, Studio Wenck, which occasionally employs the surrounding workshops for the stage scenery and costumes. 'Allegría the movie' by Cirque Du Soleil is filmed there. At the head of the Zuiveringsgebouw is the West Pacific Cafe, an American type cafe and restaurant which has led the way with its activities since the very start of the temporary leasing period. People can eat and dance in the same room where once the gas factory workers ate their meals. The Laboratorybuilding has for the last four years served as the European headquarters of Cirque du Soleil from Canada. Various theatrical companies which are considered among the best in the Netherlands give performances on the site: these include the Amsterdam Theatrical Society, mentioned above, but also De Trust, Orkater and Hollandia. The Holland Festival discovered it as a potential festival venue. They arranged to have a new Dutch opera *Antigone* performed there. Karl Heinz Stockhausen held the world premiere of his Helicopter String Quartet here.

From fashion show to multi-media exhibition, and from opera performance to house and techno parties by MTV. All of these activities have found their way to the Westergasfabriek site, bringing the public along with them.

Large-scale events such as pop concerts, balls or demonstrations often take place in the Gasholder. Its relatively isolated location on the site means that the surrounding residential neighbourhoods are not disturbed by these events. There were performances of *Cavalleria Rusticana* and *Il Pagliacci*. KPMG management advisers and accountants used the Gasholder twice as a management centre, BMW launched its new 500 series there, and it was a fantastic venue for the photography exhibition, 'Bridge over Europe', which can now be seen in the arrival hall of Kennedy Airport.

A number of visual artists have their ateliers in the smaller rooms and buildings. The Patchwork artists collective, for example, makes wedding gowns and Buddha images. And every year there is a fun fair.

3. Cultural activities

We realised that the strength of the Westergasfabriek lies in the fact that cultural activities take place there almost continuously at different locations. This is culture with a capital, but also with a lower-case, 'c' as well as art with a capital and a lower-case 'a'. The catering on the site is an equally unique, but not overpowering, binding element. Anyone looking for a fast-food joint will be sorely disappointed.

All this attracts people with the widest imaginable range of interests to the site.

The new use made the Westergasfabriek also popular among the local residents, as became clear in a study carried out in January 1996. Students at Holland Polytechnic conducted a survey among area residents which showed that, of the 191 people surveyed, more than 90% had heard of the gasworks at one time or another, 73% knew what was going on there, and almost 40% had been there in the past year. Which was remarkable since the public only had had limited access to the site since 1992-1993.

When asked about the image of the place, the respondents generally stated that they considered the site a familiar and fascinating area, that they considered the events that took place there up-to-date, and that the whole radiated a pleasant atmosphere. Almost three-quarters of the local residents questioned believes that the Westergasfabriek makes the neighbourhood a more attractive place.

D. Things that will be

1. Recent plans: the project fields of interest

Drawing on the success of the temporary use we devised a strategy for the future. The strength of this strategy lies in its almost holistic approach. This is not just a project of demolition and renewal or the maintenance of an important historical relict, it is a project that stretches beyond these borders, a project that tries to integrate the different needs of today's people. This is one of the very important things that we learned when we visited the projects of IBA-Emscherpark in Germany.

Access The Westergasfabriek site has always been a sealed-off area. Its location between the railway line and the boat canal meant that it was an enclave within the city. That is often the case with industrial complexes that are being considered for some other use. The site must still find a place for itself within the urban network.

Ecology These closed off areas often have developed a unique ecology. This area is situated at the end of the green western outskirts which penetrate deep into the city, bringing the periphery closer to the city centre than at any other point. It is an essential element of an important ecological transitional zone.

Soil decontamination The site of the former Westergasfabriek is heavily polluted. Until recently, such sites were usually subject to a large-scale clean-up, projects that sometimes involved sums up to hundreds of millions of guilders. This area, however, will set an example of a different, more sober but nevertheless effective approach in which the pollution will be insulated (possibly in stages), making the problem both technically and financially manageable.

Living The future development of Westerpark and the site of the former Westergasfabriek are of vital importance to the quality of the living environment. They give the area an important additional value, making it a more attractive place to live and, in particular, to continue to live. New residential areas are being built nearby.

Park Amsterdam enjoys a considerable reputation when it comes to parks. The Vondel Park is a very well known Dutch park and the Amstel Park, part of the green city outskirts to the south along the River Amstel, is of exceptional quality. The Gaasperplas Park was constructed in 1982 in Amsterdam Zuidoost (the Southeast suburbs of Amsterdam) for a famous once in every ten years flower exhibition. These and many other parks that enrich the city satisfy the city-dweller's desire for greenery in his immediate surroundings. They make a valuable contribution to the built-up environment. After Westerpark is completed, the western part of the city within the ring road will have a more than 50 hectares park and in this way also be able to satisfy this desire for greenery.

