S. HRG. 105–42

BROWNFIELD LIABILITY AND RESOURCE ISSUES

HEARING

BEFORE THE

SUBCOMMITTEE ON
SUPERFUND, WASTE CONTROL, AND RISK
ASSESSMENT

OF THE

COMMITTEE ON
ENVIRONMENT AND PUBLIC WORKS
UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

FIRST SESSION

MARCH 4, 1997

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BROWNFIELD LIABILITY AND RESOURCE ISSUES

TUESDAY, MARCH 4, 1997

U.S. SENATE,
COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS,
SUBCOMMITTEE ON SUPERFUND, WASTE CONTROL
AND RISK ASSESSMENT,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m. in room 406, Senate Dirksen Building, Hon. Robert Smith (chairman of the subcommittee) presiding.

Present: Senators Smith, Warner, Allard, Sessions, Lautenberg, and Chafee [ex officio].

Also present: Senators Baucus and Wyden.

OPENING STATEMENT OF HON. ROBERT SMITH, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Senator SMITH. The hearing will come to order.

Good morning, everyone. I would like to thank everyone for coming this morning and thank the witnesses in advance for being here.

We're here to review the issues associated with abandoned and underutilized industrial sites, otherwise known as brownfields. Although there are no concrete figures on how many of these brownfield sites there are in the United States, GAO estimates indicate there are over 150,000 acres of these sites nationwide. While the number in size is unclear, what is clear is it's a significant national problem. These properties sit idle in many cities and towns. They not only represent a nonproductive drain on municipal services, but also they're not adding to the local tax or employment base. There are estimates of billions of dollars in tax losses for these sites.

I believe that the problems associated with brownfields are twofold: first, at many of these sites we simply don't know what the level of environmental contamination is. Sometimes we don't know if there's any at all. By providing funding for environmental characterization, many of the sites with limited or no contamination can be quickly returned to productive reuse. Second, at many of these sites the current owners, including municipalities, that have taken these properties via tax liens are aware that some environmental contamination exists, but they're afraid to redevelop them for fear of being caught in the web of Superfund liability.

While many of these owners are willing to clean up these sites under State voluntary cleanup programs, they are tremendously fearful of getting sucked into the Superfund morass.

What they want is certainty. They want one entity in charge of the cleanups; they want to have a clear and consistent set of standards; they want to know at the end of the day after they've cleaned up the site according to the agreed requirements; and that they don't have to fear unlimited future liability.

I believe this is a well-founded fear and one that Congress needs to address. If we don't deal with this matter, companies will continue to fence these older landholdings and put their new facilities at pristine so-called "greenfield sites." The issue of brownfields redevelopment has long been an important one for both political parties. The commitment on both sides is also underscored by the fact that both of us this year have introduced legislation affecting brownfields as part of the top 20 agenda for the U.S. Senate, S. 8 and S. 18.

Given the discussions that we have had together with the various members of the committee on both sides, I think there is general agreement that we should work hard to address these and other difficult Superfund related issues this year.

Although we were not successful in our efforts to comprehensively reauthorize Superfund last Congress, I was very heartened by the positive negotiations that we had both at the staff and member level with Senator Chafee, Senators Lautenberg and Baucus, as well as the representatives of the Clinton administration, specifically Carol Browner.

Working together I hope we will continue to make progress, and I would like to thank my colleagues in advance for these very cooperative comments in this regard.

I will turn it over now to the ranking member, Senator Lautenberg.

OPENING STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Senator LAUTENBERG. Thank you very much, Mr. Chairman.

I too want to salute the spirit of bipartisanship that is evolving. I think that it's crucial that we get on with the responsibilities. We have every right to differ, but the fact is that we have a hearing today, for which I thank you, to discuss the brownfields legislation as presently proposed, separate from Superfund. I hope that we will be able to establish the fact that brownfields legislation is, of and by itself, quite an independent course of action from Superfund reauthorization. We would like to see both get done. It is the testament to the bipartisan interest and getting on with the environment agenda that's so important.

I am hopeful that this spirit will continue as we address the complex and controversial issues that will be coming before this Superfund subcommittee.

Fortunately, the brownfields legislation isn't one of those complex and controversial issues. Both parties have recognized that the threat of Superfund liability is deterring the redevelopment of contaminated properties. Both parties support liability relief for pro-

spective purchasers, developers, and bankers who would clean up these blighted properties and restore them to productive use.

Both parties have supported making low-interest money available to communities to clean up hazardous waste sites, and so it's fair to say that we all support brownfields legislation, which would promote jobs in urban communities and remove contaminants from the environment.

Mr. Chairman, now that we have this bipartisan consensus on the value, we ought to try to act. There are more than 100,000 brownfields sites that Superfund will not clean up because the contamination levels are too low to qualify. Cleaning up these sites can make an enormous difference for communities all around our country.

One of the first bills introduced this year was S. 18, my legislation, to provide assistance for brownfields redevelopment. The first title of S. 8 that Senator Smith and Chafee introduced in their Superfund reauthorization bill had many provisions similar to those contained in S. 18.

Unfortunately, there is disagreement about whether brownfields legislation should go first or should be held until both parties resolved the many issues involved in the comprehensive reform of Superfund.

Some of my colleagues on the other side of the aisle have suggested that a separate brownfields bill is nothing more than a feel-good measure, which would distract Congress for more important questions. With respect, I disagree. I think we should act now. It's a much simpler case to review, and if we can get it in place, I think we can help our communities enormously. They need this legislation.

Mr. Chairman, I want to be clear that I remain very interested in revising Superfund. We've had private conversations about it. I think that there is a distinct possibility that we can work out our differences, and, certainly hope so. I would like to find an acceptable bipartisan approach to such a bill because we both know, we all know, that unless it's bipartisan, it's not going to happen.

But I don't want controversies over Superfund to stall this critical brownfields legislation, and, frankly, as I see it, enactment of brownfields is not only the right thing to do, but it would help promote a spirit of progress and bipartisanship on environmental legislation. It would show that we can move things along.

I think that many of our witnesses today will help make the case for moving forward to address the brownfields problems and opportunities. I am especially looking forward to the testimony of Mayor Bollwage from Elizabeth, NJ, from my State, and a city I lived in during my movements around New Jersey with my family. There were many communities that we lived in as my father tried to establish a place to make a living. Elizabeth was one of those good industrial towns. Elizabeth was home to the Singer Sewing Machine Company. The city is a renowned place for companies that came, worked and later on abandoned. That wasn't in the plan, but that was the result. The economic stabilization of Elizabeth is an inspiring story, and the Mayor here has gained some significant distinction and leading the fight to reinstall pride, jobs, and progress in that city.

Mayor, we congratulate you. I hope that the Mayor's story will convince all my colleagues that we ought to get going on brownfields legislation now.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Lautenberg follows:]

PREPARED STATEMENT OF HON. FRANK R. LAUTENBERG, U.S. SENATOR FROM THE STATE OF NEW JERSEY

Mr. Chairman, I am pleased that we are here today to receive testimony on brownfields legislation. This hearing is a testament to the genuine spirit of bipartisanship that currently exists among members of the committee. And I'm hopeful that this spirit will continue as we address the complex and controversial issues that will be coming before the Superfund Subcommittee.

Fortunately, brownfields legislation is not one of those complex and controversial issues. Both parties have recognized that the threat of Superfund liability is deterring the redevelopment of contaminated properties. Both parties support liability relief for prospective purchasers, developers and bankers who would clean up these blighted properties, and restore them to productive use. Both parties have supported making low-interest money available to communities to clean up hazardous waste sites. And so we all support Brownfields legislation, which would promote jobs in urban communities, and remove contaminants from the environment.

Mr. Chairman, now that we have such bipartisan consensus, we should act. There are more than 100,000 brownfields sites that Superfund will not clean up because contamination levels are too low to qualify. Cleaning up these sites can make an enormous difference for communities all around our Nation.

One of the first bills introduced this year was S. 18, my legislation to provide assistance for brownfields redevelopment. The first title of S. 8, Senators Smith and Chafee's Superfund reauthorization bill, had many provisions similar to those contained in S. 18. Unfortunately, there is disagreement about whether brownfields legislation should go first, or should be stalled until both parties resolve the many issues involved in comprehensive reform of Superfund.

Some of my colleagues on the other side of the aisle have suggested that a separate "brownfields" bill is a "feel good" measure, which would distract Congress from more important questions. I respectfully disagree. I think we should act now. Our communities need this legislation. And many of them need it very badly.

Mr. Chairman, I want to be clear that I remain very interested in revising Superfund, and would very much like to find an acceptable, bipartisan approach to such a bill. But I don't want controversies over Superfund to stall this critical brownfields legislation. And, as I see it, enactment of a brownfields bill is not only the right thing to do, but it would help promote a spirit of progress and bipartisanship on environmental legislation.

I think many of our witnesses today will help make the case for moving forward to address brownfields. I am especially looking forward to the testimony of Mayor Bollwage of Elizabeth, New Jersey. His city's experience shows that a concerted effort can turn contaminated lands into gold mines. It's an inspiring story—one of many. And I hope it helps convince all of my colleagues that we should act now to enact brownfields legislation.

Senator SMITH. Thank you, Senator Lautenberg.

We are delighted to have both the ranking member and the chairman of the Full Environment and Public Works Committee here this morning, Senator Chafee.

OPENING STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Senator CHAFEE. Thank you very much, Mr. Chairman.

I would prefer to go for 3 minutes if the lights could alert me that because I'm anxious to hear the witnesses this morning. I want to congratulate you, Mr. Chairman, for holding this hearing on brownfields. I want to recognize you for your leadership in the entire Superfund issue. You've worked on this last year—I know the mere mention of Superfund makes you shake your head, but don't despair. We shall prevail and get a Superfund bill passed.

I also want to recognize the ranking members of the committee and subcommittee, Senators Baucus and Lautenberg, for their continued efforts on brownfields and on Superfund. Both of them have labored long and hard on this subject.

One of the unintended consequences of the Superfund statute is that new industries have shied away from urban areas, because they're worried about liability under brownfields. They move out to pristine areas in the countryside that we, as a committee, are trying to preserve. So we've got an unfortunate consequence of the legislation that we passed. The brownfields effort is an attempt to overcome that problem.

As Senator Lautenberg pointed out, while there is a lot of commonality between our two approaches—that is, S. 8 and S. 18—the basic difference is that we on this side believe that brownfields should be part of an overall Superfund reauthorization. In other words, pass Superfund legislation. On the other hand, Senator Lautenberg has indicated that he would like to proceed with S. 18, solely the brownfields part, and later follow on with the Superfund revisions overall.

I agree with you, Mr. Chairman. I prefer to see it in a package. We're having a hearing on brownfields, but I would like to see that part of the overall Superfund reform. I really do fear, Mr. Chairman, that absent that, if we just do brownfields alone, that the enthusiasm to do something about Superfund overall would slacken.

So, Mr. Chairman, I want to do everything I can to help you. I would just quote from a letter that you and I wrote to Administrator Browner in July 1996:

> We see little benefit in moving forward with the brownfields bill that fails to address the critically important issues of the Federal-State relation, and potential liability under Superfund, and we strive for the overall reform of Superfund.

Thank you very much, Mr. Chairman.

[The prepared statement of Senator Chafee follows:]

PREPARED STATEMENT OF HON. JOHN H. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

I want to thank the Chairman of the Subcommittee on Superfund, Waste Control and Risk Assessment, Senator Smith, for holding this hearing on the topic of Brownfields, and recognize him for his leadership on Superfund reform generally and on this very important part of Superfund reform, namely brownfields revitalization. I also want to recognize the Ranking Members of the Committee and Subcommittee, Senators Baucus and Lautenberg, for their continued efforts on Superfund.

One of the unintended consequences of the Superfund statute is that new industries have shied away from urban areas, which already have in place an infrastructure to support new manufacturing and industrial facilities, and have instead located in previously undeveloped areas without any infrastructure to support them. Thus, a law that was supposed to be protective of the environment has actually led to increased development of formerly pristine lands.

In late January, both we and the Democrats introduced our bills on Superfund and brownfields. A central focus of the Superfund bill we introduced in January, S. 8—the "Superfund Cleanup Acceleration Act of 1997," is a strong pro-brownfields revitalization policy. We all know what brownfields are—they are the abandoned plant that might be contaminated, or might not be. It is the mothballed facility that a large company is afraid to sell for redevelopment because a successor's mismanagement might expose it to Federal liability years later. No one knows exactly what the problems at these sites are, so people are afraid to invest in them or redevelop them, people are afraid of liability. So rather using old industrial sites, new development flees the city and tears up our open space, green fields. In the meantime, these old sites remain a blight and a big hole in local tax bases.

There is some commonality between our approach to brownfields and the Minority approach. The legislation introduced by Senator Lautenberg and others addresses some of the brownfields redevelopment barriers the Committee previously identified. The bill includes grants for site characterization, grants for States to set up revolving cleanup funds, and liability relief or limitations for bona fide prospective purchasers, and innocent landowners. All but one of the provisions are similar to provisions in our comprehensive bill, S. 8.

Title I of S. 8 contains many provisions that should facilitate brownfields redevelopment. It will provide $15 million annually to capitalize revolving loan funds for site characterization and cleanup, and an additional $25 million annually to capitalize a revolving loan fund for site remediation. It provides an additional $25 million annually to improve or create State voluntary cleanup programs. It will lift the Federal liability cloud from sites cleaned up under a State cleanup program, and it provides other assurance for prospective investors.

A major difference between our position and that of the Minority is the scope of a brownfields bill. It is our position that there are many redevelopment candidates beyond the numerous lower risk, less-contaminated sites that are not likely to be added to Superfund's National Priorities List. In fact, there are many redevelopment candidates that either are currently on the NPL or could be. Rhode Island's Department of Environmental Management informs me that there are over 200 Rhode Island sites that RIDEM screened as likely to score above the Superfund listing threshold score. The vast majority of these 200 sites will never be added to the Superfund NPL list; inevitably it will be Rhode Island's responsibility to supervise these cleanups. This has led us to conclude that a complete solution to the brownfields dilemma requires significant changes to CERCLA beyond Title I of S. 8. These changes will make possible a brighter future for brownfields sites, whether or not they are on the Superfund list or in a State cleanup program.

During Superfund hearings in the last Congress, we repeatedly heard testimony from State officials who were concerned about the potential for increased Federal involvement in State voluntary cleanup programs. We will hear similar testimony from many of our witnesses today. These witnesses will tell us that a key element needed to make brownfield programs work is the ability of States to provide future liability waivers to parties that clean up these sites.

I agree. As Senator Smith and I noted in a letter on brownfields to Administrator Browner in July, 1996, "we see little benefit in moving forward with a brownfields bill that fails to address the critically important issues of the Federal-State relationship and potential liability under Superfund." The time for tinkering around the edges of Superfund is over. We need to extensively overhaul Superfund and I invite the Minority and Administration to join us.

The Minority makes a strong case for enacting brownfields reform legislation. While we appreciate the continued commitment on the part of the Minority and the Administration toward improving this flawed environmental program, we believe that pursuing stand-alone brownfields legislation so early in the 105th Congress would seriously undermine our effort to attain comprehensive Superfund reform this year.

Real brownfields reform starts with recognizing that States and not the Federal Government are already cleaning up the vast majority of these brownfields sites, therefore it follows that the key to reform is empowering the States. It is for this reason that I believe that a real solution for brownfields reform means removing the Federal impediments to reusing these properties. I stand ready to work with the sponsors of S. 18 and the Administration to make sure that we get real brownfields reform, namely comprehensive Superfund reform, as a top priority for the Environment and Public Works Committee and commend them for their hard work on this issue.

I look forward to hearing from our witnesses today on this important topic.

Senator SMITH. Thank you, Senator Chafee, distinguished ranking member of the full committee, Senator Baucus.

OPENING STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM THE STATE OF MONTANA

Senator BAUCUS. Thank you very much, Mr. Chairman.

I would like to speak about the approach rather than getting in a debate about whether brownfields is a separable or intrinsic part of Superfund reform. I believe that there's an opportunity here to do something constructive, and I hope that we do it.

I want to remind this committee that is the first hearing that we've had this Congress on brownfields legislation. We've had hearings on regulations, but this is the first hearing on legislation. It's a good opportunity to set the right tone, to go forward and not get bogged down by partisanship.

We would all agree there's been too much partisanship in the last couple of years, but there has not been partisanship on this committee. That is due to the leadership of our chairman, Senator John Chafee and the chairman of this subcommittee, Senator Smith. I think all of us have done a pretty good job of trying to keep this debate above board, to work hard to try to find solutions. We've made some progress.

I think it is also important to remind ourselves that the approach that we have taken in the past has worked. Most significantly, this committee wrote a very good law reforming the Safe Drinking Water Act. That was legislation praised by residents of both cities and States. It was praised by environmental groups and it received overwhelming bipartisan support.

I've been thinking a little bit about why that happened, why in contrast to other legislation was that effort such a success. Here is my view: the Safe Drinking Water Act was, to use a cliche, a "win-win" proposition. We didn't just reduce regulatory burdens, but we also increased environmental protection, especially by expanding the public's right to know about the quality of drinking water. Reducing unnecessary regulations is a good thing in and of itself—we should do that. Also, we should increase environmental protections. This is a practical political matter. If you try to accomplish only one of these goals and not the other, you are unlikely to achieve a consensus.

As we begin to consider other environmental laws like Superfund and the Endangered Species Act, I hope we take the same approach that we took in the Safe Drinking Water Act. Let's try to come up with a win-win approach that not only makes the law less burdensome for those it regulates, but also that provides more environmental protection for the American people.

The brownfields legislation that we are considering today is a good example. We all talk about the environment and the economy going hand in hand, and the brownfields legislation puts our words into action. There are thousands of old, vacant industrial sites all over the Nation. Many of these sites have some contamination but usually not very much. Most can easily be cleaned up and returned to productive use. Yet, most of these sites are sitting idle.

Why? One reason is that the developers are afraid of Superfund liability. The brownfields bill makes it clear that developers and innocent landowners would not be subject to Superfund liability. Both bills also provide a little seed money to help them get the ball rolling. These provisions will help communities turn idle properties into new business opportunities creating new jobs and economic growth. That is already happening in some States like Oregon, and Illinois and New Jersey. It's also happening in my home State of Montana. In Butte, MT, county officials working together with the Chamber of Commerce built a new Visitor's Center in an area that was once used as a landfill. Nearby in Anaconda, folks have worked for years to come up with a creative approach. We're turning the

site of an old smelter works into a world-class golf course designed by Jack Nicholas. That will attract visitors from all around the country and all around the globe. In each case it's a win-win solution, good for the local economy, good for the environment. The legislation that we are considering today would mean more solutions like this.

There is another reason for passing brownfields legislation—the Welfare Reform Bill that we passed last year. That bill requires welfare recipients to find work—which is a good thing—but the strategy is successful only if jobs are available. The brownfields bill can play an important role in helping to create jobs where they are needed. For this reason, brownfields legislation is one of the most important economic revitalization initiatives that we will consider this Congress.

In closing, I want to thank expressly Senator Chafee, Senator Smith, and Senator Lautenberg and others on this side of the dais for holding this hearing. It gets us off to a good start. I hope and pledge every effort to work to find a common solution, one that has give and take on both sides, as we did when we passed the Safe Drinking Water Act.

Thank you.

Senator SMITH. Thank you, Senator Baucus.

Senator Warner.

OPENING STATEMENT OF HON. JOHN W. WARNER, U.S. SENATOR FROM THE COMMONWEALTH OF VIRGINIA

Senator WARNER. Thank you, Mr. Chairman.

I join the others here in commending you and the distinguished ranking member for your efforts and leadership. You have been unfailing, Mr. Chairman, in your dogged persistence to try and come up with legislative solutions to this troublesome situation of Superfund.

It is interesting that the distinguished ranking member from Montana, as well as, I believe, the distinguished ranking member from New Jersey used in their statements the phrase, "afraid of Superfund liability."

It is deeply regrettable that Congress has passed a law which people are fearful of. Therefore, if we have created that fear, we have an obligation to remove it. Brownfields legislation, in my judgment, is an effort in that direction.

But I take a word from Mr. Baucus' statement about welfare. Many of these sites are co-located in those neighborhoods where our welfare legislation will have a major impact. It will provide, hopefully, the jobs that are needed. Most importantly, these people don't have the ability to buy a car and drive to the site on the outskirts of the cities. This legislation will enable them to walk to work, saving the cost associated with additional transportation. Very often public transportation in place today will serve the sites we regard as brownfields.

So I think this is probably the best example of time and economic advancement, together with an environmental advancement. That opportunity is before us—let's make sure this committee gives the Senate the leadership and guidance to pass that legislation.

Thank you.

Senator SMITH. Senator Allard.

OPENING STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM THE STATE OF COLORADO

Senator ALLARD. Thank you, Mr. Chairman.

It is great to be on your subcommittee, and I note with interest all the seniority that we have on this committee. Senator Sessions and I are the new men on the block. I don't know about him, but I kind of feel like the cross-eyed javelin thrower. You're not going to be making many points, but everybody is going to be watching you.

[Laughter.]

Senator ALLARD. But let me just say from a Coloradan's perspective that I come from a State that is interested in green areas, and we've dedicated a lot of local dollars in the State to do that. One of the frustrating things is the brownfields sites' locations, and there are sites that can never be dealt with because of the big liability issue that goes with it. In some cases they are close to a Superfund site, they get intermingled with those issues related to the Superfund site. That is why I think we need to address both Superfund as well as brownfields sites.

But the brownfields site legislation, which I am a co-sponsor of with the chairman of this committee, I think would help a lot in our State. I think from hearing the other comments, it will help all over the country, and, certainly, very worthwhile legislation. I hope we can get it to move forward as a companion issue with the Superfund reauthorization.

[The prepared statement of Senator Allard follows:]

PREPARED STATEMENT OF HON. WAYNE ALLARD, U.S. SENATOR FROM THE STATE OF ALABAMA

Thank you Mr. Chairman. I'm looking forward to today's hearing on brownfields and the positive economic and environmental impact that cleaning up these sites could have for Colorado and other States. Specifically, I want to mention Colorado because in my State leaving these sites abandoned can have a disproportionate impact on individuals who live miles from a brownfield.

One of the unique aspects of Colorado, particularly the front range, is that cities are broken up by green space. Unfortunately, one of the challenges Coloradans face is growth pressure for both residential homes and new businesses that lead to development of green space. In fact, when Coloradans are asked what their major concerns are, growth always ranks near the top. To protect from this the State runs a program to buy open space for preservation called Great Outdoors Colorado. GOCO, as it is called, spends hundreds of millions preserving green space from development. Further, in last year's Farm bill Congress authorized $35 million to preserve farmland threatened by urban sprawl.

Unfortunately, the Federal Government doesn't always help in terms of providing policies that could be characterized as preservation friendly. Superfund, and the liability hammer it carries, is but one good example. Because of the fear of liability, sites that otherwise could be cleaned up and redeveloped are left empty and new industrial development occurs elsewhere.

Mr. Chairman, with respect to brownfields I'm pleased to be a cosponsor of your legislation. I think if we can get Federal agencies out of the way, States will be able to clean up brownfield sites to a satisfactory level. Thank you.

Senator SMITH. Senator Sessions.

OPENING STATEMENT OF HON. JEFF SESSIONS, U.S. SENATOR FROM THE STATE OF ALABAMA

Senator SESSIONS. Thank you, Mr. Chairman.

I salute you for the leadership you've given in working on this matter. It's a complex and important issue, and I think Senator Baucus' comments are well worthwhile. If we can improve the environment at the same time, reduce burdensome and unwise regulation, we've had a double advantage. I think that is possible in this legislation, and that's why I've been supportive of it.

I'll just share this story and conclude my opening remarks. On the northern edge of the city of Mobile there is an area that is of marginal strength economically. My law firm was involved in a situation where there was going to be built a nice, low-cost motel. A corner of that property had a service station on it. Everything was ready to go forward, but it became impossible for the environmentalists and the lawyers to agree on whether or and not they could protect that motel from future liability from the possibility of pollution from that service station years before. As a result, that project was dropped, the development was not made, and that property still remains vacant. I think it indicates to us that we do need to make sure that our government institutions and agencies can promptly respond to determine promptly whether or not there is a serious danger to the environment, and what it's going to cost to fix it so that rational decisions by developers can be made.

I salute you for working on the problem, and I look forward to learning more about it as we go forward.

Senator SMITH. Thank you, Senator Sessions.

[The prepared statement of Senator Sessions follows:]

PREPARED STATEMENT OF HON. JEFF SESSIONS, U.S. SENATOR FROM THE STATE OF ALABAMA

Mr Chairman: I believe that today's hearing into the creation of urban brownfields, and the barriers that impede their recovery for productive use, are a classic illustration of what can occur when good intentions go awry. As we look into the issues which will be raised over the course of the next several days, I have deep concerns that in its haste to remedy the problem of environmental contamination, Congress has enacted legislation with structural defects that lead to the kind of unforeseen and costly unintended consequences we will have presented before us today.

In this case, passage of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 has led to these types of unintended consequences. Clearly, the problem of urban brownfields is a significant one, and we should seek to address this issue in the most effective and efficient way possible.

The problem of "brownfields" is self-evident. It is estimated that hundreds of thousands of brownfield acres exist in major cities throughout the country. In fact, in many cities the amount of brownfield land present exceeds the total land area of Washington, DC. This abandoned or underutilized land, which once was put to productive use, is often overlooked or ignored by future developers who fear exposing themselves to Superfund's drastic joint and several, strict and retroactive liability provisions. Further, the lack of finality and certainty created by a State's certification of cleanup serves to undermine incentives for restoring potentially contaminated brownfield sites.

Finally, the effectiveness of the actual cleanup programs, both in terms of cost and time, is often hampered by the tide of litigation which has resulted from these regulations. Our cities and families cannot afford the continuing loss in jobs or tax revenues that these brownfield areas create, and we should seek measures which will remedy the inherent problems that give rise to these situations. To this end, I look forward to hearing the testimony of the witnesses on these issues.

Senator SMITH. Let's have the first panel of witnesses please come forward.

Mr. Timothy Fields, the Acting Assistant Administrator at the Office of Solid Waste and Emergency Response for the U.S. EPA;

Mr. James Seif, secretary of Environmental Protection, Pennsylvania Department of Environmental Protection; The Honorable J. Christian Bollwage, Mayor, city of Elizabeth, on behalf of the U.S. Conference of Mayors; and Ms. Lorrie Louder, director of Industrial Development. St. Paul Port Authority, on behalf of the National Association of Local Government Environmental Professionals.

Welcome to all of you this morning for being here. Each of your statements, as you've written them, will be made part of the permanent record, and if you could summarize those statements in about 5 minutes each, we would appreciate it because we do have another panel.

We also have a prepared statement by Senator Boxer for the record.

[The prepared statement of Senator Boxer follows:]

PREPARED STATEMENT OF HON. BARBARA BOXER, U.S. SENATOR FROM THE STATE OF CALIFORNIA

Mr. Chairman, resolving the issue of how to encourage the cleanup of abandoned and underutilized industrial sites around the country is of critical importance as we strive to revitalize our inner cities.

The city of San Francisco alone has an estimated 5,051 brownfields sites. If we take into account the fact that many of these sites contain multiple properties, San Francisco may have as many as 15,000 or more individual brownfields properties.

Each one of these abandoned, vacant industrial and commercial sites means fewer inner-city job opportunities, neighborhood blight, and the increased pressure of urban sprawl and loss of local tax revenue.

As reported in the 39-City Survey on the impact of brownfields on U.S. Cities, local tax revenue losses to the city of San Francisco are estimated to be between $16 million and $100 million.

The current Superfund law impedes brownfields development. Many new businesses prefer to locate in uncontaminated areas outside cities rather than face the costs of assessing and cleaning up brownfields, and face the possibility of becoming involved in cleanup liability issues for contamination caused by former users of the site.

In order to bring businesses back to intercity commercial sites, and help revitalize our communities, we must provide liability relief for prospective purchasers and innocent landowners while ensuring that we in no way erode protection of human health and the environment. The Lautenberg/Baucus bill of which I am a cosponsor would provide this relief.

The Lautenberg/Baucus bill also authorize grants to State and local governments to characterize brownfield sites and capitalize revolving loan funds for brownfields cleanup. Providing these funds is critically important as demonstrated by the success of EPA's grants for brownfields pilot cleanup projects in the last 2 years.

California has four EPA brownfields National Pilot Projects: in Sacramento, Stockton, Emeryville, and Richmond. We also have two Regional EPA Pilot Projects—one in San Francisco and one in Oakland, and EPA provides regional assistance to Los Angeles and East Palo Alto.

EPA brownfield grants are playing an important role in, for example, the city of Stockton's plans to redevelop its abandoned shipyard and industrial sites along the waterfront. EPA is helping the City fund a master plan for brownfields site assessment and remediation, and incentives for redevelopment.

San Francisco has received a $100,000 grant to help revitalize the South Bayshore neighborhood adjacent to the Hunters Point Naval shipyard.

In Sacramento, EPA grants are helping to redevelop the old Southern Pacific and Union pacific railyard sites situated in the heart of the city.

While there are many similarities between the brownfields provisions in your Superfund reauthorization bill and the Lautenberg/Baucus brownfields bill, I am particularly concerned about provisions in your bill which allow Superfund cleanups to occur under State voluntary cleanup laws and policies. State programs are designed to clean up low risk sites and may not prove adequate not appropriate for high risk Superfund site cleanup.

Mr. Chairman, acting quickly to resolve critically important liability and cleanup issues in brownfield sites all over the country is of utmost importance for our Nation.

I look forward to working with you to get brownfields reform provisions approved as quickly as possible.

Senator SMITH. We'll start with you, Mr. Fields.

STATEMENT OF TIMOTHY FIELDS, ACTING ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, ENVIRONMENTAL PROTECTION AGENCY, WASHINGTON, DC

Mr. FIELDS. Thank you, Mr. Chairman, and members of the committee.

I am pleased to be here this morning to discuss the current state of the EPA Brownfields Economic Redevelopment Initiative and to discuss how those initiatives can inform the dialog with the context of legislative reform, as expressed in S. 8 and S. 18.

As you know, Administrator Carol Browner will be testifying before you tomorrow. She will discuss Superfund in a more comprehensive way.

My purpose today is to discuss with you some of the accomplishments of the Brownfields Action Agenda that we have implemented over the last couple of years, and to identify some of the issues that are raised by the legislation that is pending before you on brownfields legislative reform.

As you know, the EPA has worked over the last 2 years to try to address brownfields in a proactive way. There are four major components of the Action Agenda. First, we've awarded 78 pilot grants to communities around the country. We had planned on 50 pilots in fiscal year 1998, but 78 pilots have been awarded to date to provide support for assessment, to facilitate cleanup and to support redevelopment planning activities in those communities, and to provide job training support as well. Second, we have built partnerships with various other players beyond the local governments. Federal agencies, like Housing and Urban Development, the Economic Development Administration of the Department of Commerce, the Department of Labor—are working together to address brownfields, job training, and redevelopment issues in communities.

We also have worked with States. As you know, State voluntary cleanup programs are a very important component of effective brownfields redevelopment. Thirty-three States have voluntary cleanup programs. The EPA has signed Memorandums of Agreement with 10 of those State programs; most recently MOAs were signed with Rhode Island and the State of Maryland in the last few weeks. We have eight other Memorandums of Agreement that are being negotiated with States. So, we hope to have 18 of those MOAs completed by the end of the year.

We also have in our budget this year $10 million to support the establishment of voluntary cleanup programs and to make sure those programs are developed in an effective way.

Finally, regarding State voluntary cleanup programs, we're working together in a stakeholder process that would allow us to develop national principles and guidance regarding the operation of State voluntary cleanup programs and the Memorandums of Agreement. In terms of our partnership efforts, EPA and the States are working together on these initiatives.

We believe in terms of working together on brownfields that the brownfields reforms that we have made under Superfund over the last couple of years should inform the legislative debate that you are undertaking today. We believe that brownfields legislative reform should codify many of the reforms that we've implemented administratively and include, among other things, funding for technical assistance, for brownfields identification, for assessment and reuse planning, for funding to capitalize revolving loan funds and liability relief, for bona fide prospective purchasers, as well as protection for innocent landowners.

We believe also that S. 235 regarding the brownfields tax incentive should be supported as part of the overall brownfields redevelopment equation.

S. 8, we think, provides for many of the kinds of things we want in legislative reform. We're encouraged to see the substantial brownfields provisions, as well as the voluntary cleanup provisions within S. 8. However, we do have concerns regarding some of those provisions. We believe that the voluntary cleanup provisions would eliminate the authority of the EPA and other Federal agencies to respond to releases of hazardous substances whenever a State remedial action plan has been prepared.

The mere existence of a plan eliminates Federal authority to respond to emergency events even where there is an imminent substantial endangerment. The provisions would leave us paralyzed to deal with those emergencies, and we think that is something that should be fixed.

Second, we believe that the S. 8 language regarding "adequate opportunity" for community involvement is a problem. Communities need to be involved. Those who live next to these brownfields properties need to have a say involving decisions of land use and remediation at these sites.

S. 8 also identifies elements for a qualifying State voluntary response program. However, it allows some of those programs to move forward without necessarily meeting all of those qualifying program elements.

Finally, regarding S. 18, we think that that bill does address many of the barriers that are preventing the cleanup and economic redevelopment of brownfields. It promotes many of the brownfields cleanup and economic development goals—that are shared by the Clinton administration—and builds upon many of the lessons learned by the EPA over the last couple of years in implementing our Brownfields Action Agenda. We think that S. 18 has the liability relief that we need. The major concern we have with S. 18 is that we don't believe it has an adequate level of funding provided to support the full range of brownfields activities.

In conclusion, the Clinton administration believes that a comprehensive approach to brownfields legislative reform would support all of the existing elements of the current program—some of these elements that are in S. 8 and S. 18—but should also include the brownfields tax incentive, we believe, is an important element.

Mr. Chairman, thank you for the opportunity to address the committee. Thank you for the little extra time, and I would be pleased to answer any questions that you and the members might have.

Senator SMITH. Thank you very much, Mr. Fields.

Mr. Seif, welcome.

STATEMENT OF JAMES M. SEIF, SECRETARY OF ENVIRONMENTAL PROTECTION, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION, WASHINGTON, DC

Mr. SEIF. Thank you, Mr. Chairman.

Mr. Allard, I might point out that as a State official, I occasionally feel in dealing with the EPA like a javelin receiver, but I'll leave it up to the committee to decide if I have become cross-eyed yet.

[Laughter.]

Mr. SEIF. I would like to start with two stories in summary of my testimony. One was December 1980 when President Carter signed the Superfund bill, and he said at that point that "for $1.6 billion we had once and for all solved the problem of abandoned waste sites in America." Flash forward nearly 16 years. Last Friday Senator Moynihan of this subcommittee participated in a ceremony at the Smithsonian celebrating that Institution's move for the first time outside the Beltway to a site in Bethlehem, PA. An old steel mill will become the National Museum of Industrial History in Pennsylvania.

If one knew nothing of the intervening 16 years, one could say President Carter was right. Here comes a site back from behind the cyclone fence and closed-down status. The fact is since then we've learned that Superfund is the least successful Federal environmental statute, at least in modern history. It has every perverse incentive, it has frozen progress in any number of communities around the Nation, it has enriched the wrong people and impoverished others, and it must be reformed. Pennsylvania would very much like to see that.

What has happened also, however, is the States which first tried to mimic Superfund with their own hazardous site cleanup bill got the message, and, as I believe one member of the panel has pointed out, perhaps Mr. Fields, there are now some 30 plus States that have programs. Our program is a statutory one. It has pretty much gone its own way. While Superfund in Pennsylvania has finished only 8 of 103 sites, we are now in 47 of our 67 counties with 64 final cleanups, 195 in progress. The American legislative exchange has dubbed our program the model for other States.

What are the elements of successful programs? My testimony on page 2 lists them. First, let's abandon the Garden of Eden cleanup standard. Pristine isn't even possible in nature we now know. If we decide—and it's a fundamentally local decision—what the future use of that land will be, we can craft a safe level of cleanup.

Second, let's stop at some point the liability. If you have a contaminated site and your uncle walked past it in 1952, you will wind up litigating his estate over liability under the present approaches of Superfund. I have myself been in Court over residues of paint cans left in a factory in 1968. That kind of litigation incentive has no place in community cleanups.

Third, stop the delays in general. Get a pathway toward bringing a site through a process and then follow it.

Finally, reduce the chilling effect of a far-reaching and a liability scheme that reaches everybody and which is joint and several. That

has entrapped lenders and scared them off and frozen many sites behind the cyclone fence.

Our cleanup standards are based on risk and the fundamentally local decision of land use. Air statutes and water statutes, it seems to me, do have a more appropriate reach between States, but the fact is that land use still remains fundamentally local and it should be that way with brownfields statutes.

Second, liability protection is final in our State. You get a release from my Department and you may proceed; it's bankable. Unfortunately, the EPA regional office may decide someday that there is a better way to clean it up and screw the deal up. We hope that we can have some protection from that.

Finally, and I'll depart with a heartfelt agreement with Senator Lautenberg on all of what he said except on one point, and that is the use of Federal money or any money in these sites. It seems to me that if you have a sensible cleanup standard and then you get out of the way, the private sector will find a site in, say, downtown York, PA, price it in terms of its location, its value, existing infrastructure and so on. If you then supply just enough money to determine what cleanup costs would be and it's a realistic cost, then subtract cleanup costs from the site value, the remainder puts the property in play—the private sector will use it.

If it will not use it, there is not enough money in either the Commonwealth budget or the Federal budget to bring them all back. The fact is that we have found that money is following sites. Law firms are advertising their ability to utilize our Industrial Site Recycling Act, consultants are advertising it, we have multi-site agreements with utilities and others. We can make progress.

I see that my time is up. I simply refer to the recommendations for Federal legislation that are at page 7 in the testimony.

Senator SMITH. Thank you very much, Mr. Seif.

Mayor Bollwage, welcome.

STATEMENT OF HON. J. CHRISTIAN BOLLWAGE, MAYOR, CITY OF ELIZABETH, AND ON BEHALF OF THE U.S. CONFERENCE OF MAYORS, WASHINGTON, DC

Mayor BOLLWAGE Thank you, Mr. Chairman, and thank you for this opportunity.

Senator Lautenberg, thank you for those kind remarks. It's good to see you again.

Mr. Chairman, I know you have roots in New Jersey going back to our Capital City, so I invite you back to our State to view the work that we're doing in the city of Elizabeth.

It's a pleasure for me to testify here today on behalf of the U.S. Conference of Mayors, as well as our great city of Elizabeth. The U.S. Conference represents over 1,000 cities throughout our Nation with populations of over 30,000 people, and our nation's mayors have been at the center of our national debate on the redevelopment of the brownfields sites and the need for comprehensive Superfund reform. Last year the Conference of Mayors adopted a National Brownfields Action Agenda that called on Congress and the Administration to develop a national brownfields.

Mr. Chairman, you have my full statement and the attachments, which provide details on this agenda and other items. We are now

revising this agenda, and I will submit for the record a further elaboration of these principles for a national strategy once it is finalized.

The mayors of this nation want to thank the members of this committee, Mr. Chairman, for all of your hard work in realizing the importance and the development of a national strategy for cleaning up hundreds of thousands of brownfields that can be found all across this Nation. We believe that it is preferable that brownfields be a major part of Superfund reform and the reauthorization process. It is also critical that we move on brownfields in this Congress.

Mr. Chairman, contamination of industrial property was not caused by our local governments or the citizens who must now live with the consequences of these lost jobs, as Senator Lautenberg spoke about the great Singer complex in the city of Elizabeth, and the abandonment of underutilized properties that denigrate our communities.

In large measure, this unintended negative consequence of our Federal Superfund policy has been the price for achieving the Superfund program's national benefits. This unfortunate situation simply must be addressed in a very aggressive way. We must undo the unintended harm that Superfund has imposed upon our communities that was spoken about by Senator Lautenberg and Senator Warner.

I would like to explain to you and show you a little bit of what is going on in the city of Elizabeth. You have the Conference's 39-city survey on the impact of brownfields in our cities. I have two photos here that show a basic before and after site of the formal landfill in the city of Elizabeth, which was a 166 acre tract that is now being converted into a metro mall project.

There's been identified 56 brownfields locations in the city of Elizabeth, and we've been able to focus our resources on rehabilitating several of these properties.

Mr. Chairman, if you come back to New Jersey and look at the city of Elizabeth on a former brownfields site, you will see the Ikea store that was built on Port Authority property, sold to the city of Elizabeth, that is now generating, along with a Toys-R-Us Superstore, the first of its kind in the Nation, next to an Incredible Universe that is now generating a million dollars in annual tax revenues and more than $2 million in State-urban enterprise zone revenues, providing thousands of jobs for people in our city and our neighboring communities.

The pictures that I just showed you is the former municipal landfill, 166 acre site, that we hope to put pilings in the ground this Spring and summer that will convert to a 250-store mega mall project and create as many as 5,000 jobs.

This has been done with minimal investment on the government's side because we care. We have worked with a developer on brownfields legislation, on applying for grants. We're currently applying under that pilot program for a $200,000 EPA grant in revitalizing this site.

But we are also, Mr. Chairman, the home of Chemical Control that dates back to 1980, which was a Superfund site that was destroyed by a fire, and it took 13½ years to clean up that site, $13

million of investment in the EPA and $26 million of investment by the State.

The Superfund site, known as chemical control, is now a cement slab with no ability to create jobs, no ability to be reused. It is just going to be monitored by the EPA forever. The brownfields site, on the other hand, have generated tax-ratables, have generated jobs and clearly an effort on brownfields legislation in the 105th Congress is something that will benefit our cities throughout the Nation.

Mr. Chairman, we are pleased that the brownfields issue has the bipartisan support of this committee. The bills that have been introduced, both S. 8 and S. 18, are excellent starting points. We are pleased, for example, that these bills make efforts to address the many issues that we have laid out as our principles.

The Conference president, Chicago Mayor Richard Daley, has made brownfields legislation one of our top priorities, and we want to work with you to refine our proposals. We are pleased that the funds will be made available for site characterization and assessment work on brownfields sites, although these funds are quite frankly very modest compared to the damage that has been done to our communities.

Likewise, we are very pleased that both the EPA pilot program and your bills call for the capitalization of local revolving loan funds, although, again the effort is too modest compared to the magnitude of the program that our cities face. We believe that the funds generally should be directed to local programs unless such State programs are targeted to smaller jurisdictions that would be unlikely to administer their own revolving loan fund.

We believe both bills need to address brownfields sites that are not in the hands of public entities. Not only must liability protections be extended to such public entities, but direct grants should be available for the cleanup of properties in neighborhoods that have shown disinvestment.

We also want to commend the committee for addressing the need for liability protections for redevelopers of brownfields sites, and we believe that to examine the relationship between the State voluntary cleanup programs and the local brownfields cleanup initiatives to effectively address the brownfields problems in our communities.

Mr. Chairman, many other issues remain to be addressed, and we will be supplementing our comments with further technical comments in the drafts of both bills. But let me, again, commend the committee for beginning a bipartisan debate on brownfields. We support your efforts to address brownfields in the 105th Congress, and we look forward to working with you this year to enact legislation.

We cannot, as mayors of this great country, afford to let another Congress go by without enacting a comprehensive national program that will lead to the thousands of brownfields cleanups, creation of jobs and sound local economies.

Mr. Chairman, one final point, while it is not in the jurisdiction of this committee, we believe it is extremely important for the Congress to enact tax incentives that will help companies redevelop

brownfields sites. I would like to thank you for this opportunity to appear before you today, and I am available to answer questions.

Thank you.

Senator SMITH. Thank you very much, Mayor.

Ms. Louder, welcome.

STATEMENT OF LORRIE LOUDER, DIRECTOR OF INDUSTRIAL DEVELOPMENT, ST. PAUL PORT AUTHORITY, ON BEHALF OF THE NATIONAL ASSOCIATION OF LOCAL GOVERNMENT ENVIRONMENTAL PROFESSIONALS, WASHINGTON, DC

Ms. LOUDER. Good morning, Chairman Smith, Chairman Chafee, Senator Lautenberg and committee members.

One of my main responsibilities at the St. Paul Port Authority is to redevelop brownfields. I am also a member of the Brownfields Advisory Committee for the National Association of Local Government Environmental Professionals, NALGEP, whose membership includes more than 50 cities. It represents local officials responsible for developing and implementing environmental policies and programs in their communities.

Mr. Chairman, I am pleased to have the opportunity to testify here today on behalf of NALGEP and present the findings of its brownfields project.

NALGEP's findings are documented in our report entitled, "Building a Brownfields Partnership From The Ground Up: Local Government Views On the Value and Promise of National Brownfields Initiatives," which we have provided for your committee, Mr. Chairman, and which we would like to submit for the record today.

Today I will summarize NALGEP's key findings with a particular focus on the need for legislative solutions to facilitate the cleanup and reuse of brownfields sites across the country.

Mr. Chairman, I would like to compliment and thank the members of your committee for your leadership in promoting the legislative solutions for the brownfields issue. Virtually every community faces this important challenge. We should not forget the fact that brownfields revitalization provides key environmental and economic outcomes including expediting site cleanup, renewing local economies and generating jobs, limiting urban sprawl and associated environmental problems and assisting Welfare reform through customized job training and linking jobs with area residents.

In St. Paul the Williams Hill project provides an excellent example. This 30-acre site is within the federally designated enterprise community area. It consists of 200 to 300 foot mounds of sand and aggregate material. There have been substantial environmental quality problems, air quality problems, along with sub-surface soil contamination.

The Port Authority in St. Paul recently acquired this site, and we will take this site from 16 jobs currently to 325 jobs with wages in the $10 to $15 per hour area. We will take the tax-base from $80,00 per year to $650,000 per year. We will achieve full environmental cleanup, and the bottom line is that after we have invested over $10 million in public cost on this site, we will leverage over $11 million in private sector investment.

Now, Mr. Chairman, I am going to focus on NALGEP's findings:

We have found that the EPA's overall leadership and its package of liability clarification policies have in fact helped establish a climate conducive to brownfields renewal. However, we have also found that legislative action is needed to facilitate the cleanup and redevelopment of more sites. One of the most significant things the Federal Government can do to facilitate brownfields reuse is to enable the EPA to delegate the authority to limit liability and issue no further action decisions for none Superfund caliber sites to the States with cleanup programs, and it's important to note that these States must have minimum requirements to protect public health and the environment.

Here's why: States with voluntary cleanup programs are completing the most significant brownfields activity today. New Jersey estimates that they have cleaned up several thousand sites; other States report similar successes. Also, the specter of Superfund liability continues to put a damper on brownfields cleanup and redevelopment in the development and lender communities. Additionally, the EPA clearly does not have the resources to review and sign off on the hundreds of thousands of brownfields sites that exist across the country.

To delegate to the States NALGEP suggests the following approach:

No. 1, the EPA and the States should clearly distinguish between NPL-caliber sites and the far numerous less contaminated brownfields sites. For example, Minnesota has approximately 160 NPL-category sites, as compared to the over 1,500 brownfields sites.

No. 2, the EPA should only delegate to States that meet the minimum requirements and States, as you probably know, vary widely because of the differing technical expertise and capacities.

No. 3, the EPA should retain its ability to reopen its involvement at a particular brownfields site under exceptional circumstances.

Continued Federal investment is critical to site assessment, remediation and redevelopment. This is where the Federal dollars will help dramatically. The EPA pilot grants have enabled many communities to develop brownfields programs, leverage private sector investment and begin to give developers and lenders the confidence and the clear message that the communities are serious about brownfields developments.

NALGEP has found that Congress should build on this success by broadening the Federal investment in brownfields through the following:

Mr. Chairman, we recommend and we have found that Federal grants are needed to establish more pilot programs. Funds for cities and States are needed to capitalize brownfields revolving loan funds, and, last tax credits for expenses related to assessment and cleanup of brownfields sites is important, as well.

Mr. Chairman, thank you for your time today. We appreciate it.

Senator SMITH. Thank you very much, Ms. Louder.

We will take 5 minutes on the first round. Let me just start with you, Ms. Louder, on a question—some have said with voluntary cleanup that the States would participate in a race to the bottom.

Have you seen any signs that the States have endangered their citizens in their voluntary cleanup programs?

Ms. LOUDER. Mr. Chairman, not at all. In Minnesota, which I can speak to relative to the State Pollution Control Agency, this is an agency that is very clearly interested in doing the right thing as far as cleaning up the environment. In a word, they are our counterparts. They are our partners in the development business, as we are attempting to bring these sites into a redeveloped status and bring jobs to these sites. So the combination of both the real estate and financing expertise, as well as their environmental expertise, is critical.

I think that the safeguard here would be the EPA reopener where if the States do not do the right thing, the EPA can in fact step right back in, and NALGEP feels very strongly about that, Mr. Chairman.

Senator SMITH. Mayor Bollwage, do you have any idea how many sites, brownfields sites, you have in Elizabeth?

Mayor BOLLWAGE Yes, Mr. Chairman. We did a study with the Regional Plan Association in the metropolitan area, and there were 56 identified sites in the city of Elizabeth—that is combined between land that is owned by the Port Authority, Conrail, the railroads and former abandoned industrial sites, as well as some neighborhood sites such as a cleaners that may want to expand. I mean, you know it is always different.

Brownfields sites could be—they are like fingerprints, Mr. Chairman. I mean, they are unique to each individual community.

Senator SMITH. What is your estimate of tax revenue loss to your city?

Mayor BOLLWAGE We could estimate anywhere between $5 million to $10 million on an annual basis on all of the brownfields sites that we lose on an annual basis in the city of Elizabeth.

Senator SMITH. What is your position, and if it's different, the position of the Conference of Mayors on the issue of finality in the cleanup of these sites?

Mayor BOLLWAGE The mayors, especially myself, regarding the Chemical Control site—we were not informed of the final capping of the location. It was basically dictated to us as a municipality on how the final structure was going to occur at the chemical control site, and I don't know if you are aware of what happened there in 1980, but there were 55,000 drums of hazardous material that just blew into the sky and created a massive pollution. About eight firemen had serious health problems and eventually died during the course of the next 10 years. The chemical control site in all of our estimations during the 1980's was eventually going to be able to be turned over to a municipality and be created into a park land for some type of reuse.

That did not happen, Mr. Chairman. It's just a cement slab out there that could never ever be used; whereas, brownfields will generate jobs, generate tax ratables and create a stronger local economy.

Senator SMITH. Do you believe, though, that once States or communities have completed a cleanup either at the State level or through voluntary cleanup, do you believe that they should be liable for additional Federal liability?

Mayor BOLLWAGE Who should be liable?

Senator SMITH. Those who cleaned up the sites. Should there be additional Federal liability at the State level after a site has been——

Mayor BOLLWAGE For the people responsible for cleaning up the site?

Senator SMITH. Right.

Mayor BOLLWAGE Well, Mr. Chairman, I can only look back at the history. You had Singer Sewing Machine in the city of Elizabeth. You had an awful lot of corporations that paid an awful lot of income taxes and corporation taxes to the U.S. Government through the years, and they have now either abandoned or walked away from the site and left the municipality the ability to clean up those sites. So the burden on the municipality is an extremely unfair burden after the Federal Government has clearly benefited from the corporation and the income taxes through the years of this.

Senator SMITH. So you support waiving Federal liability if the sites cleaned up, after it's cleaned up?

Mayor BOLLWAGE There has to be waiving of some liability at some point.

Senator SMITH. Mr. Seif, I was interested in the story that you told regarding the success in Pennsylvania, and I was just curious as to how you were able to get the numbers of people involved in the cleanup in those various sites that you talk about in your statement without the waiving of Federal liability. How were you able to pull that off?

Mr. SEIF. In a couple of ways. Finality is important, and we give a very definite, final release under State law, including from private lawsuits. Bureaucracies don't like finality but the private sector does. I'm not saying one is right or wrong, but we need to, I think, demonstrate a bias, if we legislate, in favor of finality—really exceptional circumstances to interrupt what has in fact gone into a stream of commerce or onto the tax rolls after it has been done.

That finality that we are able to give, plus sensible cleanup standards and a great deal of public relations work—and that's just what it is, going out and looking for customers—has brought us as many sites as we have.

Senator SMITH. But you could have been—are you saying that your success would be greater if you had finality?

Mr. SEIF. I think so. We continue to hear evidence from people about reluctance to join our program because of the fact that it's only our program and not a broader one.

Senator SMITH. Senator Lautenberg

Senator LAUTENBERG. Thanks very much, Mr. Chairman.

Mayor Bollwage, I just want to be certain about something that was in your testimony and I read on page 2—"We believe that it's preferable that brownfields be a major part of Superfund reform and the reauthorization process." And you say in the same sentence, "It is also critical that we move on brownfields during this Congress."

So are you connecting brownfields to Superfund reauthorization because in the second part of the sentence it sounds to me like you're saying, "Hey, we've got to move on brownfields."

Mayor BOLLWAGE Senator, I don't want to trivialize the impact of Superfund legislation or cleanup throughout this country, but I think it's important that brownfields legislation moves in some form in order to benefit our municipalities and the ability to create jobs and stimulate economic development. I think brownfields could probably move on its own with a minimal investment because the developers in our community, they want to know that not only the Federal Government, and the State governments and the municipal governments care, but they want them to play a role in the development of this property. That is why I believe that brownfields could probably move on its own.

Senator LAUTENBERG. Thank you. I wanted to be sure of that because you in particular, since we know each other and we are both long-time New Jerseyans, know that our State problems are, as usual, the same but more of the same. We have—our industrial past has left us a legacy that we didn't expect to inherit, and that is lots and lots of contaminated sites, and I assume Pennsylvania has a similar structure, as has Rhode Island perhaps with its industrial history.

So to me having seen the success you've had with mine fields of contaminated sites there—the Port Authority, PCBs, you name it—you've been able to create an incredible business site. You neglected to say that when a sale is on at IKEA, the turnpike can be tied up for miles with people waiting to bring their money in and buy their goods there at this formerly abandoned site.

Mayor BOLLWAGE Like you said, Senator, if you would have asked me 10 years ago would people be coming to the city of Elizabeth enough to shut down an exit of a turnpike, I would say to you, "That would be a bit ridiculous," but that is exactly what happened in November this year when the turnpike, Exit 13A, was shut down for 4 hours because of the numerous shoppers that were coming to former brownfields locations and now doing their shopping for the holiday season.

Senator LAUTENBERG. I don't know if you remember, but I was the Commissioner of the Port Authority that paid for 13A at the time that it was being done.

Mayor BOLLWAGE Well, we thank you for that, Senator.

[Laughter.]

Senator LAUTENBERG. It wasn't done for you. It was done for the public at large but Elizabeth benefited.

[Laughter.]

Senator LAUTENBERG. Mr. Seif, in contrast with the song, "there's seldom heard a discouraging word," your description of Superfund was at best bleak, and I would have to say lots of discouraging words. But I ask you as you appropriately boast of Pennsylvania's successes with their own sites, what the level of contamination was? Would these sites have qualified for NPL registration or are they on the low side of contamination?

Mr. SEIF. Your point is well taken. Clearly, they are not NPL-rankable sites, though there are quite a number of sites in Pennsylvania which for some reason are on the NPL and subject to 1,200 pages of directions and decades of cleanup that probably should not have been either, and I can think of a few in New Jersey from my days at the EPA that meet the same description.

Senator LAUTENBERG. The number of pages doesn't necessarily make for bad legislation. What makes for bad legislation is the inability to enforce it into an effective program.

Mr. SEIF. Well, those 1,200 pages are just the instructions, not even the law itself.

Senator LAUTENBERG. What would you have done with those sites? Would you just simply have them walked away from? Who would you go after to clean them up? Where would the money come from?

Mr. SEIF. Superfund has performed and will perform at some sites, with a narrower range than I think it is now applied, a critical and non-duplicable function. Indeed, the forcing of technology and the inventorying of sites, and indeed the energy we see behind this brownfields legislation arises out of Superfund. I think what we need to do, however, is not mimic Superfund in the States—and we've explicitly not done that—but to take the next step, to go beyond, and to get the EPA to understand that the setting up of criteria, as it now wishes to do—and some indeed are in Senate legislation about approving our programs—could well be reversed. I think the States ought to get together and decide to approve the EPA's programs every once in a while, including in this area.

Senator LAUTENBERG. I would think it might vary from State to State? When you come into a State like New Jersey, the most densely populated State in the country, and compare that to my colleague from Montana, one could reasonably disagree on what level of cleanup might be in order, but the one thing that I do see is that Superfund ought to be renewed. I think what you're suggesting in your last comments is that brownfields could very well fill that kind of gap, as I heard you describe it, between the very complicated, the highly contaminated site, and that which needs just a little bit of a push. I think the brownfields legislation would fill that gap nicely.

Thank you.

Mr. SEIF. I certainly agree with that.

Senator SMITH. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

First, I want to congratulate Senators Allard and Sessions for their willingness to plunge into this very complicated area. I'll be the first one to confess—although I've been wrestling with this for a number of years—that I don't claim to know all of it. But I applaud you for your willingness to try and master this intricate subject.

I would like to ask the panel a question to see if I've got this thing correctly. What we're trying to do here is to give some definiteness to lenders and potential purchasers. Is that correct? In other words, we're trying to solve the problem that Senator Sessions referred to, that people just wouldn't touch a particular site because they didn't know of the potential liability. So what we're trying to do is get exactness, if we can.

Is that right, Mr. Fields? Don't give to long of an answer because I'm under a time limit here.

[Laughter.]

Mr. FIELDS. I think that is a critical element. I think there are elements in S. 8 and S. 18 regarding relief for prospective pur-

chasers and innocent landowners. It is a critical part of the equation.

Senator CHAFEE. OK, all right.

Now, as I see it, we've got three kinds of sites that we're talking about, what you call low-risk sites, low-risk brownfield sites. Then the next one are those NPL, National Priority List, as possible, but not listed sites. In my State we've got 200 of them. They've prescored over 28.5. They're not on the list but they pre-scored at that.

OK, is everybody with me? That is the second group.

Now, the third group are the NPL-listed Superfund sites. OK, now as I understand it—and you can correct me, Mr. Fields, if I'm wrong. What Mr. Seif wants, and, as I understood the first part of Ms. Louder's testimony, when the State takes over, the low-risk ones or, the ones that pre-score, that the EPA does not have a lead role in those. The EPA can have a lead role in the third group, the NPL-listed sites. Now it stands that the next EPA may easily reenter the issue, and the EPA now shows up and says, "You, Pennsylvania did a lousy job," so we're coming back in to make you do it all over again because, "This cleanup isn't adequate."

Now, as I understand it here, we, at least S. 8, only lets the EPA come in in extraordinary circumstances.

Now, am I right here, Mr. Seif, or tell me what you think.

Mr. SEIF. We would hope that that is what S. 8 does and would urge that it do that and that it define an extraordinary circumstances, because——

Senator CHAFEE. Because if you let the EPA come back in at one of these less polluted sites after the State cleans it up and everything seems fine, but then along comes the EPA and says, "No, that is not right."

Now, do you agree with me, Mr. Fields?

Mr. FIELDS. Well, I didn't read S. 8 quite the same way. The way I read S. 8 is that if a State had a voluntary response plan the EPA would be precluded from going in, and I'm really concerned about that. I do believe that—although there are very effective State voluntary cleanup programs out there—when there is an imminent and substantial endangerment, an emergency situation, like in Hoboken, NJ, for example, the EPA needs the ability to be able to respond and assist as well as when there is a need to respond to a State request to supplement State authority or State ability in these types of emergencies or imminent substantial endangerment situations. I'm concerned that the way that the current brownfields provisions of S. 8 are drafted would preclude us from responding to real emergencies.

Senator CHAFEE. What do you say, Mr. Seif?

Mr. SEIF. I can only speak for Pennsylvania but——

Senator CHAFEE. Well, that's good enough, speak for Pennsylvania.

[Laughter.]

Mr. SEIF. I would be delighted to do so. It goes almost to the "race to the bottom" problem—will some State not have a decent program and should, therefore, the Senate, the Federal Senate, legislate for that case fully. We would rather not be fettered by any Federal oversight on the category of site you list after we have run

it through our program. It just seems to me that there are diminishing public policy returns, down to zero, to do that.

Senator CHAFEE. Well, I see my time is up so I just want to quote or say what Ms. Louder has said on page 8. She said, as I understand it:

> The EPA should provide that it will not plan or anticipate any further action at any site unless at a particular site there is an imminent and substantial danger to public health in an environment, and/or the State response is inadequate or the State requires the EPA's assistance.