Historic monuments There are thirteen historic buildings on the Westergasfabriek site which have all been listed. Identifying new, and mainly cultural, ways of using these buildings raises the project to the international level and guarantees that these buildings will be preserved.

Work The temporary leasing out of the buildings on the Westergasfabriek site has demonstrated that there is here a market for cultural and other various pursuits. Such activities not only create jobs on the site itself, but have a positive effect on the image of the surroundings. The present Municipal Executive has made the creation of additional jobs a policy priority.

Culture A flourishing artistic and cultural life, one in which a variety of people and groups participate, is essential to a city such as Amsterdam. In Amsterdam we have learned during the last twenty years that they also appear to be effective ingredients for attracting businesses and tourism. Moreover, they provide the foundation for an open urban living environment in which everyone has the opportunity to take part in a multifaceted cultural life.

By coming to grips with the themes mentioned above, it will be possible to create a project which is unique for Amsterdam and the Netherlands and which can serve as an example in many different ways.

2. A new park for Amsterdam

The former factory site will become the heart of the much larger Westerpark. The park is going to serve a dual purpose: visitors can feel safe there, but it should also arouse feelings of freedom in them.

To select a landscape architect we asked twelve bureau's to answer the question: what is a park and what will a park be like in the 21st century. We then organised a competition between the five architects whose answer we liked best.

The competition was won by an American landscape architect, Mrs Kathryn Gustafson. Mrs Gustafson divides her time between her offices in Paris and London and living and working in Seattle, Washington.

The plan for the park by Kathryn Gustafson also deals with time and space. A central axis representing time organises spaces and activities. From east to west you will travel from old to new. The east symbolises tradition, the west renewal. In the old days the people working on the factory already called it 'The West'.

The heart of the park will be an exhibition grounds. It is situated in the upper right corner of the park and calls to mind the horn of plenty: it seems like culture is spilling out of it, filling the park with activities.

The structure of the park is almost basic: a straight axis parallel to the old canal crossed by a diagonal like Broadway; a festival of lights linking cultural activities.

The park will make large-scale fairs and events such as pop concerts and theatrical performances possible. But the park also offers a great variety of spaces suited for other uses. It will provide the perfect environment for the buildings. Park and buildings will be fully integrated and their functions are mutually reinforcing.

It will be possible to walk, play games, daydream and relax in this park. The foliage will offer respite from the densely urbanised neighbourhoods and the historic buildings on the site. The park will satisfy the need for nature and space of the surrounding neighbourhoods.

3. Culture and activity

Theatre, film, music and visual art will predominate in the buildings themselves. There are performances and events, as well as the opportunity to organise private functions. While catering is not the main activity, it is going to be an essential part of the concept.

The people who use the buildings are not just those who make or present cultural products. The core of this group is involved in cultural enterprise: distribution, organisation, catering, building scenery and supplying special effects. There is also room available for training.

In addition to its public attractions, the site also provides accommodation to organisations that support cultural activities, such as shops and a small number of offices.

It goes without saying that the lessees are able to pay their rent. In addition, there will be accommodation made available to start-up cultural organisations. The rent will be fixed according to a sliding scale.

The usable floor space in the buildings will be optimised for future leasing. That will increase employment further for secondary firms.

The training programmes organised on the site only generate a limited number of jobs, but they do strengthen the dynamic quality of the site and its unique character. By grouping important categories of cultural activities together in the same accommodation, they become mutually

reinforcing and are more likely to co-operate and project a positive image.

One important advantage of combining public activities and cultural enterprise is that the public and activities are spread out over the day and the evening. The way the buildings are used hence makes an important contribution to the value of the park for its users.

Neighbourhood interest

Attracting cultural enterprise not only generates more jobs for the city of Amsterdam as such, but in particular it stimulates the economy of the adjoining neighbourhoods. A wide variety of activities will take place on the site and inside the buildings whose aim is in part to attract neighbourhood residents to the site. A number of activities intended especially for the neighbourhood will be visibly represented on the site.

Festival grounds

The park and buildings make an excellent venue for festivals. In the future the Westergasfabriek site will also accommodate multiple-day music festivals.

The park can also offer the Canadian based Cirque du Soleil a place to set up their 'grande chapiteau' and is a suitable location for the annual spring fair.

The interiors of the buildings will be designed in such a way that they can be used flexibly. Various rooms can be used for any larger events.