What we're trying to do here, it seems to me, is get some cutoff point where the Federal Government won't come back in, and so that there is definiteness to the whole business. What I worry about is ending up with some program where no matter what you do you have a State voluntary cleanup program, and you think you're done with it, and then comes in the EPA and says, "No, that is not right."

Well, my time is up here.

Ms. LOUDER. Mr. Chairman?

Senator SMITH. Yes, Ms. Louder.

Ms. LOUDER. If I might respond——

Senator SMITH. Yes, you want to respond, sure.

Ms. LOUDER. Thank you, Mr. Chairman, and Senator Chafee.

That is precisely it, and let me clarify my earlier comments. NALGEP's position is that the States in fact should take the lead on the non-NPL sites, and that the EPA should be involved in the Superfund sites and that the States must have adequate methods to draw the distinction between the two and to deal with that. The safety net, so to speak, Mr. Chairman, is that if one of the States has a problem with that procedurally, then the EPA could come in under the re-opener, but the bottom line is we do need closure because our lenders and our end-users of the sites, the manufacturers, and the developers and so forth are, quite frankly, afraid of the EPA coming in subsequently, and that has put a chill on developing these sites.

Senator SMITH. Thank you.

Senator Allard.

Senator ALLARD. Thank you, Mr. Chairman.

Mr. Fields, I don't know whether you've had an opportunity to read over the testimony from some of the other members of your panel, but I'm looking at testimony from Mr. Seif, and he says that there are three points that need to be laid for brownfields redevelopment. I would like to have your response to those three points. I'll go over them to refresh your memory.

His first point is a release of Federal liability of State land recycling sites, and his second is a waiver of Federal permitting requirements at State and land recycling sites, and then the third point is the authority for Governors to veto proposed NPL listings.

I would like to know what your response is to his suggestion.

Mr. FIELDS. On the first point, we, obviously, want to provide clarity as to what sites are covered by a State voluntary cleanup program and to make sure that only in very limited situations would the EPA get involved.

We do think that there are some situations where it may be appropriate, and we should make that very clear, as Ms. Louder says,

but that should be a very rare occurrence. The State is, obviously, going to handle most of these sites, and we at the EPA will not get involved. But we do think that there are some situations, an emergency situation, for example, where it may be appropriate for the Federal Government to step in or to lend assistance. We don't think that our ability to do that ought to be precluded.

So we do agree in general about providing clarity, but we don't believe in a complete elimination of Federal authority.

Second, with respect to his point on the waiver of Federal permitting requirements, under RCRA corrective action, the State wants to clean up that site, where they have not already done a cleanup of that RCRA corrective action unit, under a State voluntary cleanup program, we, the Federal Government, are willing to go along with that and allow the cleanup to proceed, pursuant to that State program, and it would not have to be further addressed under the RCRA corrective action program, as it is currently.

We are trying to make that clear in our guidance and to make sure that we work with States to make clear that voluntary cleanup programs are another option.

Regarding the authority of Governors to veto proposed NPL listings, we've operated for the last several years in EPA under a system where we seek State concurrence on the listing of sites on the NPL. We are OK with that, and with our ability to work together with States to get their concurrence on listings. That process has worked fairly well. We do believe, though, that there may be situations where a Governor's veto for the listing may be threatening the public health and safety of the public around that site. So, I do believe that there ought to be certain exceptions or waivers from that ability of the Governor to approve the listing of a site. We may want to, in an emergency, or for public health reasons list a site, if that is the only way we can assure that the people who live around that site are protected.

Senator ALLARD. And, as you might guess, Mr. Seif, I would like to have you respond to his response, if you would please?

Mr. SEIF. We would go directionally the same but a little further in each case. The release of Federal liability, of course, is the issue of, as Senator Chafee says, "Where are we going to cut it off and make for finality?"

On the waiver of permits our own State statute and some other State statutes provide for the waiver of State permits. That includes water, and air and other things or activities that go on during the cleanup.

When those permit requirements attach, and if the Federal ones also are attached, we would be right back into the morass of delay and problems and too many cooks baking the cake. If a State has a good brownfields program, let it work without interference. That is the whole purpose of the brownfields carve-out, I think.

Third, we think that sometimes the Federal Government doesn't know best about what local conditions are, and that the Governor probably has a better shot at knowing and could exercise his or her authority in that regard. I don't believe you're going to get a Governor at a site that is a falling down emergency saying, "We don't want to list it." The fact is that that Governor will use every statu-

tory tool, Federal or State, at his disposal but would not use the Superfund when its track record has been so dismal.

Senator ALLARD. I want to thank both of you for your responses. I see my time is up.

Senator SMITH. Senator Sessions.

Senator SESSIONS. Thank you very much, Mr. Chairman.

Mr. Seif, let me just ask you this just briefly. How is it that a piece of property—like in my example of the motel and the gas station. Everyone seemed to know about it; they were concerned about it. At what point is the State environmental agencies or the EPA aware that this possibility exists, and what's the danger for a purchaser to develop over that area without telling anybody. How does this occur?

Mr. SEIF. Generally local lore and anecdotes. There's also the CERCLA list maintained by the EPA of all sites about which any allegation of contamination has ever been lodged. If you own land and you're on the CERCLA list, you've, of course, just had a considerable devaluation of your property, whether or not the allegation was correct. You can get off that list eventually, but at Superfund speed, meaning not very fast.

Senator SESSIONS. Well, I think sometimes it is publicly known by the government agencies and sometimes not.

Mr. SEIF. Correct.

Senator SESSIONS. To me two things are necessary. First is a prompt decision, a plan for the proposed developers that someone can afford. He can know that if he follows this plan, he should be able to develop that property successfully. If he thinks he is going to get into it and spend hundreds of thousands of dollars and then later finds out that there millions of dollars, that he was going to be asked to do more, he will walk away and find another site in the suburbs somewhere and leave the inner-marginal area alone.

OK, that being said, looking at some of these proposed expenditures, we've got here—I've have some questions about the wisdom of that. I would rather use that money, it seems to me, in a way that could get a potential developer a prompt, an authoritative, definitive answer on what he needs to do before he can buy that property. A lot of them will buy it, if they know. If they are not certain, they're going to leave it undeveloped.

Do you have any comments or thoughts about that?

Mr. FIELDS. Just a couple. One is that over the last couple of years we have removed more than 30,000 sites from the overall master Superfund inventory—that is 75 percent of the 40,000 sites have been dropped and many of the sites are in major urban cities around the country.

That effort has provided for some relief from the stigma associated with being in the Superfund inventory, and that has encouraged prospective purchasers and developers to develop many of those properties.

For example, an old steel mill in Buffalo, NY, is being converted into a tomato farm because the site is no longer in the Superfund inventory and people there are more willing to get involved in the development of properties like this one.

I think also that, as we have tried to do administratively, and the various bills before this committee are trying to do legislatively,

things that change liability for prospective purchasers, innocent landowners. In addition, the change last year to the statute to deal with lender liability, we believe, will provide a greater incentive for people to get more involved in redevelopment of these properties. I think we're sending a signal that we want to encourage developers, we want to work with people who want to redevelop contaminated property. Relief from liability can be provided in these ways. We are trying to do all we can to remove the stigma of being associated with the Superfund inventory.

Senator SESSIONS. Sometimes the States are slow in responding too, aren't they?

Mr. SEIF. Our statute has specific deadlines in it so that there can be certainty in those respects as well. I would say in fact if there is a reopener for the EPA in a statute, that it too would see some deadlines so that that might be the way to get some finality into a site after the running of a certain amount of time—just a thought.

Senator SESSIONS. One more question, Mr. Fields.

S. 8 proposes grants and loans for characterizing and remediating brownfields and identification of brownfields. How mechanically will those grants be allocated? Who will make the decision and what standards will be employed, or do you know?

Mr. FIELDS. The terms of S. 8 are fairly similar to what we've been implementing now the last couple of years. The grants are awarded out to communities who are interested in assessing and planning for remediation of brownfields properties in their jurisdiction. The EPA regions under our current program work with us in headquarters to identify communities that would be recipients of those grants, and we would work with them to provide the funding.

Senator SESSIONS. Who makes the decision about when three cities apply and there is money for one, who makes the decision?

Mr. FIELDS. Right now that is a decision made by the EPA, and right now it's me. You're looking at him right here.

[Laughter.]

Senator SESSIONS. Right, I know who to call.

[Laughter.]

Senator SESSIONS. All that line, I'm somewhat concerned about the word "remediating" because to me once we start remediating, then Washington, DC, is going to be in the business of cleaning up. Is that a distinction? Can you see a distinction between remediating and paying for the cleanup in every city in America?

Mr. FIELDS. Yes, we are looking at that. That is a very limited amount of money that is provided in both bills for remediation. Dollars for remediation are provided through a grant program to local governments to capitalize revolving loan funds.

Senator SESSIONS. Once the doors get open——

Mr. FIELDS. Right. We recognize that most of the cleanup is being done by responsible parties or by other private investors. We're finding that the $200,000 in grant money for inventory and assessment that we're providing is being leveraged by millions of dollars in private sector investment in these communities across the country. The limited amount of money that we're currently providing to capitalize loan funds for cleanup are for those rare situations where municipalities, for example, acquire bankrupt property,

and then the city has to remediate it because the responsible party has walked away. So we think that the revolving loan fund would allow loans to be given to prospective purchasers who want to redevelop property where there is not a private interest there to provide money for cleanup.

Senator SESSIONS. You decide which one is getting it?

Mr. FIELDS. Yes, sir.

[Laughter.]

Senator SESSIONS. Certainly, every eligible person—there wouldn't be enough money to come close to supplying the needs of every eligible claimant.

Mr. FIELDS. We have seen historically over the last couple of years that about $200,000 to a community who really has expressed an interest in getting involved in our brownfields assessment program, and who has applied for one of these grants can benefit greatly from it. We expect that communities may benefit from seed money up to about $350,000 for cleanup of brownfields.

Senator SMITH. Thank you, Senator Sessions.

We do have another panel so I'm going to ask that in the second round we just ask one question and try to not have four parts to each question, if you can do it that way.

Mr. Fields, and to all the panel, there seems to be something indefinite about the term "finality" here. There's not an agreement on how we reach finality. It is very interesting what you said a few moments ago. You said that "The EPA may want to overrule a Governor because of health concerns," and there's a good example there. I mean, what is the implication there, that the Governor doesn't care about health concerns of his State or her State? I mean, I think the issue—and I didn't mean to imply that you meant that—but that is really the underlying implication here, and I think that is where we have trouble coming up with finality. I believe that a Governor probably has as much interest in finality and cleanup and preservation of the environment as you or anyone else in the Federal Government.

Let me ask you specifically how do we—what is the best way to get finality? Are you willing to allow the States to make the decision that they need to make in order to get somebody to clean that site up, the brownfields site and redevelop it? Are you willing to accept their decision?

Mr. FIELDS. I think, Mr. Chairman, that on for both the toxic waste dump, the NPL site, and the brownfields sites the same situation applies. We do not want to overrule the Governor, as you say. I think that we would like to work together, as Commissioner Seif has said. We would like to work together with the States and agree that if a site poses a high-risk, public health threat, this type of site ought to go on the NPL. That way there won't be any difficulty, there won't be any controversy, there won't be any disagreement between the Federal Government and the States because we will all agree up-front that this type of situation would possibly trigger a site listing on the NPL.

Likewise, in the case of a voluntary cleanup program, we would hope to work together with Mr. Seif and other State officials around the country and agree that there would only be a rare, limited number of situations, as the panel has indicated, that would

reopen a voluntary cleanup program and possibly trigger some Federal involvement. They would be situations that everyone would agree on—the imminent substantial endangerment, an emergency situation that may occur. That way when we, the EPA, and the States all agree that these are the limited, very limited, number of situations where we might get involved, I think that would provide a great degree of finality to the regulated community, to developers. I think that would provide the kind of finality that everybody on the panel has been talking about. But, we have to have some criteria for the listings of NPL sites and what would trigger Federal involvement, and, second, in the case of voluntary cleanup programs, we need to identify up front those rare events where we might need some additional assistance to be provided in that site-specific case.

Ms. LOUDER. Mr. Chairman?

Senator SMITH. Yes.

Ms. LOUDER. If I might offer just a brief suggestion here, NALGEP is recommending on the bottom of page 13 just a simple way of doing that—brownfields should be delegated to the States, and there are only two circumstances under which the EPA would walk back in and get involved in that: First, is an imminent and substantial threat to public health or the environment; and, second, either the State response is not adequate or the State requests EPA assistance if they don't have the capacity.

Mr. Chairman, in getting to finality, as you mentioned, I would suggest that the committee look seriously at that suggestion on page 13 of our report.

Thank you.

Senator SMITH. Thank you.

Senator Lautenberg.

Senator LAUTENBERG. Yes, thank you, Mr. Chairman.

I'll make a short statement for the benefit of our new colleague, Senator Sessions, and that is that you have to be sure that Mr. Fields doesn't have Caller-ID, which shows the number that's calling in before he answers the phone.

[Laughter.]

Senator LAUTENBERG. I would ask this question. In New Jersey there is a famous philosopher named Yogi Berra who said, "It ain't over 'til it's over," and that kind of applies to this question of finality because I ask you what do you do with a newly discovered problem? You find out that there is migration of contaminants from one place to another that was unexpected. Very often the terminology—and Mr. Seif, you know it well—"O and M", operations and maintenance, because you haven't really been able fully to get at the source of the contamination. What does one do? Who pays in the event of a discovery of a new problem at an old site?

Mr. Seif.

Mr. SEIF. I guess I have to dissent from Ms. Louder on that point. Someone will pay but it seems to me that the buck can stop at the State House, and increasingly the idea of delegated programs and then watching over it is something the EPA has been doing for 30 years micromanaging is becoming increasingly less appropriate as the States have gone up and running.

I think the States can run programs like this once they're delegated, and that State brownfields laws can have—or State tort laws; you know, the discovery rule and all of that being imported into how much did you know and when did you know it—can be run by the States. Every case doesn't have to be a Federal case.

Senator LAUTENBERG. I am prohibited by the code set down by the Chairman from following on with an intelligent deep perspective question. So I will not ask it.

Mr. FIELDS. Can I just add a comment? I think we all agree that in the majority cases the sites that we are talking about today, the brownfield sites, the sites covered by State voluntary cleanup programs, are typically going to be covered by State programs. They are dealt with at the local level. I think, though, as you said, Senator Lautenberg, we have to make some provision for when the unexpected does occur, those rare events that occur, the emergencies that happen. There needs to be some agreement up front that there are some situations when the Federal Government may need to provide assistance or may need to get involved. Those situations should be rare but we need to make clear that we define those, and that we don't preclude those protections. That is my biggest concern.

Senator SMITH. Senator Chafee.

Senator CHAFEE. Mr. Seif, I would like to ask you the following question: the low risk, or what the EPA calls brownfield sites, they're taken care of. The State can go in there and probably the chances of the Federal Government back in are very, very slight. I would like to go to the next category of the three that I formerly outlined; namely, those NPL caliber sites. They're not on the list yet but they pre-scored a 28.5 or more.

Now, tell me please your experience with those sites. When you go in and clean them up under a voluntary State program, does the—do purchasers come along and buy them with complete confidence or is there always the worry that EPA will come back in in some form?

What has been your experience in those, that category?

Mr. SEIF. As Secretary in Pennsylvania and as a private practitioner before that, we keep people away from those sites. If a site ranks, even if not formally listed and subject to an instruction back of 1,200 pages about how to clean it up, investors will not come. The situation doesn't arise when a site gets ranked like that.

Senator CHAFEE. So the only ones that get cleaned up are the so-called brownfields low-risk sites? It is hopeless to try this second category, or the NPL caliber sites? They don't get cleaned up or people don't come and buy them?

Mr. SEIF. Well, until Superfund is reformed that may be the case, yes.

Senator CHAFEE. Well, not maybe; it is, isn't it?

Mr. SEIF. In Pennsylvania that has been the case, yes, sir.

Senator SMITH. Senator Sessions.

Senator SESSIONS. Mr. Fields, as a former Federal prosecutor, and you mentioned, I believe—somebody did—the limitations on action.

Has any thought been given to extending the length of the statute of limitations from discovery of the fact that a previous owner

had a deliberately, and willfully and knowingly deposited illegal substances? Are you familiar with that?

Mr. FIELDS. I am familiar with that, yes.

Senator SESSIONS. What is the status of that?

Mr. FIELDS. Well, we're just beginning to look at that in a broader context of overall Superfund reform. We have not come up with any sort of position on that issue yet. That is something that we should look at.

Senator SESSIONS. Well, what is frustrating is you find a site and investigation shows that it was a deliberate dump, willfully and knowingly done. The company is bankrupt and the only real vindication that can be done would be a prosecution of the person who willfully and deliberately did it, but the statute of limitations has run by the time they find it.

I think that is something we ought to give some thought to.

Mr. FIELDS. We will do that.

Senator SESSIONS. And I think—I'll just share this.

Mr. Seif, your comments about agencies—I've worked with them as a Federal prosecutor and U.S. attorney for 12 years, and it is an institutional feeling. It is hard to overestimate, as you suggest in your opening remarks how reluctant they are to make any final decision, but somebody somewhere has got to do so. You've got to decide what is a minimally dangerous site, which ones are—you're going to let the State do and let it go forward and identify the ones that are not. Hopefully, this legislation will help in that regard.

Senator SMITH. Thank you, Senator.

Let me just say before we go to the next panel that committee members will have until Friday to submit additional questions. Should they do so you would have until March 14 to submit the answers to those questions, and that would also hold true for the next panel as well.

Thank you all very much for coming. We appreciate it.

Mr. SEIF. Thank you.

Ms. LOUDER. Thank you, Mr. Chairman.

Mr. FIELDS. Thank you, Mr. Chairman.

Mayor BOLLWAGE Thank you.

Senator SMITH. The next panel is Mr. Peter Guerrero, the Director for Environmental Protection Issues, Resources, Community and Economic Development Division, General Accounting Office; Mr. William Riley, general manager of Environmental Affairs at Bethlehem Steel Corporation; Mr. Peter Scherer, senior vice president and counsel of the Taubman Company, Bloomfield Hills, MI; and Mr. William K. Wray, senior vice president of Citizens Bank in Providence, RI.

Gentlemen, thank you all for being here today, and, again, as with the previous panel, your complete statements will be part of the record. If you can summarize it in 5 minutes or less, that would be appreciated.

We'll start with you, Mr. Guerrero, if you are ready to go.

STATEMENT OF PETER F. GUERRERO, DIRECTOR FOR ENVIRONMENTAL PROTECTION ISSUES, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. GUERRERO. Thank you, Mr. Chairman.

I am pleased to be here today to discuss the committee's efforts to support the cleanup and redevelopment of brownfields. While a number of factors have impeded the redevelopment of these properties, real or perceived, environmental contamination has required businesses to incur additional costs associated with assessing and cleaning up these sites.

For some businesses these additional costs have encouraged them to locate elsewhere, resulting in a loss of tax revenues and employment in communities with brownfields.

Last year you asked us to provide information on the legal barriers that Superfund presents for redeveloping brownfields and the types of Federal financial support needed. My testimony today summarizes the findings from that work and provides some additional information from our ongoing review of State voluntary programs, a tool available for addressing brownfields.

State voluntary programs replace enforcement actions with incentives to encourage rather than compel private parties to clean up contaminated properties. States, like Pennsylvania, have found these programs to address brownfields are faster and less costly than enforcement-based cleanup programs.

In summary, Mr. Chairman, we found the following:

First, even though most brownfields are not contaminated enough to be listed as Superfund sites, owners are unwilling to identify contaminated properties and prospective developers and property purchasers are reluctant to invest in projects that could leave them liable for future cleanup costs under Superfund. Most of the voluntary cleanup program managers in the 15 States that we surveyed felt this concern discouraged some participation in their programs. Both bills before the committee include various provisions that would help address these concerns.

Second, to help promote the redevelopment of brownfields, States and localities desire Federal financial support to cover some of the costs associated with assessing these properties for contamination, cleaning them up and developing voluntary cleanup programs. Over the past few years the EPA and the Congress have provided funds used by States and localities to, for example, develop inventory of brownfields properties. Funding provisions in the bills would continue to expand this support.

I now would like to turn to the issue of Superfund legal barriers. Under Superfund the EPA could compel the parties responsible for hazardous waste contamination to clean up a contaminated property or pay for its cleanup. Most States have also adopted enforcement-based programs modeled on Superfund. These State and Federal programs have limited resources and have generally been used to address the most highly contaminated sites. While the EPA targets its Superfund enforcement actions to properties on the National Priorities List, or NPL, a national list of the most highly contaminated sites, Superfund's liability and enforcement provisions apply to non-NPL sites, as well. States have found that the threat

of Superfund liability often convinces responsible parties to clean up highly contaminated sites. However, States also believe that Superfund liability discourages some parties responsible for sites with lesser contaminated, such as brownfields, from coming forward to voluntarily cleanup their properties.

For example, prospective investors and developers are wary of cleanup liability provisions that may hold them liable for any contamination later found at sites. Former property owners may also be liable for cleanup costs if contamination occurred while they owned properties.

Thus, even the suspicion of current or prior contamination may make developers hesitant to purchase brownfield properties and owners reluctant to place them on the market.

To deal with this concern and encourage participation, most States with voluntary programs offer a release of liability under State law. However, State officials feel that some potential volunteers would still find Superfund liability a deterrent to their participation.

Moreover, managers of State voluntary programs cited limiting Federal liability for certain parties, such as prospective purchasers, as one of the more important ways the Federal Government could facilitate additional voluntary cleanups.

The Congress has already taken action last session to limit the liability of lenders. The two bills before this committee also include various provisions to help address concerns about Superfund liability issues at brownfields, such as limiting the liability for prospective purchasers and clarifying circumstances under which current landowners would not be held liable for past contamination.

Now I would like to turn to Federal financial support. During our review of brownfields and voluntary programs, we found that States and localities desire Federal financial support to help them characterize, assess and cleanup brownfields, as well as to establish and support voluntary programs.

Most of the States in our review of voluntary programs, even those that levied fees high enough to cover their program costs, identified Federal funding as a key way for the Congress to promote these programs. The pending bills would continue and expand on the Federal support already provided. Specifically, the bills would give the EPA the authority to provide grants of up to $200,000 per property, to characterize and assess the nature and extent of contamination at these sites. These characterization and assessment studies are required before these properties can be redeveloped.

Because these studies involve research into a property's history and a technical analysis of its conditions, they may be costly and potentially discourage redevelopment. We estimated that for most brownfields assessment costs could average from $60,000 to $85,000 per site, and for some properties with groundwater contamination costs could exceed $200,000. However, the per site amounts in the bills to help fund property characterization and assessment should be sufficient for most brownfields.

In addition to providing funds for site characterization and assessment, both bills would provide other financial support for

brownfields redevelopment. It was clear from our discussions with key parties that such financial support would be most welcome.

Mr. Chairman, this concludes my statement. I would be happy to answer any questions you or the committee members may have.

Senator SMITH. Thank you, Mr. Guerrero.

Mr. Scherer.

STATEMENT OF J. PETER SCHERER, SENIOR VICE PRESIDENT AND COUNSEL, TAUBMAN COMPANY, ON BEHALF OF NATIONAL REALTY COMMITTEE

Mr. SCHERER. Thank you, Chairman Smith, Chairman Chafee, Senator Lautenberg, Senator Sessions.

My name is Peter Scherer. I'm the senior vice president with the Taubman Company. The Taubman Company is a national real estate company specializing in the development and management of regional shopping centers. I'm speaking today on behalf of the National Realty Committee. NRC represents the Nation's leading real estate owners, builders, managers, lenders, and advisors. As such, the organization has focused extensively on the national policy issues associated with the redevelopment of our Nation's brownfield properties.

Several weeks ago I was here in Washington and had the pleasure of meeting with Jeff Merrifield of the chairman's staff, and Scott Slesinger from Senator Lautenberg's office. We had a wonderful exchange of ideas and I left our meeting encouraged and energized, and I am delighted to be here today to have the opportunity to share with you some thoughts on what the real estate industry believes it will take to get our country's non-productive, modestly contaminated and hopelessly idle real estate back into the Nation's economic mainstream.

Two very positive legislation proposals, S. 8 and S. 18, include provisions which reflect a sophisticated understanding, in our view, of how current law can best be modified to encourage brownfields development. NRC is on record as supporting both of these bills.

We are also on record as supporting the efforts made by the EPA to foster brownfields development, but while these efforts are encouraging, they are simply not enough to achieve the economic and environmental objectives sought by S. 8 and S. 18.

As the sponsors of the bill our well aware, and as EPA Administrator Browner has stated, changes to the Superfund law are required to achieve the significant long-term impact that we seek, and let me specifically mention some initiatives taken by the EPA that the real estate industry applauds. But at the risk of striking a more sober note, let me also explain why these well-intentioned initiatives fall short of their intended objectives.

First of all, we've heard earlier this morning that the EPA has removed thousands of sites from the so-called CERCLIS list and issued guidance encouraging regulators to consider realistic future land uses in determining the extent of the cleanup activities. If it's known that a property will become a parking structure, then why force a cleanup to the level needed for a day care facility? This is a common sense approach which the business community finds both workable and sensible.

Second, the EPA has issued guidance identifying circumstances under which it will enter into prospective purchaser agreements. Developers are willing to take risks, but there is simply too many other opportunities available for any successful developers to bet their balance sheet on a brownfield where you have unlimited environmental downsides, not to mention the difficulty in obtaining financing.

In each of these situations the EPA has set a course, which my industry believes is in sync with the national policy objective of returning our country's brownfields to productive use. So why isn't it enough? Well, let me tell you specifically in 50 words or less, and at the end of each guidance I've referred to above, the EPA has inserted a disclaimer which reads as follows, and I quote:

> This policy does not constitute rulemaking by the Agency and is not intended and cannot be relied on to create a right or benefit, substantive or procedural, enforceable at law or in equity, by any person. Furthermore, the Agency may take action at variance with this Policy.

So as well-intentioned as these initiatives may be, it is clear they will fall short of providing the kind of certainty to attract private-sector capital.

I come here today not asking for the creation of economic or financial incentives to encourage brownfields developments, but rather, in the case of our industry, we're looking only for the removal of disincentives and asking that you level out the playing field, and, in doing so, create the kind of certainty that permits prudent investment and intelligent risk assumption.

So what do we think is needed? The various amendments to CERCLA that we've discussed today would significantly reduce the uncertainty that kills many deals with the type of stability, predictability, and certainty needed for brownfields initiatives to succeed. The EPA has endorsed this reform and there is no doubt that its enactment would make a difference in the real world.

At the end of the day our industry is asking for nothing more than the kind of certainty and predictability that other Federal agencies are able to provide. We ask that you empower the EPA to provide the equivalent of no further action letters, which can be obtained from the Securities and Exchange Commission or the private letter rulings that the Internal Revenue Service regularly provides to parties concerned with the consequences of contemplated activities.

Companies will frequently seek from these agencies an advance ruling before a certain activity, such a complex corporate restructuring, is undertaken. It is only after an assurance from the Agency is received, after there is certainty as to how the restructuring will be treated, and after the parties receive a document they can rely on does the actual transaction occur.

Providing this degree of predictability and certainty with respect to our Nation's brownfields will give our industry the confidence and the ability, we believe, to achieve the type of long-lasting objectives that we've talked about this morning.

The National Realty Committee remains committed to the enactment of policies and encourage reinvestment, and we remain willing to work to achieve those goals that I know that we all share.

Thank you very much for this time.

Senator SMITH. Thank you, Mr. Scherer.

Mr. Wray.

STATEMENT OF WILLIAM K. WRAY, SENIOR VICE PRESIDENT, CITIZENS BANK, PROVIDENCE, RI

Mr. WRAY. Thank you, Mr. Chairman, and thank you for this opportunity to address this important subject.

My name is Bill Wray, and I'm a senior vice president of Citizens Financial Group. Citizens is a $15 billion commercial bank holding company headquartered in Providence, RI. We have over 230 branches throughout Connecticut, Rhode Island, Massachusetts, and New Hampshire.

Please realize that I am not attempting to represent an official position on behalf of the banking industry or any of its trade associations. In my role as manager of Credit Administration for Citizens, I've seen first-hand how environmental risk affects banking at the community level. This testimony is a reflection of my personal experience in that role.

In my review, both bills are fairly similar in their approach to the brownfields issue, although S. 8 also addresses a variety of other needed reforms. Since my charter was to address brownfields, I will confine my comments to that.

Let me start by saying we have a great deal of interest in seeing brownfields initiatives work. As a secured creditor, we can't succeed unless our borrowers succeed. This means they must be able to quantify and respond to environmental risk issues without incurring inordinate expense or disproportionate liability.

We, in turn, have direct exposure to environmental liability arising from our role as a secured creditor, as well as an owner and operator of facilities.

But, finally, as members of the community, we live and work alongside our customers. We pass by abandoned industrial sites that have been locked out of consideration for productive reuse because of the chilling effects of unpredictable environmental liability. All of us want to see these sites brought back to useful life with the economic and aesthetic benefits that will result.

We believe that these bills represent a substantive effort to address many of the issues at hand, and it is an effort we welcome. We know that this process can work, and here is a real life example:

About 18 months ago, Citizens made a presentation at a seminar that had been sponsored by the Rhode Island Department of Environmental Management. Our message was that brownfields projects were a good business opportunity. We encouraged potential borrowers in the audience to bring their deals to us for review. As a result of that presentation, the owners of a company called Display World, Inc., contacted us about financing the purchase of the 13-acre Carol Cable facility in Warren, RI, which had been idle for some time due to various contamination problems.

We were part of the team involving the site owners, Display World, a prospective purchaser, and State regulators. Today the facility is again in operation and over 100 jobs have returned to Warren, RI, as a result, with growth expected to continue in that facility.

So you can see we believe in this process, and we're encouraged to see the attention it's receiving from this committee.

Let me address two specific provisions of S. 8:

First, I understand and appreciate the reasoning behind the windfall lien provisions in section 105. However, it is unclear what precedence the proposed lien in favor of the United States would have. If the intent is to have the lien be junior to all encumbrances of record at the time the lien arises, this should be explicitly provided in the bill. If the intent is otherwise, this creates a difficulty for lenders because of the uncertainty associated with the amount involved. As a practical matter, it can be difficult to quantify the incremental market value that is attributable to a response action. So this provision, as currently drafted, could insert an unknown quantity of unknown precedence into the credit underwriting equation.