Education

Schoolchildren will be welcome to visit the site and learn about the history of gas production and the historic buildings there in a relatively secure, park-like environment. In addition, they will be allowed to see how theatrical companies, film-makers and artists use the site. The complex is a culture factory, a theatre workshop, and a large artist's studio, all rolled into one and open to all.

International base

The Westergasfabriek site could become an international meeting place for artists from around the world. Indeed, space is being set aside for such encounters. One specific idea is to introduce an 'artist-in-residence' programme, but other types of guest accommodation are also being considered. There is also the possibility of exchanging productions which are created for unique locations.

Gasholder

The Gasholder is to serve as a multi-functional space which can accommodate a wide range of different activities. The Gasholder, a unique building offering 3000 m² of floor space, already plays an important role during festivals that take place on the site. Other lessees on the site will also use the Gasholder, with extra space being available for operas, balls, house parties, business parties and presentations, pop concerts and exhibitions.

Character

Thanks to the combination of historic buildings and for-profit cultural activities in the surroundings of a park, the project has the potential to develop into an unique location with its own special identity. The interlacing of historic monuments and culture gives the site a sophisticated urban character. In addition to improving living conditions in the neighbourhood, the park is also valuable for the cultural organisations on the site. They will be able to use the public space for their performances or exhibitions, an opportunity which adds to the dynamic and unconventional nature of the site.

Used in this way, the gasworks need not necessarily compete with similar centres in Amsterdam or elsewhere. It has its own special identity, one which will attract a wide variety of

visitors.

The site will give its surroundings a centre, a source of stimulation: a place to be proud of.

The gasworks site is dynamic, lively, adventurous and exciting. It is the right place to go searching for the unexpected, the serendipitous. It is never quite finished. The historic buildings, permanent and by definition static, house a world of continuous change.

And change is consequently one of the fundamental features of the culture park that the Westergasfabriek site is to become. The result is a paradox, of course. No one can capture change; change must be stimulated, even forced if necessary.

E. Summary

To give new life to a derelict contaminated site it proved to be essential to give the public a reason to visit the site. For Amsterdam space proved to be the keyword. Space for a new park and space for cultural activities. We believe we can keep the site interesting for the public by striking a course while setting new goals for ourselves as we change.

Designing the plan around this core of space and time makes it possible to reinforce and preserve the nature of the landscape and the idea of the urban periphery.

Cultural enterprise gives the thirteen historic buildings and other structures on the site a new, dynamic use. The activities that take place on the site will have a positive impact on the immediate environment.

The area will finally get the park that it has been waiting for over one hundred years. The new infrastructure will ensure that the area is accessible and usable by both lessees and visitors.

F. Change

Change and innovation are the key words in developing the site further. Although certain goals have been set, there is no final target. It is the direction that is important, not the final destination. The project has all the qualities of a road movie in the best American tradition. The point is not to arrive, but to be on the road, going somewhere.

The journey is the thing, then, the symbol of motion, of life itself. Arrival is static, the end, death. Revitalization and change drive the process. Cultural enterprise is the new source of energy powering the Westergasfabriek.

Anyone visiting the new Westergasfabriek with this in mind will be making a journey. And why undertake a journey, why visit other countries or other places, if not to discover what else is possible?

Time and space at the Westergasfabriek in Amsterdam, Holland

Norman E. Endlich

On behalf of Dale Medearis EPA I send you my paper for the Brownfields conferece.
I hereby grant EPA the permission to reprduce the paper for the Brownfields 97 binder.

drs E.H. Veragen
Amsterdam
July 28 1997

(5L) Little Town Blues: Challenges to Small Cities and Rural Communities

Friday, September 5, 1997

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

Description: Small towns can have big dreams. Hear local officials and others discuss ways to overcome the special difficulties faced by small communities. Limited human resources, environmental justice issues, funding issues, and consensus-building are among the issues considered by a panel of experts in redevelopment of small towns.

Location: Room 1203B

Speakers and Affiliation:

The Honorable Phillip Singerman (Moderator)

U.S. Department of Commerce, Economic Development
Administration

Mr. Scott E. Holmes

Lancaster County, Nebraska Health Department

The Honorable Robert B. Ingram

City of Opa Locka, Florida

Mr. Jonathan L. Markley

U.S. Department of Commerce, Economic Development
Administration

THE HONORABLE PHILLIP SINGERMAN

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

MR. SCOTT E. HOLMES

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

THE HONORABLE ROBERT B. INGRAM

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MR. JONATHAN L. MARKLEY

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