I recommend then that the bill explicitly provide that the windfall lien is junior to prior encumbrances of record. In any event, I ask that the intent of this provision be made clear to avoid this being decided case-by-case by the courts.

My second comment relates to section 106, which provides a safe harbor for purchasers of real estate in certain circumstances. One of those circumstances applies when the purchaser has made all appropriate inquiries into the environmental contamination. We support the bill's direction to the Administrator to provide clear standards for these inquiries, but we would ask in addition that the Administrator recognize that banking regulators have also issued guidelines on appropriate inquiries for environmental contamination, and we are examined as to our compliance with these guidelines. Our hope is that these two sets of directives could be reviewed and synchronized so that lenders do not receive direction from the Federal Government which is in conflict or inconsistent on this issue.

If I may, let me close with a more general comment, again, based on my front line experience:

All parties to this subject—legislators, regulators, community groups, and private sector businesses—seem to agree that our goal is to foster responsible reaction to existing environmental problems, and to provide safeguards against future danger from contamination.

But the statutory and regulatory apparatus that has been created to foster this goal can be bewildering. It is especially difficult for grassroots businesses, small scale entrepreneurs or community banks, to afford the legal and technical analysis necessary to untangle the Gordian knot of environmental rules, and to understand the myriad of potential liabilities that may arise from them.

As a result, those grassroots businesses must either take on these liabilities blindly, which we must all agree is undesirable, or more commonly, they forego opportunities for desirable redevelopment. Thus, many smaller sites will remain undeveloped and unremediated, which otherwise could have been revitalized by the energies of the private sector.

Again, I think we must all agree that this latter outcome is undesirable, even tragic. It is made no less tragic by the fact that

none but the best intentions have underlain the legislative and regulatory initiatives in this area.

The bills we're discussing today are a laudable effort to further our common goal, as I've outlined it above, but they are limited to a narrow section of the regulatory spectrum as it affects environmental matters. I hope this constructive approach will be continued and will be eventually broadened to cover a greater range of environmental legislation.

Please realize we are not asking for our risks to be eliminated, or for our costs to be subsidized, or for protection against the consequences of negligence on our part. We ask only that our environmental risks be quantifiable, predictable, and reasonable. This will allow us to evaluate environmental risks in context with our business risks, rather than having it loom as a black hole of liability that trumps all other issues when making a credit decision. This will help our borrowers to succeed, and that is the only way that we, as lenders, can succeed.

Again, I applaud the tone and direction of these bills, and that of other recent legislation in this area. I appreciate the opportunity to provide this testimony.

Senator SMITH. Thank you, Mr. Wray.

Mr. Riley.

STATEMENT OF WILLIAM J. RILEY, GENERAL MANAGER, ENVIRONMENTAL AFFAIRS, BETHLEHEM STEEL CORPORATION, ON BEHALF OF THE AMERICAN IRON AND STEEL INSTITUTE

Mr. RILEY. Thank you, Mr. Chairman.

I represent the American Iron and Steel Institute who is here today in the interest of cleaning up the sites that we're talking about today.

The committee's leadership is to be commended for addressing brownfields legislation, which has been addressed in a number of bills introduced in Congress, in particular, S. 8 and S. 18. These bills address some of the issues associated with brownfields, but we believe that legislation must address all of the issues which created the impetus for legislation in the first instance.

The steel industry has been a leader in promoting reasonable brownfields legislation at the Federal, State, and local levels. The States have taken the lead on this issue through voluntary cleanup legislation, such as you've heard from Mr. Seif today, and have collectively developed the model framework that has achieved widespread support.

In particular, I would like to commend Governor Ridge of Pennsylvania, who has been a strong advocate in the Great Lakes region for brownfields legislation. A wide variety of brownfields sites can be cleaned up and redeveloped effectively and efficiently under existing State programs if Federal legislation is enacted that promotes the one master concept—namely, that remediation under a State program will satisfy Federal requirements.

There are basically two categories of brownfields sites—abandoned sites and underutilized sites. Usually, abandoned sites are relatively small in size and have been left deteriorating for a number of years. As a result, the infrastructure associated with these sites has also been deteriorating. Such sites are often municipally

owned and usually will require financial assistance for redevelopment. Brownfields sites with a viable owner are far larger in size, and, with effective legislation, can undergo cleanup without the need for public funds. Often these sites are underutilized or surplus portions of large manufacturing sites which have ongoing adjacent operations.

As a result, the infrastructure associated with these sites is usually in much better condition than that for abandoned sites, making them more attractive to potential buyers. There are a growing number of these sites in the United States, especially as a result of the restructuring activities in industries, such as steel, that have been made, and continue to be made, in response to intense competitive environments.

There are three primary objectives that must be addressed in comprehensive brownfields legislation. They are Federal finality, certification of State voluntary programs and eligibility of sites. I will address each of these as follows:

Federal Finality—State voluntary cleanup program provide certain incentives to buyers and sellers of contaminated industrial properties, and thus facilitate faster cleanup and redevelopment of sites. However, to provide buyers and sellers sufficient incentive to make the necessary investment in these properties, these parties need assurances of finality—that is, assurances that they will face no further liability under Federal and State law for those sites, or portions of those sites, that are investigated and cleaned up in accordance with the State voluntary cleanup program. We support the provision in S. 8 that eliminates CERCLA liability once a site has been cleaned up under a State plan. We are concerned, however, that the EPA could second guess the cleanup through the RCRA statutes, and, therefore, need RCRA liability relief as well.

Certification of State Voluntary Cleanup Programs—To quality for Federal liability relief a cleanup should be conducted pursuant to a certified State voluntary response program. We believe that the criteria set forth in section 102(b) of S. 8 would be appropriate criteria for the certification of State voluntary response programs.

Eligibility of Sites—In order to promote and accelerate the cleanup and redevelopment of a wide universe of underutilized industrial properties, brownfields should be broadly defined. In particular, we strongly believe that RCRA sites where cleanup has not yet commenced and where cleanup would be accelerated by participating in a State voluntary cleanup program should be eligible. There are approximately 6,100 RCRA corrective actionsites, large portions of which often have minimal or no contamination. Less than 5 percent of these sites have completed cleanup.

We would like to have the ability to clean up portions of a facility under a State voluntary cleanup program and sell them to potential buyers for economic redevelopment purposes. RCRA, which triggers corrective action facility-wide, often precludes our ability to redevelop these properties in a timely manner. Again, we are not proposing to skirt our corrective action obligations, but merely striving to accelerate cleanup for economic redevelopment purposes. In addition, we are not seeking financial assistance or grant money to clean up our facilities. We believe the one master concept where

the State programs satisfies all cleanup requirements results in comprehensive liability relief is the way to proceed.

Thank you for addressing this issue.

Senator SMITH. Thank you very much, Mr. Riley.

Senator Sessions has to leave early so I'm going to yield my time to him at this point.

Senator SESSIONS. Thank you, Mr. Chairman.

It is an area—it does appear that business developers and realtors, environmentalists and government officials ought to be able to agree. We are at a point where if we can take these marginal sites and have them cleaned up by private investment and make them into productive taxpaying properties, we have done something real good and it does appear that the present law prohibit and inhibits that. Mr. Chairman, and all of you that have worked on this so long, I salute you.

Let me ask Mr. Scherer in the course of his real estate experience, and Mr. Wray, as a lender, have you actually seen circumstances yourselves in which properties where there was a willing buyer and developer and a willing lender in those circumstances collapsed and not be developed because of fear of environmental concerns?

Mr. SCHERER. Yes, we have in our own company one example of a relatively small project, one project that didn't go forward because of the inability to obtain the appropriate, in this case, both State or Federal sign-offs, and I think that there are many examples that are out there that are all too familiar to people in my industry.

Mr. WRAY. The bank I worked at before I joined Citizens, Senator, in 1 year during the real estate depression that hit New England we had at least $10 million of charge-offs just in one State because we couldn't foreclose on properties because the environmental liabilities were too uncertain. They may not have been too severe; they were too uncertain, so we had no choice but to walk away.

Senator SESSIONS. And if you had foreclosed on it, you could have been liable for the cleanup which would have exceeded the amount of loan you had outstanding?

Mr. WRAY. That is correct, and some of those issues have been corrected, but we had a lot of potential buyers who we could have worked with to take that site who wouldn't touch it for the same reason.

Senator SESSIONS. It is my experience that when you've got a willing developer and a willing lender, delay is the enemy. Is that fair to say?

Mr. SCHERER. You know our industry well.

Senator SESSIONS. The longer the delay, the more likely it is to collapse. Another property becomes available and the person goes somewhere else. I do think you're dealing with a real problem.

Mr. Chairman, I hesitate to suggest a new little twist to this, but it is something that is coming to mind that I think might be helpful.

In terms of Federal dollars that's spent how does the idea of a program, a grant program, to encourage State environmental management agencies to form rapid response teams to do an immediate

analysis in review, and, if appropriate, approval of cleanup plans for sites.

Would that be a cost-effective way, in your opinion, to increase the number of sites that are cleaned up? Do you have any thoughts about that?

[No response.]

Senator SESSIONS. Mr. Riley.

Mr. RILEY. I can't speak from personal experience. In the States in which we operate, which are principally here in the Northeast, we, as a company—most of those States have programs underway. I can't speak to the other States from the point of view of whether or not that kind of a program would help. However, I do have a personal observation, and that is that we have been at this environmental program since the early 1960's, and I think we should substantially increase the ability of States to manage programs. I think we need to stand back and let them assess their ability to do that. We should be in a position to do that.

Mr. SCHERER. In Michigan I can tell you that the State is very active in trying to get a number of brownfields sites under some sort of productive use, and I met fairly recently with a senior executive of a large national grocery chain. There was a meeting with the Department of Environmental Quality in Michigan, and they were very motivated in learning from us can we help them identify these sites so that they can try to market them.

For example, the fellow from the grocery industry said, "You know, we're in this business and we understand it well, but our risk is, whether somebody is going to walk in today and buy a loaf of bread or something. We cannot accept a risk which subjects our balance sheet to unlimited liability, even if the site is in the exact location where we want to be." Many of these sites are serviced by public transportation, and in the real estate industry if you don't eliminate those unlimited, environmental risks and provide certainty, developers will go to the suburbs or go somewhere else where there is ample opportunity to develop properties. You need to take a look at some of these sites and their locations and how ideal they would be for what we want to do, but, yet, unreasonably risking private capital just doesn't make business sense.

Senator SESSIONS. Well, that—I think nothing can be better. In some of the lower income neighborhoods they have a discount grocery store very conveniently located. It could save them a significant part of the income.

Mr. SCHERER. And a nice new one instead of one that has been run down and not renovated.

Senator SESSIONS. Thank you.

Senator SMITH. Thank you, Senator.

Senator Lautenberg.

Senator LAUTENBERG. Thanks, Mr. Chairman.

Mr. Scherer, I was curious, is there a—are there minimum sizes for companies to belong to the National Realty Committee, the NRC?

Mr. SCHERER. I don't know what the—if there are actual printed criteria. It is——

Senator LAUTENBERG. Are there small—yours is a giant company, but are there smaller operators?

Mr. SCHERER. Yes, very much. It's a very broad spectrum of people interested in the real estate industry.

Senator LAUTENBERG. Because I was curious as to whether the rules that you're proposing would be of benefit to all size purchasers.

One of the things that I sense in the panel's discussion—it was very good; all of you, let me compliment you—is that the focus kind of gets away and gets to the larger entity.

Mr. Riley, in particular, you had an appeal there, if I understood correctly in a quick review of the testimony, for the companies to be able to develop these sites to a point, or clean them up, and then turn them over to other people who would develop them. In that role the company would be kind of a middle man.

Mr. RILEY. Yes, Senator, we've got large steel plants, many of which we've closed and we're in the process of cleaning them up under various programs, and primarily the EPA's corrective action program. What we are attempting to do is develop portions of those properties, and what we're seeking is legislative changes which facilitates that, not avoids responsibility in the program but which removes the heavy bureaucracy within these programs, which impede progress and impede our ability to separate out particular portions of properties, which we, in fact, have done in many instances but do not have any liability relief. That portion of it, the lack of liability relief, we believe is going to impede the further development from the financial community and buyers.

Senator LAUTENBERG. Yes, but what—it raises a question for me and that is why isn't the smaller business, the smaller proprietor, able to get kind of first-hand review of that? As you construct liability and definition of what constitutes finality, I think you run into some serious problem there. It is very hard to say that this is all that we have to worry about, and I couldn't agree with you more—you don't want to leave these things open-ended because, my gosh, where does it stop?

For the banking industry, Mr. Wray, we've taken very good effort in the signing of the budget reconciliation last year to limit lender liability, which I think makes sense. Lend someone $10,000 and wind up with an obligation for a half a million dollars. It just didn't make sense, but in this case, Mr. Riley, what I kind of sense is that the companies are looking for a chance to make some money on this public program, really narrowing the definition of finality, liability, etcetera, and I think if the same conditions were made available to the smaller businessman, the individual who wants to open a couple of stores or something of that nature, I think that what we're doing is assuring the larger company that they wouldn't have any risk connected with it. I think we ought to extend the same courtesies and the same opportunity to the smaller businessperson who can't afford what XYZ steel company can do, and let them get in there and do it.

Do you disagree?

Mr. RILEY. I don't disagree. I think liability relief across the board is appropriate.

Senator LAUTENBERG. Yes.

I just want to ask Mr. Guerrero a question, if I may, Mr. Chairman.

In your testimony you talked about States as well as localities that need Federal assistance to do the evaluation characterization, assess and cleanup—$85,000 is the number you used—of brownfields sites. And, by the way, this number is jumping all over the place, as you know. It's gone from a low of 85,000 to a high of 500,000, based on witness presentations. That is a fairly narrow range.

You say that the assessment themselves would have to be there before the developers would come into purchase the property, and I think that that is probably reasonable, but S. 8—if we're distinguishing between two bills—there is no argument about the fact that we could use good brownfields legislation. It is a question of where it comes in the scheme of things.

S. 8 excludes States from receiving assistance to perform these assessments. S. 8 also requires that the States put up a 50 percent match in order to qualify for Federal funds to capitalize that, a cleanup loan fund.

Won't the S. 8 provisions end up preventing States from moving expeditiously to get brownfields development programs started?

Mr. GUERRERO. To date the States have been a very effective partner in this process, and it would seem reasonable to want to include them in the future.

Senator LAUTENBERG. But if we could limit the scope of the liability, why couldn't we expedite these things, going direct, which is what I'm proposing in S. 18, and not incumber them with the requirements of S. 8?

Mr. GUERRERO. I'm not sure I entirely follow your question, but I think the concern initially is whether the funds could be made available to the States, as well as localities and the parties themselves.

Senator LAUTENBERG. Yes, I have no problem with that, but we tried to make it easier by not having the States serve as an intermediary that might slow the process down. I would ask you to take a look at S. 8 and S. 18 and make the comparison. We want to jump out ahead because we think that we have a piece of legislation that can be considered, that doesn't in anyway inhibit the inability to reform Superfund, which is a goal that we all salute here. But get this section out and I haven't heard one witness yet say that we don't want to clean up the brownfields. We want to do it; we're interested in limiting liability. Everyone, by virtue of their testimony, certifies that this is a pretty good program, and I say then let's move it.

I don't want to inhibit Superfund's reauthorization in any way, but I thing this is separate and apart. I was trying to get an assessment from you, as you did your study, whether you saw problems, one with the other.

Mr. GUERRERO. Our own view is that from talking to the States and others involved in brownfields redevelopment, the States have been a very effective partner in that process and have not slowed it down, but in fact have facilitated brownfields redevelopment.

Senator LAUTENBERG. Thank you.

Thank you, Mr. Chairman.

Senator SMITH. Senator Chafee.

Senator CHAFEE. Thank you, Mr. Chairman.

First, Mr. Riley, I would like to commend you for the summation you have in the back of page 5 and then goes on to page 6, where you list those things that will be the result if we can speed up this brownfields and the overall approval of cleanups.

The only thing I would add in there is a point that was made by Senator Lautenberg and Senator Warner, and that is, what it means to the creation of jobs in the inner city. Not only would jobs be created, but I think this point is an excellent one about we would be retaining those jobs in the inner city where so many people would find them readily available. They would not have to drive to some green, pristine area where the plants would otherwise go. So I would just suggest you add that into your list.

Mr. Wray, I was interested where you said you deplored the red tape that you had to go through: "the regulatory and statutory operation or apparatus that has been created to foster the attainment is bewildering, and especially difficult for grassroots business—small entrepreneurs, community banking—to afford the legal and technical analysis necessary to untangle the Gordian knot of environment rules."

I think that presents us with a real challenge. We really should do something about this. So I appreciate that guidance that you gave us and want to thank you, and want to thank all the members of the panel. You've been very helpful.

I have no further questions, Mr. Chairman.

Senator SMITH. Thank you, Senator Chafee.

Mr. Guerrero, in your testimony you said that the voluntary program managers in the 15 States that you had surveyed identified Superfund liability as a barrier to tracking volunteers to accomplish cleanups, including those at brownfields.

Did you mean to limit that to only prospective purchasers or did you also include owner-operators in terms of the liability issue?

Mr. GUERRERO. We surveyed States using a questionnaire and they were very clear in stating that proposals to limit the liability of lenders, fiduciaries and prospective purchasers would be very helpful. In another area they said that they felt that the lack of resolution of this issue of Superfund liability did limit the participation by some individuals in their voluntary programs.

Senator SMITH. Could I ask each of you the same question? Do you believe that the prospective purchaser is sufficient or do you believe that the owner and the operator must also be given the same treatment as to prospective purchaser?

Mr. Scherer.

Mr. SCHERER. Well, I must say in the case of these sites, the members of the National Realty Committee by and large aren't the current owners of them, given the constituency of our membership, but, obviously, we are the kinds of people who would like to become a prospective purchaser, purchase and develop these properties. So I speak from the standpoint of the developer, not necessarily from the current owner, but I do know that with many sites out there it's a lot cheaper to put a chain-link fence and a couple of Dobermans on the property than it is to go through the worrisome and very expensive, and perhaps unlimited, liability situation involved with a cleanup.

So I think that there does have to be some recognition of that. Many of the sites, perhaps sites we've talked about this morning even, won't get into the cleanup program because of sellers who are unwilling to let the regulators or consultants come on to their land and begin peeling the onion of information.

Senator SMITH. Mr. Wray, do you want to answer the same question?

Mr. WRAY. Senator, as I said, we can't do anything right unless our borrowers understand what's going on and that their good faith efforts are rewarded, and so we lend typically to very small businesses and our typical commercial loan may be under a million dollars. What I'm concerned about is that those folks can't afford to pay somebody to read 1,200 pages of cleanup standards, can't afford to have somebody understand this on their behalf so I think, without getting very specific, you have to look at prospective purchasers but you also have to look at owner-operators to the extent that they acted in good faith or they may not have been aware of issues.

I mean, there was an article in the Providence Journal the last couple of days about a gas station owner who lives about 2 miles from me whose business is being closed down because of a leak. He had no idea where it came from, what's happening to him, or how to deal with it.

Now, again, these things have to be dealt with, but right now it's simply bewildering. No offense intended, but the Bethlehem Steel probably understand this to the T, but a community bank and a community bar is going to have a very hard time coping with this. As a result, the response has been to run away from it.

Senator SMITH. Mr. Riley.

Mr. RILEY. Thank you, Mr. Chairman.

Not surprisingly, we believe that owners-operators need liability relief, and that is appropriate. We operate very large sites for Bethlehem. We're usually in the center of a community. We've been present for a very long time—many years—and we have an investment in the community. When we shut down these facilities, we have an interest in trying to help preserve the jobs. Senator Chafee pointed out we should preserve the jobs in the inner cities. We have chain-linked fences around our properties for security purposes. We would like to take those fences down and develop the properties. It's in our interest to remove all barriers to that process. We see barriers throughout various statutes, and what we're trying to do is to work with you and your staff to remove them so that proper cleanups can occur and those properties can be redeveloped.

Senator SMITH. A major difference between the provisions in brownfields and S. 8, section 1 of the bill, and S. 18 is that one deals only with prospective purchasers and the other deals with owner-operators and prospective purchasers. It seems a bit discriminatory, doesn't it, if you have a owner-operator who wants to clean the site up but doesn't get liability relief, whereas if he sells the property, the liability relief is there.

I mean, do you all agree with that point?

Mr. WRAY. Senator, if the intent of this is to put these back in the economic mainstream and it lets you understand and quantify

risk, you can't leave that half of the equation out, meaning it should apply to both.

Mr. RILEY. We believe that S. 8 is a very good start. We would recommend addressing the issues which we've outlined.

Senator SMITH. Let me just ask one more question of each of you on finality.

As I asked the last panel, there seems to be some difference as to how you get that finality and indeed who has it. Are you willing to accept finality at the State level?

Mr. Guerrero, is that acceptable or do you believe there are States that couldn't meet the standards to provide for the protection of the environment by granting them that authority?

Mr. GUERRERO. I would like to make a couple of observations on that question.

First, of the State voluntary programs we looked at 12 of the 15 States did provide a release from State liability. Of course, they could not do that for CERCLA, but they were able to do that under their own State laws.

To help shed light on this, I would add there are an important number of considerations—first, that almost none of them did, however, provide a blanket release from liability. They all allowed for some type of reopener under certain circumstances—fraudulent submission of data, ineffective remedies and so forth.

The second consideration is that the States themselves when it came to Superfund liability did find Superfund liability to be useful in bringing recalcitrant parties to the table for dealing with the problem sites, not the brownfields sites but the sites of higher risk—the Superfund NPL caliber type of sites. In other words, Superfund liability was useful for getting those parties to the table to deal seriously with those problems and to own up for their responsibilities there.

But it is a balancing act and it's balancing between having in your back pocket the threat of that liability to get the cleanups versus the incentive to get volunteers to come forward and cleanup sites of lesser risk, and a number of States that we talked to were able to maintain that kind of balance by adapting the degree of liability relief, as well as the conditions of the programs, to the degree of risk posed by the sites.

Senator SMITH. Are there sites out there, brownfields sites, that would be redeveloped if there was a way for Federal liability to be released?

Mr. GUERRERO. I can't point to specific sites, but I can say that we were told by any number of States that participation would increase if that issue were more definitively resolved.

Senator SMITH. Does anybody on the panel have a problem with the State being the final arbiter? You brought up a very good point about fraud or some other problem. We're not asking people who commit fraud be eliminated from liability, but if there should be an additional problem on the site after all good intentions, who should be liable?

[No response.]

Senator SMITH. Don't all speak at once.

[Laughter.]

Senator SMITH. I mean, where does the liability fall? Does it go back to the Federal Government? If so, then they need to look back, right, or does it go to the State? Who is ultimately liable?

Mr. RILEY. Senator, I don't see why the standard couldn't be that the State either concurs in or requests the EPA's intervention and involvement, but I don't see any need for something beyond that. Even in the event of an imminent hazardous threat, which was raised many times, it appears to me that the State ought to be the best judge of when the Federal Government needs to be involved.

Senator SMITH. All right, so the issue then of finality really gets to the point of good faith efforts on the part of all those who are volunteering to do the cleanup whether they be prospective purchasers or purchasers, whether they be owner-operators, or the States, or, for that matter, the Federal Government? It's good faith intent. If it falls short, then your—is it your position if all of that occurred, it's a good faith attempt that the people who were on that site whether they be owner-operator or prospective purchaser would not be liable, if everything was done in good faith and good science, and everybody thought they were doing the right thing?

Mr. SCHERER. Senator——

Senator SMITH. That is the only way you can get finality, right?

Mr. SCHERER. You need certainty, predictability and finality, and I think you've defined what that means.

Senator SMITH. Did you say you thought I defined it?

Mr. SCHERER. I believe you defined it.

Senator SMITH. Mr. Riley.

Mr. RILEY. I agree with that. Typically, when we go through the cleanup programs, the evaluations are very extensive. I can't believe that we're going to leave ticking time bombs if we're responsible, and I know we are, as a company. We initiated our programs well before RCRA. We initiated site evaluations when we went into a major restructuring program within the corporation and sold many properties. We wanted to know what we were selling. We wanted to make sure we were not selling liabilities to others, and I think where there is a good faith attempt, responsible management, I think that under those circumstances there should be liability relief.

Senator SMITH. Senator Chafee.

Senator CHAFEE. Mr. Wray, one question. On page 5 you said,

> The bills we are discussing today are a laudable effort to further our common goal, as I have outlined it above, but they are limited to a narrow section of the regulatory spectrum as it affects environmental matters. I would hope that this constructive approach will be continued and will be eventually broadened to cover a greater range of environmental legislation.

What are you referring to there specifically?

Mr. WRAY. Well, Senator, I know it takes me a long time to think in my head the difference between RCRA and CERCLA, besides what the acronyms mean, and one can be applied to when the other can. What I understand is they overlap and sometimes they can beat you about the head with CERCLA and then use RCRA as another club. There's all the other issues affecting operation of properties, cleaner air acts, and clean water acts and various components, which don't appear to be touched on here.

This is primarily focused on spilling things on dirt. I'm concerned about operational liabilities, again, particularly for our small borrowers who may be running a lobster boat or doing something like that, understanding all the different legislative issues and regulatory issues that might affect them. I, frankly, don't understand them all but I know they're out there, and I can guarantee that our borrowers don't generally understand them.

So this whole approach to cleaning up, simplifying and addressing good faith I would like to see extended beyond these laws, which primarily affect just real estate.

Senator CHAFEE. Yes, I'm—let me say if we solve this problem, we'll deserve a lot of kudos, and if we can move on to the others, three cheers.

Mr. WRAY. Well, I get to fly home tonight, Senator, I don't have to worry about it. I can say it and leave.

Senator CHAFEE. OK, thank you.

Senator SMITH. Final question, do you believe that the States are going to try to get away with what we would call "crummy cleanups" that some have charged or do you feel confident that we're going to get the type of cleanups that are warranted without the heavy hand of the Federal Government overseeing them or second guessing in here? Each of you, yes or no.

Mr. SCHERER. We're talking brownfields, and my experience has been that the States are very interested and very careful when they go through these, and also at this point in time very motivated to try to get them back into the mainstream. So I've seen nothing that would suggest that States aren't capable, in my experience, Senator.

Mr. WRAY. We agree.

Mr. GUERRERO. I would observe that the States have adopted these streamlined voluntary approaches simply because you can't do everything under Superfund. You can't do everything under the State Superfunds, and the majority of programs we looked at have controls in place. But I would also observe that those controls do vary from State to State.

Senator SMITH. Given the liability problems we have under Superfund, does it—is it better to go forth with brownfields separately or is it better to go with the broader Superfund reform and include brownfields?

Mr. GUERRERO. I don't have any opinion on that matter.

Mr. SCHERER. Well, I think that we're encouraged by seeing the way that both sides are working together, and we would love to see that continue to provide the type of bill we've talked about.

Senator SMITH. All right, I guess that's it. Thank you very much for coming today.

The hearing is adjourned.

[Whereupon, at 12:02 p.m., the subcommittee adjourned, subject to the call of the Chair.]

[Additional statements, submitted for the record, follow:]

PREPARED STATEMENT OF HON. TOM DASCHLE, U.S. SENATOR FROM THE STATE OF SOUTH DAKOTA

Mr. Chairman and Ranking Member, thank you for holding this hearing to explore the merits of enacting legislation to encourage brownfields cleanup and redevelopment. This is a very important issue affecting both the quality of our urban

environment and the potential for urban economic development. It is my hope that Congress will move in a bipartisan manner to enact brownfields legislation in the very near future.

Throughout this country there is an enormous unfulfilled potential to restore contaminated industrial sites, known as "brownfields," and create urban parks and rejuvenated centers of commerce. Unfortunately, current law and a lack of resources have combined to hinder the cleanup and development of these sites for productive use.

That is why Senate Democrats have introduced legislation, as one of our first ten bills, to change current law and provide the resources needed to address this problem.

The legislation developed by Senator Lautenberg and introduced as part of our leadership package will, if enacted, encourage the cleanup and development of contaminated industrial sites and thus help communities to rehabilitate these areas for productive use and reduce the public health risks posed by many of these sites.

When most people think of brownfields, they envision vast and aging urban areas where dying industries have left behind a dangerous, and in some cases toxic, legacy of blight. But this caricature is not always accurate. Even in largely rural States, such as South Dakota, there are opportunities to transform brownfields into productive and aesthetically desirable parts of the city landscape.

The city of Sioux Falls has worked for years to redevelop a brownfield site in the center of town. As is often the case in these circumstances, lack of resources have hampered this effort. Fortunately, last year, Sioux Falls succeeded amidst enormous competition in obtaining a grant from EPA to assist in this process and the project is moving forward.

But for every Sioux Falls, there are a number of other worthy cities and sites that have not been able to obtain assistance. There is much more demand for brownfields redevelopment assistance than the current system can support. That is why legislation is needed and why Senate Democrats have made brownfields legislation one of our top priorities for this Congress.

Our legislation authorizes EPA to provide grants to local communities for use in evaluating and cleaning up brownfield sites. It also eliminates the existing disincentives in Superfund that have hindered independent efforts to clean up sites by innocent landowners and prospective buyers.

By providing relief from potential Superfund liability to innocent owners and prospective buyers who had no hand in causing the contamination, the legislation will encourage characterization and cleanup of sites in a fair and equitable manner.

There is broad agreement that brownfields legislation is needed. I note that the Republican's Superfund reauthorization bill, S. 8, includes a brownfields title. Our legislation, S. 18, would encourage the redevelopment of brownfields sites and does not link passage of needed reform in this area to broader and more contentious Superfund legislation.

There is no need to delay enacting brownfields legislation. We were successful at the end of last session of Congress in passing the Safe Drinking Water Act, reform of pesticide regulation, and the Magnuson Fisheries reauthorization with strong bipartisan cooperation. Brownfields legislation clearly has strong support on both sides of the aisle and deserves to be enacted quickly.

PREPARED STATEMENT OF TIMOTHY FIELDS, JR., ACTING ASSISTANT ADMINISTRATOR, OFFICE OF SOLID WASTE AND EMERGENCY RESPONSE, U.S. ENVIRONMENTAL PROTECTION AGENCY

INTRODUCTION

Good morning, Mr. Chairman, and Members of the Committee. I am pleased to have this opportunity to appear before you today to discuss the current state of the Brownfields Economic Redevelopment Initiative. I am also pleased to have the opportunity to begin these discussions within the context of legislative reforms to the Superfund program. I am, of course, preceding Administrator Browner, who will be testifying before you tomorrow. Her testimony will provide a broader perspective and context for discussion of the substantial accomplishments EPA has achieved over the past few years through its administrative reforms of Superfund. It will also provide the framework for legislative reforms that will address the remaining barriers to success for the Superfund program and that can help us achieve responsible legislative reform in this Congress.

My purpose today is threefold: (1) to share with you the substantial accomplishments EPA has achieved since the initiation of the Brownfields Economic Redevel-

opment Initiative in 1995 and the very positive linkages these activities are engendering among other key stakeholders; (2) to identify key EPA brownfields legislative principles for you; and (3) to examine the reflection of those principles in legislation now before this Committee and the U.S. Senate for consideration—S. 8 and S. 18.

BROWNFIELDS ECONOMIC REDEVELOPMENT INITIATIVE

EPA is promoting redevelopment of abandoned and contaminated properties across the country that were once used for industrial and commercial purposes ("brownfields"). While the full extent of the brownfields problem is unknown, the United States General Accounting Office (GAO/RCED–95–172, June 1995) estimates that approximately 450,000 brownfields sites exist in this country, affecting virtually every community in the Nation. EPA believes that environmental cleanup is a building block, not a stumbling block, to economic development, and that cleaning up contaminated property must go hand-in-hand with bringing life and economic vitality back to communities. EPA's Brownfields Economic Redevelopment Initiative places a new focus on brownfields. The Brownfields reforms are directed toward empowering States, local governments, communities, and others to work together to assess, safely cleanup, and sustainably reuse these sites. As the National Community Reinvestment Coalition (NCRC) said "[W]e wholeheartedly support the EPA's Brownfields Economic Redevelopment Initiative. NCRC believes that [EPA's] multifaceted initiative represents a significant step forward by the Administration in working with distressed communities on the local level in their revitalization efforts."

EPA efforts, to date, have been accomplished through the Brownfields Action Agenda—an outline of specific actions the Agency is conducting.

Brownfields Action Agenda

The initial Brownfields Action Agenda announced on January 25, 1995, outlined four key areas of action for returning brownfields to productive reuse: (1) awarding Brownfields Assessment Demonstration Pilots; (2) building partnerships to all Brownfields stakeholders; (3) clarifying liability and cleanup issues; and, (4) fostering local workforce development and job training initiatives.

Brownfields Pilots are Encouraging Redevelopment

The Brownfields Assessment Pilots form a major component of the Brownfields Action Agenda. Chosen through a competitive process, these pilots are helping communities articulate a reuse strategy that demonstrates model opportunities to organize public and private sector support, leverage financing, while actively demonstrating the economic and environmental benefits of reclaiming brownfield contaminated sites. The Brownfield pilots will develop information and strategies that promote a unified approach to site assessment, environmental cleanup, and redevelopment. In addition, these pilots are providing opportunities to stimulate jobs and economic activity. EPA exceeded its early commitment to fund at least 50 pilots by actually funding 76 pilots at up to $200,000 each by the end of 1996. And, just this month, the Administrator announced the addition of two more pilots, bringing the total to 78. These 2-year pilots are intended to generate further interest in Brownfields redevelopment across the country. Many different communities are participating, ranging from small towns to large cities. Stakeholders tell the Agency that Brownfields redevelopment activities could not have occurred in the absence of EPA efforts.

Brownfields Partnerships Build Future Solutions

The Brownfields Initiative is clearly about partnerships—with other Federal, State, and local agencies, and a diverse array of stakeholders. The EPA has undertaken partnership efforts with individual States as well as through broad organizational structures like the Association of State and Territorial Solid Waste Management Officials (ASTSWMO), the National Governors Association (NGA), and the National Association of State Development Agencies (NASDA). Federal partnerships have been fostered, in particular, through Memoranda of Understanding (MOUs). EPA has signed MOUs with the Economic Development Administration of the Department of Commerce, the Departments of Labor, Housing and Urban Development, and Interior. EPA is working with the Agency for Toxic Substances and Disease Registry and county health officials to address the health concerns of brownfields communities. EPA also forged working relationships with a vast spectrum of other stakeholders, including the Mortgage Bankers Association of America, the Irvine Foundation's Center for Land Recycling, NASDA, ASTSWMO, International City/County Management Association (ICMA), to mention but a few. Other

outreach efforts include coordination of brownfields efforts with the Agency's Common Sense Initiative.

Ultimately, it is the voice of the community that all brownfields stakeholders hear. The recently released report, Building A Brownfields Partnership from the Ground Up, by the National Association of Local Government Environmental Professionals, February 13, 1997, presented the views of a network of local government brownfields leaders on the value of EPA's brownfields programs and policies. The report calls local government leaders "a key link in the success of brownfields partnerships, for it is the environmental, health, development and political leaders in our cities, counties and towns who can best build a brownfields partnership "from the ground up." EPA has developed its brownfield capacity for outreach through each of its ten regions. Each region has a designated "Brownfields Coordinator" to assist and oversee the brownfields pilots and other actions under the Brownfields Initiative. We believe our Brownfields Coordinators are the most effective link to communities and form the linchpin of success under the Brownfields Action Agenda. In addition, EPA has assigned staff members to cities around the country (e.g., Detroit, Los Angeles, Dallas, East Palo Alto) through Intergovernmental Personnel Assignments (IPA) to further support brownfields activities.

These partnerships and those that we will develop in the future represent new ways of doing business with communities. We are working hard to continue to improve communication and coordination among all stakeholders. In this regard, we are encouraged by the increasing linkage being made between brownfields redevelopment and environmental justice. The National Environmental Justice Advisory Council (NEJAC) released its report, Environmental Justice, Urban Revitalization, and Brownfields: The Search for Authentic Signs of Hope." in July of last year. Recommendations from the NEJAC are the result of a series of public hearings held in five cities (Boston, MA; Philadelphia, PA; Detroit, MI; Oakland, CA; and Atlanta, GA). These recommendations will be used to address not only past mistakes of urban planning but also to benefit brownfields identification and redevelopment.

Redevelopment Barriers—Addressing Liability Concerns

The Agency also committed to addressing the threat of liability and other barriers impeding the cleanup and redevelopment of brownfields. Over the past year, EPA has announced a variety of guidance and initiatives that have had a positive impact among Brownfields stakeholders in terms of removing uncertainties often associated with brownfields properties. EPA is promoting redevelopment of brownfields properties by protecting prospective purchasers, lenders, and property owners from the threat of Superfund liability. EPA's "prospective purchaser" policy is stimulating the development of sites of Federal interest where parties otherwise may have been reluctant to take action by clarifying (through agreements known as "prospective purchaser agreements" (PPAs) that bona fide prospective purchasers will not be responsible for cleaning up sites provided they do not further contribute to or worsen contamination. EPA issued new guidance in May 1995, which allowed the Agency greater flexibility in entering into such agreements. The new guidance expanded the universe of sites eligible for such agreements to include instances where there is a substantial benefit to the community in terms of cleanup, creation of jobs, or development of property. Of the 50 agreements to date, more than 50 percent have been reached since issuance of the May 1995 guidance. Environmental justice advocates see these agreements as providing a new flexibility that will assist the consideration of environmentally sustainable enterprises occupying former brownfields sites next to residential areas, or of converting past industrial properties to green spaces or non-polluting commercial operations.

People owning property under which hazardous substances have migrated through groundwater also feared liability under the statute. EPA responded by announcing that it will not take enforcement actions under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) against owners of property situated above contaminated groundwater, provided the property is not a source of contamination. Further, EPA also will consider providing protection to such property owners from third party lawsuits through a settlement that affords contribution protection.

EPA has given reassurance to the lending industry and to governmental entities who acquire property involuntarily. EPA outlined in guidance what it considered appropriate actions a lender may undertake without becoming a liable party. In the 104th Congress, EPA worked with concerned White House offices (including the Council on Environmental Quality and the National Economic Council) in a successful effort to gain legislation to clarify the liability of lenders and fiduciaries under CERCLA and other toxic waste laws. This reform, which was developed through a bipartisan effort involving this Committee and the Senate Banking Committee, re-

flected the principles of EPA's own policy guidance as well as the approach Senator Lautenberg had developed for his earlier brownfields bill. The resulting proposal was incorporated into a broader banking reform bill enacted in the final days of the Congress as part of the continuing budget resolution. This change in the law will provide significant relief to banks and lending institutions, expand the availability of credit for small businesses, and greatly facilitate the assessment, cleanup, and redevelopment of brownfields sites. We were also pleased to have the support of the Bankers Roundtable, the American Bankers Association, and the Environmental Defense fund in achieving this reform.

EPA also is providing "comfort/status letters", in appropriate circumstances to new owners, lenders, or developers to inform them of EPA's intentions at the site. The Policy on the issuance of Comfort/Status Letters is designed to assist parties who seek to clean up and reuse brownfields. EPA often receives requests from parties for some level of "comfort" that if they purchase, develop, or operate on brownfield property, EPA will not pursue them for the costs to clean up any contamination resulting from the previous use. The policy contains four sample comfort/status letters which address the most common inquiries for information that EPA receives regarding contaminated or potentially contaminated properties. The policy aims at using such "comfort" to where it may facilitate the cleanup and redevelopment of brownfields, where there is a realistic perception or probability of incurring Superfund liability, and where there is no other mechanism available to adequately address the party's concerns.

Finally, EPA believes that the removal of sites from the active Federal inventory, the Comprehensive Environmental Response, Compensation and Liability Information System (CERCLIS), is having positive repercussions for the Brownfields Initiative. To date, EPA has removed approximately 30,000 sites from CERCLIS, about 75 percent of the Federal inventory. EPA expects to remove more than 1,000 additional sites from CERCLIS per year over the next several years. The removal of these sites eliminates the stigma of potential contamination and fear of liability associated with these sites, and allows stakeholders to focus on the future land use and redevelopment of such sites.

Brownfields Job Development and Training

Brownfields may be a consequence of industrial downsizing, relocation or bankruptcy. The loss of jobs may also result. Training members of brownfields communities to fill potential jobs created as a result of cleanup and redevelopment efforts is a critical component of the Brownfields Initiative, particularly for groups representing dislocated workers, welfare recipients, or the chronically unemployed. EPA committed as an Agency to environmental workforce training programs in brownfields communities throughout the country. Efforts successfully underway include the following:

- Work with the Hazardous Materials Training and Research Institute to expand environmental training and curriculum development at community colleges located near brownfields pilots. Since 1995, three workshops for 40 colleges in or near Brownfields communities have been held. Of the colleges attending these workshops, 13 have established credit and noncredit environmental programs, 13 have target dates for program startup, and 14 are collecting data and conducting labor market surveys to determine the need for and feasibility of starting a program.
- Establishment of an environmental education and training center to provide comprehensive technician-level training with an emphasis on Superfund and Resource Conservation and Recovery Act (RCRA)-related subjects with the Rio Hondo Community College District in Whittier, California.
- A partnership with Cuyahoga Community College in Cleveland, Ohio, to develop training programs that increase cultural diversity in environmental employment.
- Working with the Department of Labor collaboration with EPA to leverage job training opportunities for Brownfields Pilot communities.
- Working with the National Institute of Environmental Health Sciences (NIEHS) to ensure that Minority Worker Training grants overlap with Brownfields pilot communities.
- Working to incorporate the Housing and Urban Development Department's Step-up Apprenticeship Initiative with community jobs strategies for Brownfields.

The Brownfields Initiative Today

By mid-1996, EPA completed all of its commitments on the initial Action Agenda. It has become clear to us that the brownfields problem requires more interaction among all levels of government, the private sector and non-governmental organizations. The need for continuation and expansion of the national brownfields response

was further buttressed by the recommendations of the President's Council on Sustainable Development regarding the redevelopment of brownfields sites. To that end, EPA and more than 20 other Federal agencies established an Interagency Working group on Brownfields in July 1996. Our colleagues at HUD and the Department of Transportation (DOT), for example, play a critical role in brownfields redevelopment. Through our Working Group collaborations, we are planning ways to further identify, strengthen, and improve commitments to brownfields, while continuing efforts toward a comprehensive, community-based approach to clean up and redevelopment of contaminated property. The new Brownfields Action Agenda for fiscal year 1997 and fiscal year 1998 is based on protecting human health and the environment, enhancing public participation in local decisionmaking, building safe and sustainable communities through public/private partnerships; and, recognizing that environmental protection can be the engine that drives economic redevelopment.

EPA's brownfields efforts this year will include the announcement of an additional 25 Brownfields Assessment Demonstration Pilots (up to $200,000 each). The application deadline for award of these new pilots is now past and EPA is in the process of reviewing and evaluating the applications. Award announcements are expected by late March or April 1997.

For the first time, EPA will be awarding funds for a new type of brownfields pilot. The $10 million Brownfields Revolving Loan Fund (BRLF) pilot program is designed to enable eligible States, cities, towns and counties, U.S. Territories, and Indian Tribes to capitalize revolving loan funds to safely cleanup and sustainably reuse brownfields. EPA's goal is to select BRLF pilots that will serve as models for other communities across the Nation. Only entities that were awarded National or Regional Brownfields Assessment Demonstration Pilots as of September 30, 1995, will be eligible to apply to EPA's BRLF pilot program. Therefore, up to 29 BRLF pilots may be awarded in fiscal year 1997. Fiscal year 1997 BRLF pilots will be funded at up to $350,000. The BRLF pilots will be awarded through a competitive process.

EPA recognizes the important role that State environmental agencies have in encouraging economic redevelopment of brownfields. EPA also plans to provide $10 million, in fiscal year 1997, to encourage the development or enhancement of State programs that encourage private parties to voluntarily undertake early protective cleanups of less seriously contaminated sites, thus accelerating their cleanup and redevelopment. EPA recently issued a memorandum setting out an interim approach for its relations with State voluntary cleanup programs. The memorandum includes criteria for State voluntary cleanup programs that are enabling EPA and the States to start negotiating a division of labor between EPA and the States in memoranda of agreement (MOAs) as well as ensuring protection of public health and the environment. EPA hosted a meeting here in Washington on February 27th to continue our dialog with stakeholders and to solicit their views on a variety of voluntary cleanup issues. We will use that input to develop principles and national guidance on State voluntary cleanup programs. Finally, EPA is pleased with the progress it has made in signing MOAs with States. Ten States have now signed MOAs with EPA regarding sites to be cleaned up under voluntary cleanup programs. Both Rhode Island and Maryland have signed MOAs with EPA in the last few weeks. We are in the process of negotiating with 8 other States.

Other elements for the fiscal year 1997 program include additional support for an expanded site assessment initiative as well as technical assistance to existing pilots and partnerships with other Federal agencies and nongovernmental organizations (NGO's).

KEY ELEMENTS OF BROWNFIELDS LEGISLATIVE REFORM

The Brownfields Economic Redevelopment Initiative has achieved much initial success. The continuing value of the Brownfields Initiative is its evolution and promise for the future. To build upon these successful first steps and launch others, we must not lose sight of our overall goal to revitalize communities. Future efforts under the Brownfields Economic Redevelopment Initiative must be viewed as an important component of any strategy for reform of Superfund. With the breadth and variety of activities and stakeholders converging on the brownfields issue, we have tried to establish a framework that articulates a complete and comprehensive brownfields program. It is against this framework that we will measure legislative proposals addressing brownfields.

Address Full Range of Brownfields Reforms

Brownfields reforms made under CERCLA should be codified, and should reaffirm use of the Superfund Trust Fund to address the full range of brownfield issues including: technical assistance funding for brownfields identification, assessment and reuse planning, cooperative agreement funding to capitalize revolving loan funds for

brownfields cleanup, support for State development of voluntary cleanup programs, liability protection to bona fide prospective purchasers, protection for innocent landowners of contaminated property, support for mechanisms for partnering with Federal, State, local and tribal governments and other non-governmental entities to address Brownfields, and support and long-term planning for fostering training and workforce development.

By the end of fiscal year 1997, more than 100 communities will have received grants from EPA for brownfields assessment pilots. The United States Conference of Mayors has stated regarding the fiscal year 1998 budget which has just been proposed by the Administrator that the "budget reflects the fact that momentum for brownfields redevelopment, one of the mayors' highest priorities, is building."

The Administration is also supportive of the continued growth of the State and Tribal regulated and voluntary programs which have greatly expanded the number of hazardous waste sites cleaned up to protect human health and the environment. More than 30 States have established voluntary cleanup programs to date.

EPA has sought to integrate job training opportunities into brownfields cleanup and redevelopment and is supported in this endeavor by the President's Environmental Initiative. Forging these vital links between jobs and environmental cleanup is both challenging and encouraging to us. Our pilots are providing specific examples. In Bridgeport, Connecticut, one of EPA's first pilot cities, a job summit was held as part of its public outreach strategy. The pilot in Cleveland, Ohio is now home to several new businesses which have provided almost 200 new jobs. And, in Baltimore at the former American Smelting and Refining Company (ASARCO) site, old buildings are being razed, and 350,000 of the 750,000 square foot complex is being renovated. Currently there are 200 construction workers employed on the property. Additionally, it is expected that more than 180 permanent jobs will be in place over the next 3 years.

EPA primarily supports the job training and workforce development aspect of the Brownfields Initiative with non-Superfund general appropriations. Section 311(a) of CERCLA provides limited authority for training and continuing education within the context of hazardous substance basic research. As part of a comprehensive strategy for brownfields, we are also examining ways to address these statutory limitations.

Presidential Initiatives

Support Brownfields Tax Incentive

Innovative approaches and solutions to the problems faced by communities are manifested in every aspect of brownfields. Innovative financing efforts are no exception. The Federal Government can help level the economic playing field between brownfields and greenfield sites. Last year, in his 1996 State of the Union address, President Clinton proposed a Brownfields tax incentive. Senators Moseley-Braun, Lieberman, Abraham and others have introduced this proposal in the Senate (S. 235). (A companion bill, H.R. 505, has been introduced in the House by Congressman Rangel). We support this proposal and believe it is an essential element of a complete and comprehensive brownfields program. Under the proposed Brownfields tax incentive, environmental cleanup costs for properties in designated areas would be fully deductible in the year in which they are incurred, rather than capitalized. This incentive would reduce the capital cost for these types of investments by more than one half.

The proposed tax incentive would be applicable to properties that meet specified land use, contamination, and geographic requirements. To satisfy the land use requirement, the property must be held by the taxpayer incurring the eligible expenses for use in a trade or business or for the production of income, or the property must be properly included in the taxpayer's inventory. To satisfy the contamination requirement, hazardous substances must be present or potentially present on the property. To meet the geographic requirement, the property must be located in one of the following areas: EPA Brownfields pilot areas designated prior to February 1, 1997; census tracts where 20 percent or more of the population is below the poverty level; census tracts that have a population under 2,000, have 75 percent or more land zoned for industrial or commercial use, and are adjacent to one or more census tracts with a poverty rate of 20 percent or more; and Empowerment Zones and Enterprise Communities (both existing and those that would be designated in the second round proposed in the President's fiscal year 1998 budget). Both rural and urban sites would qualify for the proposed incentive. Sites on EPA's National Priorities List would be excluded.

Support Environmental Initiative

Last August, the Clinton Administration announced an Environmental Initiative which supported the significant expansion of the Brownfields program. We estimate that with the expansion of the Brownfields Assessment Pilots and the BRLF Pilots, a total of 300 cities/pilots can be reached resulting in cleanup at many thousands of brownfields sites over the next 4 years. In addition, the Initiative called for additional support for State Voluntary Cleanup infrastructure and brownfields related job training efforts. Many of these proposals are reflected in the President's Budget for fiscal year 1998.

The Environmental Initiative also supported an expansion of HUD's Economic Development Initiative (EDI) grants and use of HUD section 108 loan guarantees to leverage brownfields redevelopment funds.

EPA urges the Committee to support these components of the President's Budget as we work together on other statutory changes that will not only enhance our ability to implement these proposals, but also enable us to forge stronger partnerships with States, local governments, communities, and private interests and successfully accelerate brownfields revitalization.

CONCERNS WITH S. 8

The Administration supports brownfields legislation within the context of Superfund legislative reform. We are supportive of legislation which continues the progress made under the EPA's administrative reforms and which also addresses brownfields itself in a comprehensive manner.

EPA is very encouraged to see substantial Brownfields provisions, as well as voluntary cleanup program provisions, within S. 8. The bill authorizes EPA to issue grants for assessment and to capitalize revolving loan funds, although the details are of some concern to us. The provision which exempts "bona fide" prospective purchasers from CERCLA liability and the requirements that must be met to assert an innocent landholder defense are also valuable additions to our authority. As with other aspects of S. 8, however, we are concerned that the brownfields provisions would erode protection of human health and the environment.

Voluntary Cleanup Program Concerns

The Administration is opposed to provisions in S. 8 regarding voluntary cleanup that would eliminate the authority of EPA and other Federal agencies to respond to releases of hazardous substances whenever a State remedial action plan has been prepared, whether under a voluntary response program, or any other State program. Under S. 8, the mere existence of such a cleanup plan eliminates any Federal authority to respond to a release or threatened release of hazardous substances—even where there may be an imminent and substantial endangerment to human health and the environment. This compromise of public protection is alarming. The provisions of S. 8 could leave us powerless to respond to immediate threats from the worst toxic waste sites (VRPs are given authority to clean up NPL sites) even where the State's VRP program lacks the resources and expertise to "qualify" under the provisions of S. 8.

Though S. 8 provides the elements for "qualifying" State voluntary cleanup programs, these elements are not used to make funding decisions. A State is required to merely notify EPA of its "intent to establish a qualifying State voluntary response program "to receive funding. Funding for States is provided at $25 million per fiscal year. While S. 8 identifies elements for a "qualifying" State Voluntary Response Program (VRP), these provisions do not preclude a private party from cleaning up a site, including an NPL site, pursuant to a State VRP that does not meet, or intend to meet, the "qualifying" elements. Under this bill, States without a "qualifying" program may authorize such cleanups so long as they do not request or receive technical or other assistance, including funding from EPA.

In addition, the level of community involvement provided by S. 8 is questionable. The bill limits the community to an "adequate opportunity" for public involvement and does not guarantee participation in all levels of the cleanup process or determinations regarding end uses of the property. Finally, the preclusion of all private and citizen suits belies the apparent commitment in S. 8 to strengthen community participation.

As mentioned, EPA is already developing MOAs with concerned States to ensure that its response authorities complement and encourage rather than duplicate or discourage, voluntary cleanups. This approach, we believe, strikes the right balance between Federal and State programs while continuing to provide the needed protection of public health and the environment for our communities.

Brownfields Characterization and Assessment Grants Do Not Include States

One of the major concerns with S. 8's Brownfields characterization grants provision is the exclusion of States from the list of eligible recipients. EPA's experience with the Brownfields Pilot Program has taught us that in many cases, where small communities are involved it may make more sense and be more efficient to provide the grants directly to States. Six brownfields pilots have been awarded directly to States. We are also finding that the availability of pilots at this level of government can increase awareness of and involvement in the program.

Additionally, the limitation on funding of $100,000 per year for these grants may restrict and inhibit the grant recipient from efficiently managing and benefiting from the grant itself. Under the current brownfields program, EPA does not limit funding or proscribe activities on a site-specific basis. Rather, EPA pilot funds are awarded to State, Tribal, and municipal governments, which then determine, based on their own priorities and resources, activities and allocations among different brownfields sites.

Another concern is found in the definition of Brownfields. S. 8 improperly excludes sites where removals have occurred, or are planned to occur, and sites deleted from the NPL with "No Action" RODs. These sites may be appropriate candidates for redevelopment. In addition, EPA has first-hand experience with prospective purchaser redevelopment of these properties.

Finally, we are concerned that the application for a characterization pilot would require information which may not be available until after the Brownfields process has been completed. Inventorying sites and casting economic projections have been, in our experience, within the range of activities for which the pilot is being awarded in the first place. Thus, the pilot applicant may find itself in the proverbial "catch–22" situation—unable to complete the application to do the very thing that should be done under the pilot.

S. 18

Before concluding my discussion this morning, I would like to mention S. 18, The Brownfields and Environmental Cleanup Act of 1997, introduced by Senator Lautenberg (and Senators Baucus, Reid, Moynihan, Graham, Boxer, Wyden, Levin, Torricelli, Breaux, and Kennedy). This bill addresses many of the barriers that are preventing the cleanup and economic development of brownfields. It promotes many of the brownfields cleanup and economic development goals shared by the Clinton Administration and builds upon many of the lessons learned by EPA over the past 3 years as the Agency developed and implemented its Brownfields Economic Redevelopment Initiative. The bill authorizes EPA to issue grants to State and local governments to inventory and assess brownfields sites as well as providing grants for States and local governments to capitalize revolving loan funds for the cleanup and economic redevelopment of brownfields sites. Other provisions of the bill which capture important elements of the existing program include those referring to prospective purchasers and innocent landowners. They are important tools that will encourage lending and investment institutions to fund brownfields redevelopment. I would add, however, that we do see some drafting problems with the bill and have been assured by Senator Lautenberg that his staff will work with us to address those concerns. Our most significant concern is the inadequate level of funding provided in this bill to support brownfields activities.

CONCLUSION

EPA's Brownfields Economic Redevelopment Initiative represents an innovative approach to environmental protection while bringing the focus of that protection directly to communities. It has spurred environmental cleanup, reduced neighborhood blight, generated tax revenues, and created jobs and in so doing it has helped to stabilize and enrich communities. Through this Initiative we have identified innovative ways to address the brownfields problem in the United States, which will assist us during the discussion of legislative reform.

The Clinton Administration believes that a comprehensive approach to brownfields legislative reform would include support for all the existing elements of the current program, as well as the brownfields tax incentive. We believe that brownfields legislative reform should be addressed within the context of responsible legislative reform of the Superfund statute. The Administration is fully committed to participating in that process and to seeing that responsible reform of the Superfund law is the proud legacy of the 105th Congress.

Mr. Chairman, thank you for this opportunity to address the Committee. would be pleased to answer any questions you or the other Members may have.

RESPONSES OF TIMOTHY FIELDS, JR., EPA, TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. In your testimony, you site GAO figures of 450,000 brownfield sites in the United States. Do you have any opinion about the accuracy of these figures? Does EPA have the financial and personnel resources to oversee this many cleanups?

Response. The number of brownfields sites has not been determined. The June 1995 GAO/RCED–95–172 estimated 450,000 contaminated commercial and industrial sites across the country. The GAO report also states that "the precise magnitude and severity of brownfields is unknown because there is no national inventory." The EPA's fiscal year 1997 budget for brownfields is $36.7 million. The fiscal year 1997 Superfund budget is, in total, $1.3 billion. For a comparatively small investment, the Brownfields Economic Redevelopment Initiative is seeing positive results among its pilot recipients, encouraging others to take steps toward brownfields redevelopment, and producing results of national replicability.

The success of the Brownfields Assessment Demonstration Pilots, in particular, will encourage others to take steps toward brownfields redevelopment, too. Stakeholders tell the Agency that brownfields redevelopment activities could not have occurred in the absence of EPA efforts. Institutions such as the Bank of America, the National Community Reinvestment Coalition and others attribute new interest and enthusiasm for brownfields redevelopment directly to EPA's policies and efforts to focus attention on the issue. The need for continuation and expansion of the national brownfields response was further buttressed by the recommendations of the President's Council on Sustainable Development regarding the redevelopment of brownfields sites. To that end, EPA and other Federal agencies established an Interagency Working group on Brownfields in July 1996. This Working Group began drafting a national plan to guide future work on brownfields. The purpose of this effort is to continue to strengthen and improve upon the commitments made initially while continuing efforts toward a comprehensive, community-based approach to cleanup and redevelopment of contaminated property.

As the report *Building A Brownfields Partnership from the Ground Up,* by the National Association of Local Government Environmental Professionals, February 13, 1997, stated:

> The EPA Brownfields Action Agenda represents a new generation of partnership between the Federal Government and local communities. Since EPA Administrator Carol Browner's announcement of the Brownfields Action Agenda in January, 1995, the Agency has successfully promoted a national message about the value of brownfields renewal, launched nearly 100 pilot projects and successfully implemented policies for the clarification of liability, job training and development, and Federal/local partnerships and outreach. These EPA efforts have helped spur genuine results in communities across the Nation.

EPA does not intend to fund or oversee the cleanup of all brownfields properties. EPA has not taken the position that overseeing the cleanup and redevelopment of brownfields properties is solely a Federal responsibility. Rather, EPA has taken a creative approach to effectively leverage Federal, State, local government and private resources, including State and local government capacity building, to encourage brownfields cleanup and redevelopment.

Question 2. In your testimony, you make note that States should also be eligible recipients of brownfields characterization grants. We have heard from local governments who oppose State control over these funds. Is there a disagreement between the States and local governments over who should be the appropriate recipients of this funding?

Response. EPA believes States should be eligible recipients of both brownfields "characterization" grants and grants to capitalize revolving loan funds for the cleanup of brownfields sites. This is particularly true in those circumstances where local communities are unable to manage grants due to a lack of resources, personnel, experience or other management capability. In such circumstances, limitations on State eligibility may deprive some communities of the benefits of a grant. Since 1995, EPA has awarded "Brownfields Assessment Demonstration Pilots", under cooperative agreements, to States, cities, towns, counties, and Tribes. These Pilots, each funded up to $200,000 over a 2-year period, are designed to support creative explorations and demonstrations of brownfields solutions. The Pilots are intended to provide EPA, States, Tribes, municipalities, and communities with useful information and strategies as they continue to seek new methods to promote a unified approach to site assessment, environmental cleanup, and redevelopment. States and other eligible entities are invited to apply for pilot grants. Pilot applications are re-

quired. To date, 78 Brownfields Assessment Demonstration pilots have been awarded. In fiscal year 1997, EPA expects to fund 25 new National Brownfield pilots on the basis of a competitive application process.

The Brownfields Assessment Pilot applicants were required to address the following criteria:

1. Problem Statement and Needs Assessment
   —Effect of Brownfields on your Community or Communities
   —Value Added by Federal Support
2. Community-Based Planning and Involvement
   —Existing Local Commitment
   —Community Involvement Plan
   —Environmental Justice Plan
3. Implementation Planning
   —Appropriate Authority and Government Support
   —Environmental Site Assessment Plan
   —Proposed Cleanup Funding Mechanisms
   —Flow of Ownership Plan
4. Long-Term Benefits and Sustainability
   —National Replicability
   —Measures of Success

The Application Guidelines for Brownfields Assessment Demonstration Pilots (October 1996, EPA 500–F–96–067) state that while group applications are encouraged, a single legal recipient must be designated. Moreover, as mentioned, local governmental entities must provide documented evidence of support from State and local environmental, economic development, and health agencies. In addition, the application must describe the legal authority—State or municipal Superfund or voluntary action/cleanup programs or other local, State, Territorial, or Tribal regulatory programs available for identifying, assessing, and remediating brownfields. EPA strongly encourages States and municipalities to work together to identify and improve brownfields strategies. EPA also encourages municipalities to use existing tools such as State voluntary cleanup programs to enhance their Brownfields efforts. EPA encourages State-wide applications to be community specific. State-wide proposals that offer tangible cleanup and redevelopment success stories within the 2-year time-frame of the awards will be considered; however, proposals that specify the target location of these activities are stronger proposals than those that do not. To date, 6 State pilots have been awarded.

Question 3. I know that a number of individuals at the EPA, including Administrator Browner, have frequently stated that Superfund is not the same program it was 5 or 10 years ago? Given the significantly improved ability and sophistication of the State hazardous waste cleanup programs, isn't it fair to say that the State programs aren't the same that they were 5 or 10 years ago?

Response. Yes, EPA agrees State programs have changed over the past few years. The vast majority of States (See table V–2, page 62, December 1995 50-State Study) have followed the Federal lead and established hazardous waste cleanup programs in order to address sites not covered by the Federal program. These programs vary by their age, and breadth and depth. For many States, as with the Federal program, experience and maturity have resulted in an increased number of cleanups taking place and being completed. So too, both Federal and State programs are succeeding in getting responsible parties to clean up sites. The States are not, of course, uniform in their authority, resources (both cleanup ends and personnel), success or accomplishment. A study is presently being conducted by the GAO that will focus on, in particular, State voluntary cleanup programs which supplement the enforcement-based State cleanup programs. (A copy of the EPA 1995 "Analysis of State Superfund Programs" is provided.)

Question 4. We have previously heard comments alluding to the fact that while some States may have the technical sophistication to address brownfield and voluntary cleanups, others do not? Do you agree with this assertion? If so, would you please provide the committee a specific list of every State you believe does not have the ability to conduct voluntary cleanup programs and the reasons why?

Response. EPA believes State voluntary cleanup programs currently vary. Not all States possess the same capability, resources, personnel, nor have they all achieved the same level of success. There are approximately 37 State voluntary cleanup programs. The agency has not evaluated each of these State voluntary cleanup programs to determine how many would appropriately address brownfields sites. (A GAO study is currently underway to evaluate State voluntary cleanup programs). Several years ago, Regions began evaluating a limited number of State voluntary cleanup programs to determine their capabilities, adequacy and appropriate State/

EPA roles with respect to sites addressed under these programs. From these efforts, EPA Regions entered into Memoranda of Agreement with 10 States regarding voluntary cleanup programs. In addition, in order to facilitate discussions between EPA and States on these issues, on November 14, 1996, EPA issued its "Interim Approach for Regional Relations with State Voluntary Cleanup Programs" which sets out some basic criteria for EPA Regions to consider when entering into MOAs with States. Since its issuance, Rhode Island and Maryland signed MOAs with EPA and are included among the 10 States mentioned. Discussions are now underway with 8 other States.

EPA believes the promotion of effective State voluntary cleanup programs will provide an integral tool to converting a significant portion of the brownfields sites in this country into areas that offer the public both protection of their health and environment, and sustainable reuse of these sites. Voluntary cleanups can benefit the public by reducing risk posed by releases of hazardous substances, and by facilitating the beneficial reuse of brownfields sites. To accomplish this however, it is imperative that Federal, State and local governments works together to define complementary government roles that are focussed on restoring brownfields properties to beneficial reuse.

RESPONSES OF TIMOTHY FIELDS, JR., EPA, TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. I understand that EPA has not finalized the final State Voluntary Cleanup program guidance and that a major point of contention is the universe of sites to be covered under these agreements. I would like to ask you about the treatment of so-called National Priority List caliber sites—those sites that score above the 28.5 hazard ranking system threshold for listing on the NPL. In my own State, the Rhode Island DEM informs me that there are over 200 sites have been prescored above 28.5. Some of these sites may have significant redevelopment potential. Do you believe the Rhode Island Voluntary Cleanup Program should not be allowed to address these sites?

Response. The decision regarding the scope of sites covered by an MOA concerning State voluntary cleanup programs is a complex issue that the Agency has not yet resolved. Under consideration are issues such as the level of cleanup and public participation, the State preparedness to assume costs and responsibilities, and appropriate State/Federal roles with respect to clean up and enforcement.

EPA will continue to seek comment from affected stakeholders prior to finalizing guidance that addresses the scope of sites to be included within an MOA on State voluntary cleanup programs. EPA and the Rhode Island DEM have discussed their respective approaches to addressing sites, and their respective resources, and have negotiated an MOA that excludes sites referred for evaluation pursuant to the CERCLA Hazard Ranking System (HRS). By entering this agreement, EPA and Rhode Island DEM believe they are expediting the assessment and cleanup of contaminated property and are facilitating the return of such property to productive use.

Question 2. If EPA does not decide to include NPL-caliber sites in these agreements, would it be EPA's intent to list these sites on the NPL?

Response. EPA may not list all NPL-caliber sites on the NPL. However, each site would require individual evaluation. Occasionally, sites initially screened and ranked above 28.5 may not require NPL listing based upon subsequent evaluation. EPA has issued guidance as to what constitutes "NPL-caliber sites" in its October 12, 1993 OSWER Directive 9320.2–07A, entitled "Additional Guidance on 'Worst Sites' and 'NPL-Caliber Sites' to Assist in SACM (Superfund Accelerated Cleanup Model) Implementation." In addition, the fact sheet "Assessing Sites Under SACM—Interim Guidance" (OSWER Directive 9203–1–05I, Vol. 1 No. 4 December 1992) offers examples of NPL-caliber sites. Those examples include sites where:

- Public drinking water supplies are contaminated with a hazardous substance
- Private wells are contaminated with a hazardous substance above a health-based benchmark
- Soils on school, day care center, or residential properties are contaminated by a hazardous substance above background levels
- A hazardous substance is detected above background in an offsite air release in a populated area
- A highly toxic substance known to bioaccumulate (e.g., PCBs, mercury, dioxin, PAHs) is discharged into surface waters

• Sensitive environments (e.g., critical habitats for endangered species) are contaminated with a hazardous substance above background levels

EPA recognizes that some percentage of sites that have the characteristics described above, will, upon site-specific review, not score for proposal on the National Priorities List (NPL), due to the small number of targets, small waste quantity, etc. Thus, it is difficult to draw a clear line between sites that will be listed on the NPL and sites that will not be on the NPL for programmatic purposes, i. e., without site-specific review. In general terms, EPA guidance states that sites where significant human exposures to hazardous substances have been documented or where sensitive environments have become contaminated should be considered NPL-caliber sites.

Finally, CERCLA and its regulations, particularly the National Contingency Plan (NCP), contain certain provisions concerning sites on the NPL. For example, under the NCP, the Superfund cannot be used to pay for remedial actions at non-NPL sites. (See 40 CFR 300.425.) CERCLA and its regulations set out certain site cleanup requirements and provide for public comment on proposed remedies at NPL sites (see CERCLA 121 and the NCP); thus, consistent with these requirements, Federal remedial actions, which are usually taken at NPL sites, must: be "protective of human health and the environment," utilize "permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable," be "cost-effective," attain applicable and relevant and appropriate requirements (ARARs) and provide for meaningful public participation. CERCLA and its regulations also provide funding for technical assistance grants (TAG) to certain parties to help ensure meaningful community involvement at sites on the NPL. These resources and opportunities are important to many stakeholders who live near sites.

Question 3. In November 1996, you issued interim guidance which sets out the criteria EPA plans to use to evaluate the adequacy of State Voluntary Cleanup programs when negotiating Memoranda of Agreement with States. Under such agreements, EPA would not plan to take any action at sites under a voluntary cleanup action, except in cases of imminent and substantial endangerment. I have a number of questions regarding this guidance.

a. Under the guidance, having an MOA does not constitute a release from Superfund liability. Does this mean that volunteers could still face future requirements for removal or remedial action even after they have cleaned up a site under a State program?

Response. As the *Interim Approach for Regional Relations with State Voluntary Cleanup Programs* states "generally EPA does not anticipate taking removal or remedial action at sites involved in this Voluntary Cleanup Program unless EPA determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment." Should such imminent and substantial endangerment occur, EPA would take appropriate action in compliance with CERCLA.

b. If volunteers still face liability under an MOA, what does the MOA really provide to volunteers?

Response. The MOA is a work planning tool for Regions and States. It defines respective roles and responsibilities within the current law. The MOA provides volunteers information about how EPA and a State are coordinating their efforts to address sites in a complementary manner.

EPA believes that the ten Memoranda of Agreement between States and the Agency concerning voluntary cleanup programs offer private parties (volunteers) some comfort that subsequent Federal action under CERCLA will not be taken except under limited conditions, such as imminent and substantial endangerment to the public health, welfare, or the environment as the *Interim Approach for Regional Relations with State Voluntary Cleanup Programs* states "generally EPA does not anticipate taking removal or remedial action at sites involved in this Voluntary Cleanup Program unless EPA determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment."

c. What has been the States' and State associations' response to this guidance?

Response. EPA has entered into MOAs with ten States—Minnesota, Illinois, Indiana, Wisconsin, Texas, Colorado, Michigan, Missouri, Rhode Island and Maryland. EPA does not believe that the November 14, 1996, Interim Approach has slowed the pace of MOAs. Since November, two States, Rhode Island and Maryland, have signed MOAs and eight other MOAs are now in negotiation.

The decision regarding the scope of sites covered by an MOA concerning State voluntary cleanup programs is a complex issue that the Agency has not yet resolved. Under consideration are issues such as the level of cleanup and public participation, the State preparedness to assume costs and responsibilities, and appropriate State/

Federal roles with respect to clean up and enforcement. EPA will continue to seek comment from affected stakeholders prior to finalizing guidance that addresses the scope of sites to be included within an MOA on State voluntary cleanup programs.

In addition, as further background on this matter, this was one of the Superfund reforms announced in February 1995. In March 1995, EPA invited States, as co-implementers of the Superfund program, to work with it in investigating the feasibility of developing National guidance concerning State voluntary cleanup programs. Representatives from five States (California, Pennsylvania, Tennessee, Minnesota, New Jersey) agreed to participate with EPA and U.S. Department of Justice (DOJ) on a workgroup tasked with drafting guidance that would then be recommended to senior EPA management for concurrence and release as final guidance. The workgroup developed draft guidance in October 1995, which included the six criteria outlined in the November 14, 1996 interim approach memo.

Senior EPA management discussed further Federal Government comments on the October 1995 draft guidance with the States, primarily those States on the ASTSWMO Voluntary Cleanup Task Force, from November 1995 through August 1996 via teleconferences and meetings. By August 1996, EPA believed that States had clearly stated their position. Furthermore, EPA wanted to seek public comment from other interested stakeholders. In the meantime, at least ten States had expressed to their EPA Regions interest in negotiating MOAs. In order to keep these negotiations on track, EPA senior management decided to issue the November 14, 1996 interim approach memo to its Regional Superfund Policy Managers. The issuance of the interim approach was needed to prevent further delays in negotiating MOAs with individual States.

d. You set out six criteria State Voluntary Cleanup programs needed to meet or obtain an MOA including: (1) providing for meaningful levels of community involvement; (2) using protective cleanup requirements; (3) having adequate resources; (4) ensuring the completion of cleanups; (5) overseeing cleanups; and (6) taking enforcement action if necessary. Do you think most States will meet the criteria you set out in the guidance?

Response. EPA believes that the goal of promoting effective State voluntary cleanup programs is an important issue. As EPA negotiates Memoranda of Agreement (MOAs) with States, EPA will evaluate State programs against the criteria and specific enforcement language contained in the November 14, 1996, memorandum entitled "Interim Approaches for Regional Relations with State Voluntary Cleanup Programs" until such time as other voluntary cleanup program guidance is finalized.

To enhance and develop State voluntary cleanup programs, EPA will be providing States with technical and financial assistance ($10M in fiscal year 1997).

Question 4. I understand 8 States signed MOAs with EPA before the Interim Guidance was issued. I have some questions about these States experiences.

a. Did these States receive any kind of release from Superfund liability?

Response. MOAs do not constitute a release from liability under CERCLA. However, they do provide comfort language as to EPA's general intentions to conduct a response action and the conditions under which EPA might consider doing so.

b. Have these States told you whether the MOA has helped them in any way?

Response. EPA is actively pursuing initiatives to encourage the development and use of strong State voluntary cleanup programs. Several States at the February 27, 1997, stakeholder meeting expressed the belief that the MOAs helped to encourage private party cleanups.

c. Are these States interested in additional releases from liability, such as those offered in S. 8?

Response. EPA has not heard directly any States requesting "additional releases" to date. Moreover, releases are normally granted on a site-specific basis.

Question 5. On page 14 of your testimony you talk about a stakeholder meeting on voluntary cleanups held last week. You state that "[w]e will use that input to develop voluntary and national guidance on State voluntary cleanup programs."

a. Is this meeting the last outreach effort to States before the guidance is finalized? What was the result of that meeting? Do you believe all stakeholders, especially States with mature Brownfields programs were represented; and how were the States selected.

Response. The primary purpose of the EPA stakeholder meeting on voluntary cleanup programs held February 27, 1997, was to seek individual input from a diverse group of stakeholder representatives as part of EPA's deliberations, rather than to reach a consensus of the stakeholder participants. Once EPA has had an opportunity to consider the information that this meeting produces, we will publish the resulting draft guidance in the Federal Register for formal public comment.

The State representatives invited to the meeting included representatives from a geographically diverse group of States that represented an array of experience with voluntary cleanup programs. We invited States with relatively mature voluntary cleanup programs that address a large number and/or diverse type of sites, such as Minnesota, Texas, and New Jersey; States that have recently signed an MOA, such as Rhode Island; and, States that have recently enacted a brownfields law, such as Maryland. We also invited States who had experience in particular areas such as environmental justice issues found in the south and southwest part of the country, or whose voluntary cleanup law specified a more limited scope of sites to be addressed under the voluntary cleanup program. In addition to States, we invited representatives from communities and community organizations, local governments such as mayors and county commissioners, economic development agencies, large and small industry, the business, banking and development community, environmental justice communities, environmental groups and citizens.

b. Will the final guidance include a certain release from Superfund liability for States meeting the criteria than the interim guidance?

Response. EPA is in the process of developing the voluntary cleanup guidance and will announce the contents of guidance upon its completion. No determination on the contents of that guidance have been made at this time. The draft guidance will be published in the Federal Register for comment.

Question 6. On page 14 of your testimony, you discuss FY97 EPA funding for State voluntary cleanup programs. I have a number of questions on this topic. To date, how much of the FY97 $10 million appropriated for State voluntary cleanup programs have you distributed?

a. When do you plan on distributing the money? What criteria do you plan on using to distribute this money and have you shared this criteria with the States/State organizations?

Response. The $10 million identified in the fiscal year 1997 Brownfields budget is for general capacity building by States to implement State VCPs. The funding will be distributed based solely on State need during fiscal year 1997.

Acting Assistant Administrator Tim Fields (Office of Solid Waste and Emergency Response) committed to States that they would have the opportunity to provide individual State input concerning the criteria used to distribute EPA funding in support of State Voluntary Cleanup Program (VCP) infrastructure. A draft paper entitled "Draft Approach for Regional Funding of State Voluntary Cleanup Programs" has been prepared and made available for review by States. Individual State comments are due on that draft document, March 20, 1997.

EPA plans to assemble its Regional Brownfields and Core Program Coordinators in Washington, DC for a meeting in April 1997 to discuss the criteria and process for distributing the $10 million budgeted in FY97 for support of State VCPs. State representatives have been invited to attend the part of the meeting where criteria and quarterly reporting are discussed. It is not appropriate, however, for States to participate in any EPA discussion of ranking State proposals for funding should that prove necessary.

b. Do you plan on distributing this money through your normal processes, i.e., allocating a lump sum to each region and allowing the regions to negotiate with the individual States?

Response. The $10 million identified in the fiscal year 1997 Brownfields budget is for general capacity building by States to implement State VCPs. The funding will be distributed to the Regions based solely on State need in developing or enhancing voluntary cleanup programs. The core program cooperative agreement vehicle will be the funding vehicle used to distribute the money to the States. For purposes of EPA Regional/State planning, EPA is preparing to discuss the distribution methodology in a meeting with its Regions. EPA HQ and Regional representatives will participate in a National Coordinators' meeting in April 1997 for the purpose of allocating the first year of National resources ($10M in fiscal year 1997) specifically dedicated to the development and enhancement of State Voluntary Cleanup Programs. The purpose of this National meeting is to communicate the need for National consistency in the allocation of VCP infrastructure funding. Regional Core Funding Coordinators and Brownfields Coordinators are encouraged to participate in this National meeting. At this time, States are being advised that each State should estimate its annual funding requests in support of its VCP at a level not to exceed $300,000.

c. What role will headquarters play in this process? Do you realistically believe headquarters can evaluate State programs better than individual regions?

Response. EPA headquarters' role in the process of funding State voluntary cleanup programs infrastructures is to promote consistency among the Regions in the

areas of activities eligible for funding and quarterly reporting on the use of the funds. EPA HQ is using this meeting to guide up-front planning so that the Agency will be prepared to address future requests for information about voluntary cleanup programs. This planning will help EPA successfully implement the funding process in the out-years. EPA will evaluate whether a State voluntary program qualifies for funding based on its meeting, or plans to meet, the base-line criteria and specific enforcement language contained in the November 14, 1996, memorandum entitled "Interim Approaches for Regional Relations with State Voluntary Cleanup Programs" until such time as other voluntary cleanup program guidance is finalized. EPA Headquarters and Regions are working to draft criteria and procedures that will be used to allocate the funds for voluntary cleanup programs. In the November 14 interim approach, EPA identified six baseline criteria that we think are minimum elements that a voluntary cleanup program should contain. EPA may modify these criteria as agency discussions on issues surrounding the development and enhancement of these programs continue. A draft set of criteria was provided to ASTSWMO to distribute to the States March 6, 1997. Comments are due to the Agency on March 20.

EPA will request States to address how they meet, or plan to meet, these criteria in the context of their applications for either funding their efforts to develop voluntary cleanup programs or their efforts to enhance existing voluntary cleanup programs. State requests for funding voluntary cleanup programs may exceed the $10 million available in fiscal year 1997. To prepare for that, EPA HQ and Regions are discussing ways to balance the needs of those States who are just starting a program versus those States that want to enhance an existing program. We want to reward those States who were forward-looking and innovative in establishing voluntary cleanup programs at the same time we want to provide seed money to those States who need assistance in establishing voluntary cleanup programs. This is the type of issue that EPA HQ and Regions are now discussing and for which we are developing criteria. Funds will be awarded by the Regions through the existing core cooperative agreement mechanisms.

d. Will States without an existing voluntary cleanup program receive preference over States with existing programs which desire program support funding? Will you require States to have signed Voluntary Cleanup MOAs to receive funding?

Response. EPA HQ and Regions are discussing ways to balance the needs of those States who are just starting a program versus those States that want to enhance an existing program. We want to reward those States who were forward-looking and innovative in establishing voluntary cleanup programs at the same time we want to provide seed money to those States who need assistance in establishing voluntary cleanup programs. This is the type of issue that EPA HQ and Regions are now discussing and for which we are developing criteria.

MOAs will not be required to receive funding from EPA, nor will the presence of a signed MOA preclude a State from receiving funding.

Question 7. Does EPA seek legislation allowing RCRA corrective actions to be addressed under State brownfield or voluntary cleanup plans? Please explain why such a legislative fix is necessary, in light of EPA's long-standing policy against listing on the NPL sites subject to RCRA corrective actions. (53 Fed. Reg. 51417 (Dec. 21, 1968).

Response. EPA believes the existing flexibility to use State brownfield or voluntary cleanup programs at RCRA facilities under current law is appropriate; EPA is not seeking additional legislation in this area and does not support legislation that would grant prospective waivers of corrective action liability for RCRA sites that are cleaned up under these programs. Under current law, EPA and authorized States have the discretion to allow cleanup of RCRA corrective action sites under appropriate State brownfields or voluntary cleanup programs. EPA notes that the discretion to allow cleanup of RCRA facilities using State brownfield or voluntary cleanup programs does not affect the RCRA hazardous waste permit requirements to address corrective action section 3004(u) or RCRA enforcement authorities related to corrective action. However, allowing these sites to be handled under State brownfields and voluntary cleanup programs can affect the amount of corrective action needed in any given RCRA permit or enforcement order. For example, if part of a RCRA facility were appropriately cleaned up under a State brownfield or voluntary cleanup program before a permit or order was issued, for the purposes of the permit or order for that facility, RCRA corrective action requirements should be considered fulfilled action for those areas addressed under the State brownfields or voluntary program.

Question 8. (a) Please provide examples of sites where a State had lead cleanup authority under CERCLA; where a State responded to a hazardous substance re-

lease under its own authority; or where a State certified that a cleanup was complete and there was no need for further cleanup, in short, being handled or evaluated under State auspices, and where: a) a State requested that EPA assume the lead (e.g., as is happening at the Grand Street site in Hoboken, NJ); b) EPA assumed lead on its own—e.g., upon finding of imminent and substantial endangerment; or c) EPA assumed lead for another reason—e.g., upon finding that the State failed to obtain a cleanup using its own enforcement authority; or that the State-lead cleanup was failing to meet EPA standards for protectiveness. For these sites, please describe the mechanism used by the State to respond to or evaluate site conditions, and the mechanism which ushered in EPA involvement. In addition, for each site, please indicate the cost of the EPA response, and whether EPA sought reimbursement of this amount from a PRP.

Answer a. HOBOKEN, NEW JERSEY—Grand Street Mercury Site

Background: Mercury vapor lamps were manufactured at this site during the 1930's. The 5-story building used for manufacturing was later used as a tool and die company. In the early 1990's the owner of the tool and die company sold the building. Prior to that sale, the owner notified the New Jersey Department of Environmental Protection (NJDEP), as required pursuant to the State's Environmental Cleanup Responsibility Act. (ECRA).

Under ECRA, the tool and die company owner was required to conduct sampling and implement a cleanup plan for the building. This work by the owner was limited to sandblasting oil stained areas and removing an underground storage tank containing fuel oil. Upon completion of this voluntary cleanup action, the NJDEP issued an approval of negative declaration of ECRA. (Allows property to be sold.)

In 1993, the building was sold to Grand Street Artist Partnership (GSAP). The building was renovated and converted into condominiums and artist studios. Sixteen families purchased condominiums or otherwise came to live in the building.

Shortly after moving into these condominiums, a resident found elemental mercury dripping out of the ceiling. The NJDEP was contacted. NJDEP, in turn, contacted U.S. EPA. after air monitoring detected elevated levels of mercury. The State requested U.S. EPA take the lead at the site. EPA, the Agency for Toxic Substance and Disease Registry (ATSDR), the State and local health agencies conducted urine analysis on the residents of the building. Urine sample results indicated that mercury levels in some residents were five times safe levels. Elevated levels of elemental mercury can damage the central nervous system and in severe cases cause death.

The Hoboken Department of Health ordered the residents to vacate the building. On January 4, 1996, EPA announced that it would provide temporary relocation assistance and study the extent of contamination in the building. Since the relocation of the residents, the site has been proposed for listing on the NPL and is undergoing extensive assessment.

On December 23, 1996, the NJDEP rescinded its approval of the negative declaration under ECRA.

Concerns Regarding Voluntary Cleanup and Proposed Legislation: Because the assessment conducted under ECRA was limited, the NJDEP was not aware of the extensive, and potentially life-threatening, levels of mercury contamination on this site. It is for circumstances such as these, that EPA wishes to preserve its section 104, 106, and 107 authorities. In most States, Voluntary Cleanup Programs are only 2–3 years old, thus, extensive long-term monitoring history of VCP cleanups is not available. While the Agency does not expect to be called upon to exercise its authority, it is important to preserve them for unanticipated circumstances as Hoboken exemplifies.

Answer b and c. EPA does not know of any specific examples.

Question 9. Please indicate whether EPA seeks to retain an "overfiling" authority (i.e., an ability to take over responsibility for cleanup and enforcement at a site whether or not a State requests or concurs in EPA's action.)

Response. As the *Interim Approach for Regional Relations with State Voluntary Cleanup Programs* states "generally EPA does not anticipate taking removal or remedial action at sites involved in this Voluntary Cleanup Program unless EPA determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment." This memoranda sets out the baseline criteria which EPA will employ until a permanent guidance document is issued.

Question 10. (a) Does EPA believe that brownfields and/or voluntary cleanup programs ought not to include NPL or NPL-caliber sites? (b) Does EPA believe that brownfields cleanups should meet NPL-caliber cleanup requirements? (c) Does EPA believe that liability relief (that is, assuming an acceptable scheme that contains a re-opener of sorts) is appropriate for lenders, developers, and innocent purchasers

of brownfields? Does EPA believe that brownfield site owners should be entitled to liability relief?

Answer a. The decision regarding the scope of sites covered by an MOA concerning State voluntary cleanup programs is a complex issue that the Agency has not yet resolved. Points under consideration include the following related to the level of cleanup and public participation, and the State preparedness to assume costs and responsibilities. CERCLA and its regulations, particularly the National Contingency Plan (NCP), contain certain provisions concerning sites on the NPL. For example, under the NCP, the Superfund cannot be used to pay for remedial actions at non-NPL sites. (See 40 CFR 300.425.) CERCLA and its regulations set out certain site cleanup requirements and provide for public comment on proposed remedies at NPL sites (see CERCLA 121 and the NCP); thus, consistent with these requirements, Federal remedial actions, which are usually taken at NPL sites, must: be "protective of human health and the environment," utilize "permanent solutions and alternative treatment technologies or resource recovery technologies to the maximum extent practicable," be "cost-effective," attain applicable and relevant and appropriate requirements (ARARs) and provide for meaningful public participation. CERCLA and its regulations also provide funding for technical assistance grants (TAG) to certain parties to help ensure meaningful community involvement at sites on the NPL. These resources and opportunities are important to many stakeholders who live near sites.

Thus, EPA plans to seek comment from affected stakeholders prior to finalizing guidance that addresses the scope of sites to be included within an MOA on State voluntary cleanup programs. In the meantime, Regions and individual States will discuss their respective approaches to addressing sites, and their respective resources, and negotiate whether it is appropriate to include NPL-caliber sites within the scope of an MOA for a specific State voluntary cleanup program.

Answer b. EPA has made no determination on this issue.

Answer c. Yes. As part of the Omnibus Consolidated Appropriations Bill for Fiscal Year 1997, signed by the President on September 30, 1996, Congress enacted the "Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996" (the "Act"). The Act supercedes EPA's Policy on CERCLA Enforcement against Lenders and Government Agencies that Acquire Property Involuntarily. As part of the Omnibus Consolidated Appropriations Bill for Fiscal Year 1997, signed by the President on September 30, 1996, Congress enacted the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 (the "Act"). The Act includes lender and fiduciary liability amendments to CERCLA, amendments to the secured creditor exemption set forth in Subtitle I of RCRA, and validation of the portion of the CERCLA Lender Liability Rule that addresses involuntary acquisitions by government entities. These amendments made by the Act apply to all claims not finally adjudicated as of September 30, 1996, which include all cases that are in the process of being settled.

While EPA's Lender Liability policy outlined its use of enforcement discretion with respect to the pursuit of lenders and government entities who acquired contaminated property involuntarily, that policy did not prevent third party contribution claims against these entities. The "Act" now clearly outlines the circumstances under which these entities are protected against enforcement actions by the U.S. Government for CERCLA liability and for third party contribution claims arising under CERCLA.

Finally, EPA is encouraged to see legislation which addresses "bona fide" prospective purchasers from CERCLA liability and the requirements that must be met to assert an innocent landholder defense. The Agency has noted with approval the inclusion of provisions on prospective purchasers and innocent landowners in S. 18.

Question 11. Please describe the MOAs into which EPA has entered regarding State voluntary cleanup programs. Are the terms of these uniform? Do they provide for releases of Federal liability? If so, how are those releases executed? Has your November 14, 1996, Interim guidance hastened or slowed execution of MOAs?

Response. EPA has entered into MOAs with ten States—Minnesota, Illinois, Indiana, Wisconsin, Texas, Colorado, Michigan, Missouri, Rhode Island and Maryland. The terms of these programs are not uniform and instead have varying characteristics in terms of organization, funding, scope, level of cleanup required, controls, long-term monitoring, public participation, and assurance of relief from future State liability. These MOAs vary depending on the provisions of each State program.

The MOA is a work planning tool for Regions and States. It defines respective roles and responsibilities within the current law. The MOA provides volunteers information about how EPA and a State are coordinating their efforts to address sites in a complementary manner.

EPA believes that the ten Memoranda of Agreement between States and the Agency concerning voluntary cleanup programs offer private parties (volunteers) some comfort that subsequent Federal action under CERCLA will not be taken except under limited conditions, such as imminent and substantial endangerment to the public health, welfare, or the environment. As the *Interim Approach for Regional Relations with State Voluntary Cleanup Programs* states "generally EPA does not anticipate taking removal or remedial action at sites involved in this Voluntary Cleanup Program unless EPA determines that there may be an imminent and substantial endangerment to public health, welfare, or the environment."

EPA does not believe that the November 14, 1996, Interim Approach has slowed the pace of MOAs. Since November, two States Rhode Island and Maryland have signed MOAs and eight other MOAs are now in negotiation.

PREPARED STATEMENT OF JAMES M. SEIF, SECRETARY, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION

Mr. Chairman, my name is Jim Seif As Secretary of the Pennsylvania Department of Environmental Protection, I am proud to present Pennsylvania's Land Recycling Program as you begin to consider changes to the Federal Superfund program.

Land recycling is the most significant environmental innovation developed in the last decade—an innovation pioneered by States in response to unrealistic Federal policies that actually encourage the abandonment of contaminated properties.

Returning properties to productive reuse free from environmental liabilities has not only obvious environmental benefits but economic benefits as well. And by encouraging businesses to locate on old industrial sites in towns and cities, land recycling may also turn out to be a major factor in reducing sprawl development and preserving open space and farmland.

To see just how successful our program is, you only need to look at the numbers. In the short time since Governor Ridge signed our Land Recycling Act into law in May 1995, over 195 sites have begun the formal process toward redevelopment and a total of 64 have been completely remediated.

Compare that to the Federal scorecard for cleaning up contaminated sites in Pennsylvania under the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA" or "Superfund"). In 16 years, only 8 of Pennsylvania's 103 Superfund sites have been cleaned up and removed from the National Priority List.

Pennsylvania's Land Recycling Program is a major environmental success story for the Ridge Administration and has been selected as a national model by the American Legislative Exchange Council. Superfund, while good intentioned, is universally recognized ads the least successful Federal environmental statute in history.

Today I want to outline the key elements of our Land Recycling Program and tell you why it's working so effectively. I will also discuss the efforts Pennsylvania and its sister States are taking to promote redevelopment of old industrial sites in the Great Lakes region through Governor Ridge's chairmanship of the Council of Great Lakes Governors. In addition, I want to give you my perspective on the Federal/State relationship at land recycling sites and to tell you what States need from the Federal Government to maximize the effectiveness of our land recycling programs.

PENNSYLVANIA'S LAND RECYCLING PROGRAM

Pennsylvania, like many other States, has learned from its mistakes. Past environmental cleanup laws and policies often encouraged property owners to "take a walk" and simply abandon a site, rather than deal with the contamination.

The Federal Government and the States erected four barriers which effectively prevented the cleanup and reuse of old industrial sites.

• First, cleanup requirements often used "Garden of Eden" or background standards, regardless of whether the site was to be used for a daycare center or steel mill. These standards ranged from expensive to simply impossible.

• Second, there was never-ending liability for responsible parties, and everyone who touched the land was "responsible". Government would not provide releases of cleanup liability to anyone, even after a site had been made safe.

• Third, consider the now-legendary delays in approving cleanup plans. The adversarial, lawyer-dominated review process could take years to approve cleanup plans, making it unpredictable. This uncertainty worked against normal timetables for arranging financing for redevelopment.

• Finally, lenders and redevelopment authorities did not want to become enmeshed in this problem by loaning money to redevelopment projects. Lenders simply

stopped making loans to persons wanting to acquire or improve contaminated property.

For 3 years, the Pennsylvania General Assembly worked hard, in a bipartisan way, to address these problems. It held numerous hearings, and heard from dozens of witnesses all pleading for changes that would put some common sense back into the process of redeveloping old industrial sites. Finally, on May 19, 1995, Governor Tom Ridge signed into law a three-bill package, which created Pennsylvania's Land Recycling Program. He did so at the then abandoned, but now being redeveloped, USX National Tube Works in McKeesport, Pennsylvania.

The Land Recycling Act applies to all contaminated sites in Pennsylvania, existing and future, and covers both voluntary cleanups and enforcement actions. The Act sets cleanup standards based on health and environmental risks. Land use is also incorporated into the cleanup standards, allowing different cleanup levels for residential and non-residential sites.

The statute provides maximum flexibility to persons performing cleanups by allowing them to choose from three cleanup standards—background, a statewide health-based standard, and a site-specific standard.

Persons choosing to meet background or the statewide health-based standard need no prior approval from the Department of Environmental Protection ("DEP" or "Department") to get to work. They simply file a notice of intent with DEP to remediate, perform the cleanup, and then file a final report with the Department showing that they in fact met the standard. There is also notice to the community and to the general public, but no required hearings or meetings.

Both the background and statewide health standard represent pre-approved standards adopted by the General Assembly itself or by regulation after full scientific and public review.

Persons choosing to meet the site-specific standard, on the other hand, must submit at least three reports—remedial investigation, risk assessment, and cleanup plan—to the Department for review and approval. In addition, a public participation plan is required when the host municipality requests it. This may include public hearings, meetings, or door-to-door canvassing of local neighborhoods as a means of obtaining community input on the cleanup and reuse plans for the contaminated property.

The Land Recycling Act creates special incentives for redeveloping abandoned sites for which no financially viable party is available to perform the cleanup and sites in State designated enterprise zones. For these "Special Industrial Sites" a developer is only required to perform a baseline environmental assessment and cleanup any direct and immediate threats to persons who will be on the property using it for its intended purpose.

DEP signs an agreement with the developer outlining specifically what contamination he is and is not responsible for, giving him the assurance he needs to proceed. So far we have signed 8 agreements, and we have another 25 Special Industrial Area sites moving through the system.

To address the perpetual liability problem, the Act gives a full statutory release of liability to any person who meets one of the three cleanup standards. The release covers the current owner or occupier of the property, the developer, successors, assigns and anyone who participates in the cleanup. The release also includes contribution protection and protection from citizen suits under Pennsylvania (not Federal) law.

To make the Department more responsive to persons submitting plans for the reuse of contaminated property, the Land Recycling Act sets up a clear process to regularize approval of cleanup plans and imposes fixed deadlines. For example, the Department has 60 days to review a site remediation plan. If the Department fails to review the plan within that deadline, it is deemed approved, and the person gets the release of liability. That has not happened yet, and I don't expect it to. The point is that the DEP now has real live deadlines that cannot be avoided.

Pennsylvania's Economic Development Agency Fiduciary and Lender Environmental Liability Protection Act is the second of the three bill package. It frees lenders, development authorities, municipalities and fiduciaries from cleanup liabilities unless, of course, they are the direct cause of contamination at the site. This protection covers all routine commercial lending practices, including taking ownership or control of a property after foreclosure. Even if there was a release of hazardous substances on the property prior to and continuing after foreclosure, the lender will not be sucked into the liability loop.

The message is simple—we have no interest in suing lenders. Our real objective is to put money in the hands of people who can put industrial sites back into productive use.

Finally, Pennsylvania's Industrial Sites Environmental Assessment Act, the third law in the package, provides $2 million in grant money to cities and municipalities to finance environmental assessments at industrial sites. In addition, the Land Recycling Act offers $15 million in grants and loans for assessment and cleanup.

Pennsylvania's Community and Economic Development Department already has over 90 projects lined up for State funding it has approved funding for 40 projects at a total cost to the Commonwealth of $4.3 million in grants and loans. The largest grant, close to one million dollars, was given to a reuse project in the city of Pittsburgh in which the old abandoned Hays Army Ammunitionsite was turned into a hot dip galvanizing facility that now employs over 80 people.

IMPLEMENTATION OF OUR LAND RECYCLING PROGRAM

There were 60 days between the time the Land Recycling Act was signed and when it became effective. In that period, an internal workgroup comprised of people from DEP headquarters and our six regional offices put together a 200 page technical guidance manual, 10 fact sheets, and a citizen handbook that were made available to the public.

That effort showed that there are very creative, energetic scientists and engineers working in the Department, who simply needed to be freed from the old perpetual liability mindset. Our bureaucracy was indeed responsive. We have engaged in extensive outreach efforts, including seminars and conferences throughout the Commonwealth, to educate the public, local government, developers, property owners, attorneys, bankers, and the environmental consulting community, and provide a step-by-step understanding of how to move a property through the Land Recycling Program. We have also utilized our award winning weekly newsletter "The Update" and our worldwide web site (http://www.dep.state.pa.us) to provide information on the program to tens of thousands of people.

After 20 months experience with the program, I can say emphatically that it is working.

It is working at the 2.45-acre former Thonet site in the city of York, Pennsylvania. That property contained a furniture manufacturing facility that suffered a catastrophic fire in 1993. It sat vacant and unused due to environmental contamination, including soil and groundwater containing lead and benzene. Gur Land Recycling Act brought new life to the site. In February 1996, a private developer and DEP signed a Special Industrial Area Site Agreement. The cleanup included the removal of paint, drums, and debris from the fire, asbestos remediation, and capping the contaminated soils, and was completed the following month. The new operator of the site, The Wolf Organization of York, built a 37,000-square-foot state-of-the-art facility on the site to manufacture countertops. Tom Wolf, the president of the company, said that without Pennsylvania's Land Recycling Act the project would not have happened. He told Governor Ridge that the plant "would not have been built without it." "Without the Act, the plant would have been built on five acres of land at some greenfields site outside of the city. We would have plowed under five acres of agricultural land."

It's also working at the former Johnson Bronze site in New Castle, Lawrence County, Pennsylvania. That site was home to a ball bearing manufacturing facility until 1978, when it was abandoned, leaving a site contaminated with lead and PCBs. No financially viable past owner would take responsibility for remediating the eight-acre downtown site, so the city of New Castle took possession. Both the city and county were anxious to redevelop the property, but prospective buyers were unwilling to commit because of the liability and health issues posed by site contamination. With the help of Pennsylvania's Land Recycling Act, the site was remediated as a Special Industrial Area site. The cleanup took 9 weeks and was completed in February 1996. The city and the Lawrence County Economic Development Corporation recently found two companies to purchase tracts on the property. One is a ceramics company that will be expanding its operations and adding new jobs, and the other packages frozen food and will employ between 35 and 80 people.

Our Land Recycling Program is working because we have a statute that brings common sense and private sector resources to the process of redeveloping old industrial sites. Moreover, the Department is willing to meet with anyone, anytime, to discuss redevelopment of any site, free from the "Gotcha!" mentality of the past. We have built into the system enough flexibility to allow for creativity, innovation and common sense in addressing the unique problems that arise at old industrial sites.

But the main reason why our Land Recycling Program is working is because there are people out there—in local government, the private sector, the redevelopment authorities and others—with the vision for taking the promise of our new legislation and turning it into reality. Without their hard work to identify sites, bring together

buyers and sellers, and raise the necessary capital, we wouldn't have close to 200 sites in the system, and we wouldn't be so optimistic about the future.

SUCCESS IS SPREADING

I urge the Subcommittee's members and its staff to critically examine all of the State land recycling laws and voluntary cleanup programs that now exist all across the country. At latest count over 30 States had developed such programs. What you will quickly see is that while State land recycling programs vary, there are many similarities.

The common elements are (1) cleanup standards based on risk and land use; (2) liability protection, in the form of a statutory release, a covenant not to sue or no further action letter given to persons meeting the cleanup standards; and (3) a reliance on private funds to pay for the vast majority of land recycling cleanups, with limited State funds available in the form of grants, low interest loans, and tax credits for site assessments and cleanups.

These land recycling laws and State voluntary cleanup programs are all designed to promote site cleanups by providing clear standards and offering liability protection. They are not meant to provide ways for parties to avoid undertaking cleanups. In fact, once a cleanup is completed, all the State and Federal laws and regulations governing site operations and pollution control continue to apply.

Last year, Governor Ridge began a 2-year term as Chair of the Council of Great Lakes Governors and made land recycling his top priority. His choice reflects a recognition on the part of all eight of the Governors on the Council that the ongoing transformation of our region from a mass production economy to a high performance economy depends, in large part, on the success of our State voluntary cleanup programs. (The Great Lakes States include Illinois, Indiana, Michigan, Minnesota, New York, Ohio, Pennsylvania, and Wisconsin). In discussions with the Great Lakes Canadian provinces of Quebec and Ontario the Governor personally, and the Council, have discovered that similar problems exist there, that similar solutions apply, and that the world's most productive industrial powerhouse can and will renew itself on all shores of the Great Lakes.

Each of the Great Lakes States has worked very hard to develop State land recycling laws and voluntary cleanup programs that are environmentally sound, and respond to the needs and interests of local government, the business community and the public.

In just a short time, our individual State programs have produced real results—hundreds of old industrial sites cleaned up, countless acres of open space protected from sprawl, and the creation of family sustaining jobs—all while protecting the health and safety of our citizens and the environment.

As a way of building on these successes, the Council adopted a Land Recycling Action Agenda at its annual meeting in Detroit last July. I have included a copy of that Agenda with my testimony. The Council plans to form regional SWAT teams of land recycling experts and to establish a clearinghouse of information on remediation and cleanup technologies that will allow our States to share individual approaches and solutions to our common problems.

STATES PLAY A LEAD ROLE

The land recycling activity occurring throughout Pennsylvania provides a useful illustration of the role that the State and Federal Government currently play in the process of redeveloping old industrial sites.

Old industrial sites that present good redevelopment opportunities are first identified by local government, local redevelopment authorities, or the private sector. If there are environmental concerns, any notices, site characterization reports or other studies are typically analyzed and reviewed by the appropriate regional office of the Pennsylvania Department of Environmental Protection.

My staff meets with local officials, developers and others to provide technical support and guidance during redevelopment activities. In addition, local government and the redevelopment community look primarily to the State for funding. While the Federal Government has offered some limited funding for land recycling projects in Pennsylvania, the State currently has made more dollars available and has funded 10 times the number of projects supported by the Federal Government in our State. That is both a reflection of limited Federal resources, and the fact that these really are local, community projects that draw more attention from State and local representatives.

When all the cleanup work is done at a site, DEP provides the critical review of all the technical data and provides the final sign-off and State liability protection. As you can see, Pennsylvania has all the personnel, resources and other tools nec-

essary to handle all of the land recycling cleanups from start to finish, and given that the actual cleanup work is done privately, we have had no need for additional staff resources to administer this program.

There really is no reason to seek the Federal Government's involvement at a land recycling project in Pennsylvania. We do advise people who want to redevelop a site that is on the Superfund National Priorities List (NPL) or subject to a RCRA corrective action order to contact EPA's Regional Office in Philadelphia. We recognize the Federal Government's interest in maintaining oversight and control over those site cleanups.

If someone was interested in puffing one of those sites through our Land Recycling Program, we would contact EPA to see if it would be willing to allow the site to be handled through our State system, and indeed that would be our preference.

Of the approximately 200 sites that have entered our Land Recycling Program to date, none is an NPL site, and it is a rare occasion when EPA expresses any interest in one of the non-NPL sites in our State system. The land recycling sites being redeveloped in Pennsylvania are sites where EPA readily acknowledges they have neither the time, resources nor interest to deal with.

RECOMMENDATIONS FOR FEDERAL LEGISLATION

For land recycling to really succeed, the Federal Government must undertake common sense reforms similar to the States. There have been numerous "brownfields" bills introduced in Congress over the past few years. Unfortunately, most of them have not addressed the three key things that the States need from Congress to complement our land recycling and voluntary cleanup programs and allow them to reach their maximum potential for environmental cleanup and economic revitalization. These key items are: (1) a release of Federal liability at State land recycling sites, (2) a waiver of Federal permitting requirements at State land recycling sites, and (3) the authority for Governors to veto proposed NPL listings. S. 8 does address the three items.

Our No. 1 priority is to amend the Superfund law to provide a release of Federal cleanup liability to any person who completes a cleanup at a land recycling site in accordance with applicable State law.

These land recycling sites simply do not belong under the shadow of Superfund liability. I hope we can all agree that Superfund was not written to address these sites; it was written to address a limited number of highly contaminated sites that presented emergency situations, imminent hazards and significant threats to human health and the environment, and where no private resources were available. This is generally not the case with land recycling sites. If they presented emergency situations, the State or EPA would have responded accordingly. It's unfortunate that Superfund, the Federal statute with the heaviest enforcement hand—strict, joint, retroactive liability—is applied to the environmental problem where the concerns are mostly local in nature. While someone could, no doubt, point to a case where a land recycling site impacts more than one State, the local issues these sites present are very different from the issues of air and water pollution that have obvious multi-state and national implications.

We need a Federal release of liability at State sites to combat the lingering perception by developers that Federal liability is a real concern at the typical State land recycling site—one that is not on the Superfund list and has no outstanding RCRA corrective action order.

As a former EPA Regional Administrator, I have tried to reassure the people who want to redevelop old industrial sites that EPA is unlikely to take any judicial or administrative action at sites that are being handled in the State system.

While this is comfort to some, there can be no assurance that EPA will not second guess the State's decision. There are also no assurances that they won't be subject to a third-party suit under CERCLA. Only Congress can provide local government, lenders, and redevelopers of contaminated property the Federal statutory protection that they seek. In asking for this, we aren't alone. The Great Lakes Council of Governors, the Council of State Governments, the National Governors Association, the Association of State and Territorial Solid Waste Management Officials and others are all asking Congress to give releases of Federal liability to persons that cleanup sites in accordance with applicable State law.

Second, there needs to be a waiver of Federal permitting requirements at land recycling sites being addressed under a State voluntary cleanup program. Our General Assembly gave DEP the authority to waive State permits at sites being handled by our Land Recycling Program, but only Congress can waive the requirement to obtain Federal permits. These are the same permitting requirements that EPA has

authority to waive at the much more seriously contaminated sites it has captured under the Superfund program.

In asking for this waiver, be assured that discharges to the air and water are fully regulated by our State regulatory program, and persons cleaning up sites in our State system have to meet all of our applicable emission and discharge limitations, both during cleanup and thereafter.

Finally, Congress should reinstate the opportunity of Governors to veto proposed Superfund listings. The impacts associated with Superfund sites are borne primarily at the State and local level. If a Governor believes that a site is more appropriately handled in the State system, he or she should be able to protect the community from the Federal Superfund program.

Last year, when we had such opportunity, Governor Ridge concurred on adding two sites to the NPL, but did not concur on two other sites. His reasoning was simple: the two sites that he allowed to be added to the NPL were former waste disposal sites with no potential for redevelopment, while the other two sites each presented reasonably good opportunities for redevelopment under our Land Recycling Program.

Had these sites been added to the NPL, based on Superfund's dismal track record in Pennsylvania, it would be virtually impossible to convince anybody to redevelop the property. Most people now see Superfund as a slow moving, lawyer feeding, black hole that sucks the redevelopment potential out of any site and scares away local government and the development community.

We are confident that private parties can cleanup these sites through our Land Recycling Program much more quickly than they would get cleaned up under Superfund and provide the same level of protection to the local community.

At the two sites where we did not concur with the proposed NPL listing, we recognize the interest of EPA to be kept informed of the status of the State's cleanup efforts. We have also advised the private parties doing the cleanup that if they fail to move forward on a timely basis to remediate the site in accordance with our State cleanup standards that we will recommend to EPA that those sites be re-listed.

FINAL POINT

In Pennsylvania, Governor Ridge, the members of our General Assembly, and others that worked so hard to develop our Land Recycling Program are at a loss to understand why anyone in Washington would argue that a person who meets the requirements of Pennsylvania's Land Recycling Act and receives a release of State liability after cleaning up a site should not also be entitled to a release of Federal liability.

Pennsylvania is more than willing to work in partnership with the Federal Government regarding the cleanup of Superfund sites, RCRA corrective actionsites, and even sites proposed for listing on the NPL. But we hope that Congress recognizes that it is the States that carry the responsibility for identifying the needs and interests of their citizens as they relate to the cleanup and reuse of old industrial sites and addressing those local concerns through the adoption of State laws and programs.

As evidenced by a November 1996 EPA memorandum regarding State voluntary cleanup programs, it appears that the Administration still believes there is a need for the Federal Government to develop criteria for the review and "approval" of State land recycling programs. Unfortunately, it seems EPA may be building a Washington-driven program that looks a lot like Son of Superfund, with all its downsides.

I have not been able to identify any Federal statute that directs EPA to develop criteria for approving State land recycling programs.

What I can tell you is that Pennsylvania, and many of its sister States, spent years developing our individual State land recycling laws, and did so without the benefit of or need for Federal intervention or support. I have heard the argument that supporters of Federal baseline criteria put forward—that without Federal oversight and approval and minimum requirements the States will engage in a "race to the bottom" to develop the weakest cleanup laws to attract new business.

As I said earlier, before you put EPA in the position of reviewing and approving State land recycling laws, I urge you to take a very careful look at the land recycling laws already being applied by the States. You will see that there has been no "race to the bottom." It is pure fiction.

Indeed, the States that have adopted land recycling laws and developed voluntary cleanup programs have gone to great lengths to ensure that the environment is not sacrificed at the expense ofjob creation. These State land recycling laws were enacted by State senators and representatives that are directly accountable to their

constituents, the people that live, work and play in the communities that host the land recycling sites. To say that these State elected officials can't be trusted to protect the needs and interests of their constituents is offensive, and it smacks of the kind of paternalism that has no place in our Federal system of government.

It is clear that some matters are best left to the States to handle and the reuse of old industrial sites is a perfect example.

EPA is clearly playing catch-up in land recycling. While we are grateful for the financial support for specific projects, it would be much more helpful for the Administration to devote its energies to promoting real reforms instead of seeking to building a bureaucracy to approve State programs.

We look forward to working with the Subcommittee on legislation that will help complement our land recycling program and allow it to reach its full potential.

ATTACHMENT

LAND RECYCLING IN GREAT LAKES STATES A NEW OPPORTUNITY TO EXTEND THE HIGH PERFORMANCE REVOLUTION

INTRODUCTION

Over the last 25 years, global shifts in the location of traditional manufacturing industries have not only resulted in economic and social changes in the Great Lakes States, but in thousands of vacant or under-used industrial sites. The persistent "Rustbelt" image of this region was created by these changes.

At the same time, increasingly stringent environmental laws adopted by Federal and State governments established cradle-to-grave liability for hazardous wastes.

The unintended consequence of these laws was to discourage the redevelopment of vacant industrial sites by fixing cleanup liability on any person who had an interest in a site, whether or not they were responsible for its contamination. Unrealistic cleanup standards required the cleanup of these sites to near pristine conditions in all cases even if they were to be reused for manufacturing, thus creating another disincentive to reuse.

In the last 10 years, the Great Lakes region has seen an economic transformation from a lagging, de-industrializing area to a high-tech, higher wage manufacturing and industrial economy.

This change has taken place in many areas without taking advantage of a key resource—vacant or under-used industrial sites that many times already have built-in transportation access, utilities, a nearby work force and other advantages over new, greenfield sites.

Promoting the reuse of industrial sites in the Great Lakes States through an aggressive Land Recycling Program achieves several important objectives for the region——

- Promote the development of already urbanized areas so they are more economically and environmentally sustainable.
- Help to retain and expand existing manufacturing in the region.
- Save farmland and open space from development to improve the quality of life.
- Improve the environment by eliminating hazardous conditions in communities.
- Change the image of the Great Lakes region from "Rustbelt" to "High Performance."

KEYS TO LAND RECYCLING

There are many factors that go into a business location decision—transportation facilities, tax policy, work force skills and even global economic conditions. Environmental concerns are only one part of that decision, but they are often viewed as a significant barrier to be overcome.

In order to overcome these barriers and have used industrial properties actively considered as an option for business expansion, a successful Land Recycling Program includes several key elements——

- Encourage the reuse of all commercial and industrial sites, not just a narrow category of sites.
- Cleanup standards used in the program must be clear and based on risk and sound science, preferably offering a choice of solutions, so that a property owner or developer can reliably estimate the cost to clean up a site.
- Provide a straight-forward, timely process for reviewing cleanup plans and giving agency approvals.

• Provide finality with regard to clean up liability so that meeting a cleanup standard ends the liability for further cleanup, except under clearly specified conditions.

• Provide cleanup liability protection for financial institutions, economic development agencies, fiduciaries, non-profit organizations and local governments that did not contribute to contamination on a site so they can act as a catalyst for redeveloping sites.

• Resolve potential cleanup liabilities under Federal environmental laws.

• Provide financial and other incentives to conduct environmental assessments and cleanups and locate in special areas like enterprise zones.

GREAT LAKES STATES MOVE AHEAD

In keeping with a long history of performance and leadership at the national level, the Great Lakes region of eight States is once again at the forefront of a major policy initiative—industrial sites reuse.

The Great Lakes States are the nations leaders in Land Recycling programs. Aggressive Land Recycling Programs are helping to transform the persistent Rustbelt image of old into one which exudes the vibrant economy of today. High-tech, higher wage manufacturing and industrial jobs are on the rise in the region. Innovative State Land Recycling Programs complement this economic revitalization and continue to offer a dynamic new approach to distressed urban areas.

All eight States in the Great Lakes region have Land Recycling Programs. Individual legislation differs throughout, but each State is moving to implement practical, smart industrial sites reuse programs.

Three States—Illinois, Minnesota and Wisconsin—have entered into a Superfund Memorandum of Agreement with the U.S. Environmental Protection Agency. These agreements allow States to maintain the role of overseeing the cleanup of sites and officially clearing the owner of future liability.

Illinois has built upon its voluntary cleanup program of 1991 which offers a No Further Action letter upon completion of a site cleanup project. Recently, Illinois EPA has prepared draft rules incorporating a tiering system based on risk, land use and progressed levels of site information, establishing uniform cleanup objectives and methodology for all site cleanup programs.

The Minnesota Superfund Memorandum of Agreement expanded on the States Voluntary Investigation Program, better defining roles and responsibilities for the cleanup of sites. This agreement encourages partnerships between U.S. EPA, Region V; the Minnesota Pollution Control Agency; other State and local governmental agencies and external stakeholders.

In addition to Wisconsin's Superfund Memorandum of Agreement, the State has recently created the Bureau of Remediation and Redevelopment within its Department of Natural Resources. Wisconsin has streamlined the cleanup process by creating various grades of uniform soil standards, relieving lenders, cities or counties and innocent purchasers of liability for contaminated property and has implemented a Brownfields pilot program with the U.S. EPA.

Indiana established a Voluntary Remediation Program in 1993. This program provides a mechanism for site owners or operators to voluntarily enter an agreement with Indiana's Department of Environmental Management to clean up contaminated property. A Covenant Not to Sue is issued upon successful completion.

Michigan amended its Natural Resources Environmental Protection Act to create an owner-pays liability scheme only when that owner contaminated the site; offer a series of grant and loan programs for prospective site cleanups; create a task force to speed up cleanups in Detroit and a Brownfields Coordination Team to customize similar action on other cities; and create a Brownfields manual for guidance. Michigan offers two grant programs—Site Reclamation Grants and Site Assessment Grants to encourage redevelopment

Ohio created a Voluntary Action Program which relies upon private parties to investigate and cleanup contaminated sites; allows the cleanup to be tailored to the future use of the land; limits the property owners legal responsibility for future cleanup; encourages public input; and audits at least 25 percent of properties cleaned up. The Ohio EPA certifies professionals to oversee cleanups. Ohio offers low interest loans, tax abatements and a grant program.

New York has a voluntary cleanup program that requires volunteers to investigate a site, remediate contamination to agreed-upon levels, and eliminate sources of onsite contamination that cause offsite impacts. When the cleanup levels are met, the New York Department of Environmental Conservation issues a "no further action" letter.

Pennsylvania Example

In May 1995 Pennsylvania adopted three new laws creating a State Land Recycling Program. In the past year 100 sites have participated in the program and cleanups have been completed at 35 of those sites.

This record compares favorably with Pennsylvania's Hazardous Sites Cleanup Program, which has cleaned up only two sites permanently in 8 years, and the Federal Superfund Program, which has resulted in removing eight sites from the National Priority List in 26 years in Pennsylvania.

The cleanups completed so far under the Land Recycling Program include large and small projects that resolve long.standing contamination problems, put abandoned industrial sites back into productive use, allow existing businesses to clean up their own sites and continue operations, and give hope to "land-locked" cities that now, for the first time in years, have potential industrial sites to show businesses seeking to expand. They include——

• the Frameisi USA Inc. site near Pittsburgh that was able to expand its operations after cleaning up a portion of its property

• a former kitchen appliance manufacturing site closed since 1990 near Reading that was put back into productive use as a site for a warehousing operation

• a long-vacant manufacturing site in Harrisburg that will soon be home to a new 200-employee business

• the former Johnson Bronze manufacturing site in New Castle, abandoned in 1978, that will be cleaned up and available for new businesses

• a multi-site cleanup agreement with a State electric utility that requires the evaluation and cleanup of 134 different sites around the State

• a site that was part of the State Hazardous Sites Cleanup Program that was taken over, given its final cleanup and will be reused by a private company.

A quick summary of each of the new laws forming Pennsylvania's Land Recycling Program follows:

Act 2—The Land Recycling and Environmental Remediation Standards Act

Act 2 establishes environmental remediation standards to provide a uniform framework for cleanups. Land recyclers have a choice of three types of cleanup standards: background standards, statewide health standards or site-specific standards. Special industrial area standards are available for certain sites and certain persons. This framework provides new direction for a more reasoned, scientifically based blueprint for site remediation.

The act describes the submission and review procedures to be used at sites using each of the three types of cleanup standards, thus providing a uniform process for all sites statewide.

Act 2 provides releases from liability for owners or developers of a site that has been remediated according to the standards and procedures in the act.

Act 3—The Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act

Act 3 extends liability protection to financiers, such as economic development agencies, lenders and fiduciaries. Under Act 3, these parties cannot be held responsible for contamination at any site unless their actions directly caused the contamination. Engaging in routine commercial lending practices, including foreclosing on contaminated property, will not trigger liability. These provisions are intended to reduce the liability concerns that may inhibit involvement with contaminated or abandoned sites.

Act 4—The Industrial Sites Environmental Assessment Act

Act 4 authorizes the Department of Community and Economic Development to make grants to municipalities, municipal or local authorities, nonprofit economic development agencies, and similar agencies. The grants help finance environmental assessments of industrial sites located in municipalities that the Department of Community and Economic Development has designated as distressed communities. Certain cities are eligible for grants to conduct environmental assessments and remediation activities.

A detailed report on the first year of Pennsylvania's Land Recycling Program is available.

RECOMMENDATIONS

While Great Lakes States have become national leaders in adopting land recycling programs, these efforts are not yielding the full economic and environmental benefits they could for the region. Great Lakes States should learn from each other about how to promote land recycling. There are also issues involving the Federal Govern-

ment where increased levels of cooperation are needed to deal with cleanup liabilities under Federal law.

The Great Lakes States will act together to promote Land Recycling Programs throughout the region by taking these steps:

1. Form a regional "SWAT Team" of land recycling experts who can be called upon to offer technical assistance on individual industrial site reuse projects.

These experts could meet periodically to discuss what is working and what is not working in the individual State programs. In addition, when issues arise concerning the application of specific cleanup technologies or statistical methods of analysis, these experts could be consulted to share individual State approaches and solutions.

2. Establish a regional clearinghouse of information on remediation and other land recycling techniques, including an Internet website to provide quick access to information.

Remediation techniques and technologies are advancing quickly as more and more companies are seriously looking at reusing industrial sites. Keeping up-to-date on these technologies is a difficult task. Identifying existing sources of reliable information and tapping into the expertise available in State environmental agencies would be a tremendous regional asset Making that information available through the Internet, 24-hours a day, 7-days a week would allow the Great Lakes States to move quickly on cleanup issues.

3. Develop a template of "best practices " that highlight the most effective techniques States can use to encourage land recycling.

No one State has the ideal set of programs to encourage the cleanup and reuse of industrial sites. States also have their own experiences to share about the effectiveness of programs they have adopted. Capturing the "best of the best" for each element of a land recycling program—approach to clean up standards, reviewing cleanup plans, releases from liability, financial incentives—would enable the Great Lakes States to put together a set of "best practices" that each State could use to make improvements in their own programs.

4. Explore opportunities for the Great Lakes region to develop a private sector mechanism to help encourage investment in the reuse of industrial sites.

There seems to be clear evidence that regulatory action and grant programs alone may not always provide sufficient incentive to attract investment to industrial sites. On a region-wide basis there may be opportunities to stimulate investment by lowering risks and costs to banks and lending institutions. A bank pool which operated as a form of guarantee or secondary market, for example, may lower the cost of capital and increase the number of projects attracting investment. A regional approach to such a mechanism offers the potential for both a broader range of participating institutions and a more diverse portfolio of sites.

5. Initiate discussions between Great Lakes States and the U.S. Environmental Protection Agency on a uniform memorandum of understanding that clarifies Federal cleanup liabilities related to State Land Recycling Programs.

In the absence of legislation that releases parties who complete brownfield cleanups from Federal liability, it may be appropriate for the Council to pursue a basin-wide Memorandum of Understanding (MOU) with EPA that will clarify the Federal Governments role at State brownfield sites.

A basin-wide MOU would be negotiated between the Council and EPA Regions 2, 3 and 5. If the Federal Government is serious about increasing brownfield redevelopment, it should have a great deal of interest in negotiating such a high profile agreement with the major industrial States that comprise the Council. The benefit of taking a basin-wide approach is twofold: it increases the bargaining power of each individual State, and it ensures consistency among the three EPA regions.

6. Support changes to the appropriate Federal environmental laws to recognize State Land Recycling Programs.

The Council of Great Lakes Governors provides the perfect forum for advocating Federal legislation that will allow our individual State brownfield laws to reach their full potential. In this regard, there are three elements that should be included in a Federal legislative package: (1) a release of Federal liability to any person who completes a cleanup at a brownfield site in accordance with State law; (2) a waiver of Federal permitting requirements at brownfield sites being addressed under State law; and (3) liability protection for lenders, economic development agencies and fiduciaries.

The Council can present a common front on these Federal legislative issues through the issuance of white papers-and direct lobbying of State delegation members, especially those in leadership positions.

RESPONSES OF JAMES M. SEIF TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Mr. Seif, in your testimony you state that the Pennsylvania Land Recycling Act applies to all contaminated sites in the State and covers both voluntary cleanups and enforcement actions. Why did Pennsylvania choose to have such an expansive cleanup system? Has EPA been supportive of your efforts?

Response. In the past, Pennsylvania's environmental policies have been a disincentive for the cleanup of contaminated sites. Both State and Federal cleanup laws imposed full responsibility for a site cleanup on new buyers, even though they have had no involvement in contamination of the property, and imposed never-ending liability, discouraged private firms, lenders and public redevelopment authorities from getting involved.

The Land Recycling Program in Pennsylvania encourages the current landowner, prospective buyer, redevelopment authority and lending institution, to look more favorably at cleanup and reuse of contaminated sites.

Our policy decision was to have one set of cleanup standards and procedures that would apply to all contaminated sites. The reason was that we wanted to address existing brownfields and not create new ones by forcing them to deal with different standards. In addition, one set of standards for all sites is easier for the Department to administer.

As far as I can tell, the components of the Land Recycling Program have been supported by the Federal EPA. While we do not have a formal MOA, there have been several contaminated sites that EPA has deferred to Pennsylvania for cleanup under the Land Recycling Program at the request of the property owner or prospective buyer.

Question 2. Would you say that the current liability system under Superfund remains one of the biggest impediments that is keeping major developers and owners from voluntarily cleaning up these sites in your State?

Response. Yes. The current liability system under Superfund is a major impediment to redevelopment efforts. There is still a lingering perception that our releases of liability are not complete because there is no release from Superfund liability.

The liability associated with Superfund provides no incentive for site cleanup for current or future owners of contaminated property. As a result, there is less cleanup and more legal entanglements that increase costs and further impede redevelopment efforts.

Question 3. In Pennsylvania's attempts to encourage potential investors and banks to clean up these sites, have you found that liability uncertainty is the largest problem?

Response. Yes, but the liability concerns are not driven by State law considerations. The liability uncertainty that impacts Pennsylvania's Land Recycling program is the result of the liability that remains with the Federal Superfund program. Sites cleaned up under the State's Land Recycling Program receive a complete liability release under State statutes and regulations. However, potential exposure to Superfund liability remains under the Federal law creating uncertainty for property owners.

Question 4. Mr. Seif, you state that there are no NPL-caliber sites in your program right now and that EPA rarely expresses an interest in such sites. If that is the case, why won't EPA give you final authority concerning cleanup?

Response. There are currently no NPL "listed" sites or NPL-caliber sites that have formally entered our Land Recycling Program. Nevertheless, we believe that we have all of the tools necessary to handle all of the contaminated sites in our State system, including NPL-caliber sites. With regard to why EPA won't give us final authority, you'd have to ask them. EPA's November 1996 memorandum on State voluntary cleanup programs seems to imply that the agency does not want to sign MOA's covering NPL or NPL-caliber sites.

Question 5. Mr. Seif, some people say that if States control their voluntary cleanup programs there will be a so-called "race to the bottom." Has Pennsylvania or any other State that you know engaged in a "race to the bottom?"

Response. As I stated in my testimony, there has been no "race to the bottom." It is pure fiction. You simply have to read the 30-plus State laws that have been enacted to see that. Pennsylvania's Land Recycling Program takes a health-based

approach to cleanups that incorporates risk associated with current and future use of the site and surrounding property, and produces cleanups that are safe and protective.

Question 6. In your testimony you state, "we need a Federal release of liability at State sites to combat the lingering perception by developers that Federal liability is a real concern at the typical State land recycling site." How do you answer critics that are concerned that States will approve "crummy cleanups," or that the taxpayers may get stuck with the bill if they aren't done appropriately?

Response. The remediation standards established under the Land Recycling Program require compliance with one or a combination of the following three environmental standards: (1) background standard; (2) statewide health standard; and (3) site-specific standard. The protection levels for human health and the environment that are associated with these three standards assure the public that "crummy cleanups" cannot and will not be approved.

While it is true that limited tax dollars will be spent to assess and cleanup abandoned sites, the dollars spent will be recovered in the future as revitalized sites will bring in local tax dollars, increase employment and preserve agricultural land.

Question 7. In your testimony, you state that Federal and State cleanup requirements often used "Garden of Eden" or background standards regardless of whether the site was to be used for a daycare center or steel mill." In order to provide the tools you need to fix brownfields, isn't it necessary to modify the cleanup requirements under Superfund to inject some common sense into the system?

Response. Yes, the modification of cleanup standards under Superfund should be pursued to complement the common sense approaches being taken by the States at brownfield sites. Having cleanup standards that include a common sense approach by allowing for a combination of health based standards or risk based standards associated with the current and future use of the property is essential.

Question 8. In your testimony you state that there were two potential Superfund sites in Pennsylvania that Governor Ridge vetoed from being added to the NPL based on, as you state, "Superfund's dismal track record in Pennsylvania—that would make it virtually impossible to convince anybody to redevelop the property" if it were to be added to the NPL. Could you expand on your comments in this area?

Response. It's pretty simple. To developers, property owners, and lenders, placing a site on the NPL is a kiss of death. We can move a site through our program much faster than it can move through Superfund.

Two sites that were proposed for NPL listing were vetoed by Governor Ridge because there were responsible parties volunteering to participate in State cleanup efforts who wanted to avoid being forced into the Federal program. Their willingness to commit to meeting our State standards is proof that the regulated community would rather work with the State than take their chances with an NPL listing.

Question 9. In your testimony you state, "if someone was interested in putting one of those sites (Superfund or RCRA) through our Land Recycling Program, we would contact EPA to see if it would be willing to allow the site to be handled through our State system, and indeed that would be our preference." Given this statement, is it your view that these NPL or RCRA caliber sites would get cleaned up a lot faster under your authority rather than under EPA's?

Response. Yes. The cleanup of contaminated sites under Pennsylvania's Land Recycling Program will easily out-pace similar efforts under the Federal program.

RESPONSES OF JAMES M. SEIF TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. I am sure you would agree that EPA's Brownfields Initiative is accomplishing some positive results. Can you comment on EPA's testimony on the needed elements of Brownfields reform?

Response. The common elements needed to drive a successful Brownfields program are: (1) cleanup standards based on risk and current/future land use; (2) liability protection in the form of a statutory release or covenant not to sue for persons meeting those cleanup standards, and release for lending institutions and fiduciaries overseeing finances; and (3) lender protection and funding available in the form of grants, low interest loans and tax credits for site assessment and cleanup in combination with private funds. Those are actions that each State needs to take.

With regard to Federal reforms, the thing that is absolutely essential to Brownfields reform is the release of Federal liability. EPA must recognize that, and work with Congress to that end. If EPA can't see the importance of that, then they have not done a good job of listening to the States.

Question 2. Last year, the President delegated authority to issue section 106 cleanup orders to a number of Federal natural resource trustees. By the Executive Orders terms, the trustees may only exercise this new authority at State-led sites, then only with the concurrence of EPA. In your opinion, will this new delegation of authority have a chilling effect on Brownfields cleanups in Pennsylvania?

Response. While we have some concerns about the Executive Order, I do not anticipate the delegated authority to Federal natural resource trustees to significantly impact Brownfield cleanups in Pennsylvania. A typical Brownfield sites occurs in an urban/industrial location where natural resource damages are generally of secondary concern. Should natural resource damages become a factor of concern at a Brownfield site, cooperation of both government agencies and their natural resource trustees must occur and the State's interests need to be considered.

RESPONSE OF JAMES M. SEIF TO AN ADDITIONAL QUESTION FROM SENATOR LAUTENBERG

Question. You describe several State programs in the attachment to your written testimony, and speak of releases of liability thereunder. Are you referring to releases of State or Federal liability? Also, you describe two programs that limit owner liability. Please describe how these work, whether the limitations result in any shortfall, and if so, who pays the deficit?

Response. Pennsylvania's Land Recycling Program provides for a release of liability under State law only. A major concern and deterrent at State cleanups under the Land Recycling Program are the liability uncertainties that remain under Federal law for the responsible parties and prospective buyers of contaminated sites. I have emphasized in my testimony the need for Congress to provide a Federal liability release when cleanup efforts occur under State law.

The Land Recycling Program provides a release of State liability only after the remediation standard has been achieved. The release covers the current owner or occupier of the property, developer, successor, and assigns. All of our standards are designed to be safe and protective of human health and the environment. Accordingly, there should be no "shortfall" by way of environmental cleanup at any site where one of our three standards is attained.

The State program also creates incentives for the development of abandoned sites for which no financially viable party exists and for sites in designated enterprise zones known as "Special Industrial Sites." On these special industrial sites, a developer is only required to perform a baseline assessment and abate any direct or immediate threat to people who will be using the property. If additional long-term remediation for offsite contamination is required, State funding from our Hazardous Sites Cleanup Fund is available. We have more than enough money in our HSCA fund to deal with those situations. To date, we have not had to use any State money to address offsite impacts at any of the 33 SIA sites in our program.

STATEMENT BY MAYOR CHRIS BOLLWAGE, ELIZABETH, NJ, ON BEHALF OF THE U.S. CONFERENCE OF MAYORS

Mr. Chairman, Members of the Committee, I am Chris Bollwage, Mayor of Elizabeth, NJ. It is a pleasure for me to testify today on behalf of The U. S. Conference of Mayors, which represents about 1,050 cities in our Nation with populations over 30,000.

The Nation's mayors have been at the center of our national debate on the redevelopment of brownfield sites and the need for comprehensive Superfund reform. In 1994, Louisville Mayor Jerry Abramson, as President of the Conference, formed our first Brownfields Task Force. St. Louis Mayor Freeman Bosley, Jr. was appointed as chair of this task force. The work of the Conference's Brownfields Task Force resulted in a Mayors' National Brownfields Action Agenda that called on Congress and the Administration to develop a national brownfields strategy that included, at a minimum, the following:

(1) Liability Protection for Lenders, Innocent Third Party Purchasers and Redevelopers of Brownfield Sites;

(2) Development and Expansion of EPA's Brownfields Initiative, Including Funds for Preparation and Implementation of Local Brownfield Redevelopment Strategies, Including Funds for Site Assessment and Characterization;

(3) Development and Capitalization of Local Revolving Loan Funds for Brownfield Clean Ups;

(4) Targeted Tax Incentives for Brownfield Redevelopers;

(5) Expedited Cleanup Strategies and Cleanup Standards Based on Future End-Use; and

(6) The Availability of Tax Exempt Financing for Redevelopment of Brownfield Sites.

Mr. Chairman, we are now revising this agenda and I would like to submit for the record a further elaboration of these principles for a national strategy once it is finalized.

The mayors of this Nation want to thank the members of the Committee for realizing the importance of developing a national strategy for cleaning up the hundreds of thousands of brownfields that can be found all across the Nation.

We believe that it is preferable that brownfields be a major part of Superfund reform and reauthorization process and it is also critical that we move on brownfields during this Congress. Why? Two of Superfund's greatest accomplishments are: (1) a dramatic national reduction in the generation of hazardous waste; and (2) a much safer, national hazardous waste management and disposal system. But along side these tremendous public benefits is a horrible, unintended consequence of the Superfund program—the fact that the private sector would not invest in hundreds of thousands of non-NPL, contaminated properties because of the fear of being caught in the Superfund liability web. These properties are now commonly called brownfields.

Mr. Chairman, contamination of industrial property was not caused by local governments or the citizens who now must live with the consequences of lost jobs, an eroded tax base and abandoned or underutilized properties that denigrate communities. In large measure, this unintended, negative consequence of our Federal Superfund policies has been the price for achieving the Superfund program's national benefits. This unfortunate situation simply must be addressed in an aggressive way. We must undo the unintended harm that Superfund has imposed upon our communities.

Last year The U.S. Conference of Mayors released at its Winter Meeting a 39-City Survey on the Impact of Brownfields on U.S. Cities. Of the cities surveyed, 33 cities with brownfield sites said that more than $121 million is lost each year in local tax revenues—using conservative estimates. More than $386 million is lost each year, using more optimistic estimates, suggesting that the more than 20,000 cities and other municipalities nationwide could be losing billions of dollars each year in local tax receipts due to the existence of brownfields. The survey also found that cities of all sizes, small and large, had brownfield sites which were extremely diverse in terms of size and configuration. I would like to submit the Survey findings for the record.

I would also like to give you an example of how brownfields impact my community. To date, we have identified 56 brownfields in the city of Elizabeth, NJ, alone. For me, these sites represent 56 possibilities to create new industry, jobs, housing, and more tax ratables. We have been able to focus our resources on rehabilitating several of these properties—and our successes have been monumental. On one property we built an IKEA store, which has become the chain's best performing store, and a Toys R Us Superstore, the largest of its kind in the chain. Both businesses provided hundreds of new jobs, more than $1 million in annual tax revenues and more than $2 million in Urban Enterprise Zone revenues.

Nearby we cleaned up a former municipal landfill, and soon hope to use the land for a 250-store Mega Mall project on 166 acres of land. The project will create as many as 5,000 jobs. As part of our ongoing efforts in rehabilitating these and other contaminated properties, we have applied for designation as one of EPA's brownfield demonstration pilots.

I have provided to the Committee a report, "Inventory of Reclaimable Sites," which was prepared by the Regional Plan Association of New Jersey. I would ask that this report be included in the record. I have also provided information pertaining to the OENJ Development Project.

Mr. Chairman, all of this information supports our claim that we need Federal help to develop and implement strategies reclaiming brownfields sites. When these sites were previously flourishing with manufacturing, commercial or other uses, the Nation shared in this prosperity, including all governments in the form of tax receipts and other economic activity.

What is important to note is that for each tax revenue dollar that is generated, local governments realize about 15 cents. More than 80 cents of each dollar accrues to Federal and State governments in the form of income taxes and other revenues. This explains why local governments can't do it alone, and we need your help. We can't expect the level of government who realized the smallest share of the prosperity to absorb the largest share of the cleanup, remediation and redevelopment costs.

Mr. Chairman, we are pleased that the brownfields issue has the bipartisan support of this Committee. The bills that have been introduced, both S. 8 and S. 18, are good starting points launching a more detailed deliberation on the brownfields problem and the need for a comprehensive national strategy. The Conference of Mayors President, Mayor Richard Daley, has indicated that brownfields legislation is one of the Conference's top priorities, and we want to work with you to further refine your proposals.

We are pleased, for example, that both bills make efforts to address many of the issues we have laid out as our principles. We are pleased that funds will be made available for site characterization and assessment work on brownfield sites, although these funds are, quite frankly, too modest compared to the damage that has been done to our communities. Likewise, we are very pleased that both the EPA pilot program and your bills call for the capitalization of local revolving loan funds for the ongoing, bureaucratic-free cleanup of brownfield sites, although again the effort is too modest compared to the magnitude of the problem. These funds should be used for local programs and not be given to State bureaucracies, unless such State programs are targeted to smaller jurisdictions that would be unlikely to administer their own local revolving loan programs.

We believe both bills need to address brownfield sites that are in the hands of public entities, either through tax default or acquisition for economic development purposes. Not only must liability protections be extended to such public entities, but direct grants should be available for the cleanup of properties in neighborhoods of disinvestment and in properties that have negative value due to more significant contamination.

We also want to commend the Committee for addressing the need for liability protections for redevelopers of brownfield sites. It will be important to strike a balance between giving redevelopers certainty that they will not be thrown back into the liability web after having invested in cleanups, and at the same time protecting the public against future contamination of these sites.

We believe the Committee should seriously address the need to give local governments the flexibility to clean up properties with brownfield redevelopment funds that are free from many of the arcane rules and regulations of the Superfund program. We need the flexibility to bring common sense to clean ups. This is not only the case with the issue of cleanup standards based on end-use, but in the definition of brownfields. We believe there are too many exclusions to the "brownfields facility" definition. For example, many abandoned industrial sites will have both removal and remediation needs. These sites are typical brownfield facilities which require a removal of immediate threats and a less urgent remedial process to restore the property to a useful purpose. The bill would exclude all of these facilities from any funding under this program. We would be glad to provide examples to the Committee.

It is also important for the Committee to address the relationship between State Voluntary Cleanup programs and local brownfield cleanup initiatives to effectively address the brownfield problems in communities. We have talked to several State voluntary cleanup program administrators who indicate that their voluntary programs tend to focus on projects that are close to being NPL sites, not those brownfields that are less contaminated but still suffer from the Superfund stigma. While we believe there may be an appropriate link to State voluntary cleanup programs, we should not assume that they will expedite brownfield cleanups or that they are the panacea for brownfield cleanups. Again, we believe local governments are best equipped to expeditiously cleanup certain sites and to work with the private sector in the redevelopment of brownfields, albeit in some form of partnership with State agencies.

Mr. Chairman, as a result of your efforts and those of the Administration to support brownfields redevelopment, communities are finally having some success in cleaning up less contaminated properties, which is allowing us to get these sites redeveloped and back on the tax rolls. More complicated cleanups or NPL-caliber sites do create some misconceptions about the nature of the bulk of the inventory of sites, which we commonly refer to as brownfields.

Mr. Chairman, many other issues remain to be addressed and we will be supplementing our comments with further technical comments on the drafts of both bills. But let me again commend the Committee for beginning a bipartisan debate on brownfields. We support your efforts to address brownfields in the 105th Congress and we look forward to working with you this year to enact legislation. We cannot afford to let another Congress go by without enacting a comprehensive national program that will lead to thousands of brownfields cleanup, job creation, and sound local economies.

Finally, Mr. Chairman, while it is not in the jurisdiction of this Committee, we believe it is extremely important for the Congress to enact tax incentives that help companies redevelop brownfield sites. We have worked closely with the Administration on the development of their proposal and would welcome the opportunity to work with the Senate as they consider this year's tax bill.

Again, we thank you for the opportunity to appear before you today.

BROWNFIELDS REDEVELOPMENT ACTION AGENDA

INITIAL FRAMEWORK

January 25, 1996

The United States Conference of Mayors

THE UNITED STATES CONFERENCE OF MAYORS

BROWNFIELDS REDEVELOPMENT ACTION AGENDA

Initial Framework

The United States Conference of Mayors calls upon the President and Congress to develop a comprehensive national brownfield redevelopment program that would include, but not be limited to, the following components:

I Liability Protection for Lenders, Innocent Third-Party Purchasers and Redevelopers of Brownfield Sites.

Currently, financial institutions and private sector developers are unwilling to risk investment in the redevelopment of contaminated land out of fear of known or unknown cleanup liability. This barrier to brownfield redevelopment is particularly applicable to abandoned and underutilized sites with significant past industrial activity and to sites with documented environmental contamination or suspected contamination.

While contamination at brownfield sites must be adequately and appropriately addressed, lenders, developers and innocent third party purchasers should not be held liable for contamination for which they were not responsible. Removing such liability would significantly reduce financial risk and spur private investment and development in certain brownfield sites. In turn such development would trigger cleanup activities at sites which otherwise would not have occurred.

Justification: Without such liability protection, lenders and developers will continue to invest in greenfield properties that do not carry the risk of future environmental cleanup costs and liability.

II Expansion of EPA's Brownfields Initiative, Including Funds for Preparation and Implementation of Brownfield Redevelopment Strategies.

Beyond liability protection, the first critical step to attracting private sector investment to brownfield sites is an environmental assessment and site characterization to determine the extent of environmental contamination and the cost of removal or remediation. If a city is to begin discussions with private developers, it must know whether the site is moderately or severely contaminated. Cities must know if removal actions will cost a potential developer $10,000, $300,000, or millions. Certainly, in some instances private developers may pay for these initial assessments on sites with prime locations and suspected low levels of contamination. But in reality, many brownfield sites will require assessments by local governments in order to attract initial private interest.

For some brownfield sites the cost of cleanup would exceed the value of the property. Many of these "upside down" sites will never be redeveloped without governmental intervention. EPA's expanded initiative should include funds for cleanup in these cases. Cities should be supported in targeting specific properties for redevelopment and their marketing the property if the cleanup costs are substantially less than the land value or proceeding with cleanup otherwise.

Funds should be set-aside either from the Superfund Trust Fund or general revenues to provide resources to local governments to develop brownfield site inventories, site assessments and brownfield redevelopment strategies, the main goal of which would be to attract private investment.

Justification: Contamination of industrial property was not caused by the local governments, lenders or the citizens who now must live with the consequences of lost jobs, an eroded tax base and abandoned property that denigrates communities. The thousands of brownfield sites that nationally pervade our communities represent a form of national emergency. Federal assistance to assess the environmental contamination of these sites in order to attract private investment, or target public investment for their remediation, is warranted as a national policy. Expenditure of funds from the Superfund or from general revenues is appropriate because sites have gone without removal actions and are unremediated and undeveloped due to the negative effects of 15 years of a Superfund liability system. That system has stigmatized properties and communities resulting in overall disinvestment, the effects of which go far beyond the actual brownfield site. A federal program focusing on brownfield removal and remediation would help to compensate communities for lost tax revenues and jobs as well as other unintended, negative effects of the current liability system on a community's ability to attract business investment.

III Development and Capitalization of Local Revolving Funds

Thousands of brownfield sites require removal or remediation activities in order to attract private investment. For example, many investors and lenders will perceive the mere need for such removal or remediation as a prohibitive risk to investment in the property, even though "liability risk" has been removed and site assessments completed. Particularly in communities that have suffered from significant disinvestment already, developers may not invest until actual removal and remediation have been performed or unless financial assistance is provided for the cleanup.

Federal funds should be made available for the creation and capitalization of local revolving loan funds for local governments or the private sector to perform environmental assessments, removal and remediation activities. The revolving loan fund would be administered by the local government or designated agency. For communities with a single brownfield site, for example, removal and remediation loans could be provided on a site specific basis.

Justification: Costs for certain removal and remediation activities can not always be absorbed up front by local governments and authorities and, in many cases, the private sector. The local revolving loan fund would reduce risk of up front investments, attract additional private sector involvement and would be repaid to fund future brownfield site removal and remediation activities.

IV Targeted Remediation Tax Credits

The Administration and Congress should establish a targeted remediation tax credit program that would be administered by states and local governments. Tax credits would apply directly to a certain percentage of removal and remediation costs incurred by the private sector in developing brownfields in distressed communities. Under such a program, Congress would authorize a given amount of credits for a designated number of years, after which a reauthorization would be required for the credits to remain available.

Justification: A variety of incentives are required to attract private investment to properties that have remained abandoned due to the stigma of environmental contamination. These properties often are found in communities that have already suffered from patterns of disinvestment. Tax credits are necessary to overcome the risk of investing in contaminated property as well as neighborhoods that suffer significant blight.

V Expedite Redevelopment Through Cleanup Standards Based on Future End-Use.

Removal and remedy selection for Superfund sites and for cleanup of brownfields often does not take into consideration the future end-use of the site. Selection of cleanup standards based on a property's end use can result in significant savings for the developer and enhance the likelihood that a facility will be remediated and redeveloped. For example, properties whose end-use is industrial should not have to meet cleanup standards for residential use.

When cities and developers participate in a certified voluntary cleanup program, cleanup standards should be established based on end-use. Meeting such standards should protect the city or private sector entity from future federal liability under CERCLA.

Justification: Basing cleanup standards on a property's end-use would protect public health and the environment while providing added incentive for the public and private sectors to cleanup properties that otherwise would remain unremediated, underutilized or underdeveloped.

★★★

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RESPONSES OF MAYOR CHRIS BOLLWAGE TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Mayor, the Orion Project that you mention in your testimony involves the capping and redevelopment of a 166-acre landfill. Included in this project was the filling of approximately 10 acres of wetlands, could you talk about your interaction with the Federal agencies involved at this site regarding natural resource issues. Were there any claims for natural resources damages raised by the Fish and Wildlife service?

Response. No.

Question 2. Mr. Bollwage, I understand you are representing The U.S. Conference of Mayors. I am aware that the Conference of Mayors supports provisions in both S. 8 as well as S. 18 that would provide grants and loans to localities attempting redevelopment brownfields sites. What is the position of the Conference of Mayors on the issue of finality? For example, after an individual or company has cleaned up a site under State and local supervision, they could be liable for additional Federal liability?

Response. On the issue of finality, it is important that there be a mechanism for a property owner or prospective purchaser to be able to know what level of cleanup is necessary, and once those objectives are met, no further remediation will be required, unless there is some imminent and substantial threat to public health or the environment.

With respect to brownfield sites, many States have well developed voluntary cleanup programs that lead to "No Further Remediation" letters. The USCM believes that if a site has successfully gone through a qualified State program, then there should be no additional Federal liability attached to that site for the contaminants of concern. There may be a need for a reopener clause, but it should be limited to cases where (1) there is an imminent threat to human health or the environment, and (2) either the State response is not adequate or the State requests Federal assistance.

The USCM is looking for legislation that will make a bright line distinction between Superfund caliber sites and brownfield sites that have been for too long disadvantaged by the shadow of Federal liability. If a State has the ability to evaluate and approve a cleanup, then the issue of "finality" should also be delegated to them.

Question 3. Is it the position of the Conference of Mayors that comprehensive reform of the hazardous waste cleanup laws, including liability reform, remedy reform, and increased State and local controls are necessary to really "do the job" at many of these brownfield sites? That is, does the Conference of Mayors believe that grants are enough to deal with the problem or does more need to happen?

Response. Grants will provide municipalities with a tool for brownfields redevelopment. They can provide the impetus for getting a successful project off the ground. But for an issue as complex as brownfields, grants are not enough. Successful redevelopment requires incentives for companies to relocate in sometimes blighted areas, transportation projects to improve site access, and opportunities for job training to bring jobs back into the cities.

In addition to grants, liability protection for prospective purchasers and municipalities which take title to brownfield sites for the purpose of cleanup and redevelopment must be a component of any national brownfields strategy. Without such liability protections, brownfield redevelopers will still not invest in these properties.

From our perspective, the brownfields issue is not just about cleanup, it is a full-scale recycling of our properties that will use the already existing infrastructure to benefit both our economies and our environment. Flexibility in the way public resources can be leveraged with private investment is what we need most.

Question 4. One significant brownfield issue involves viable companies that have the financial ability to clean up these sites, but fear to do so because they may get caught in the Superfund liability net. Rather than risk a liability problem, they prefer to fence large industrial sites and let them lay fallow? Do you agree that this is a problem? How would you propose to fix it?

Response. Idle, or mothballed properties are a problem in many cities. There is almost no incentive for a company to initiate a cleanup and develop a property if just securing the property and paying the taxes are less expensive. This goes back to your earlier question about "finality." If a company knows it can negotiate reasonable, risk-based cleanup standards, obtain certainty after it is done, and perhaps get a tax incentive for initiating the cleanup, we are confident that more companies will initiate their own, voluntary cleanups.

It is not an acceptable outcome for companies to continue to "mothball" land that could and should be returned to productive reuse and tax generating property.

RESPONSES BY MAYOR CHRIS BOLLWAGE TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. On large projects, the dedication of resources from the City, State and Federal Government can often make the difference. However, not all projects are large enough to justify such a commitment of resources. In your testimony, you note that you have identified 56 brownfield sites in Elizabeth. What are the characteristics of those sites, in terms of the risks presented? Are they so-called NPL-caliber sites? What changes do we need to make to Superfund to ensure that the average site, and not just the exceptional site, is redeveloped?

Response. On the 56 sites in Elizabeth, I can't simply characterize the risk on each, without providing detailed information on these sites. Attached is a report which provides a full description of these properties.

As a general statement, I would say that for most of these properties are not NPL-caliber sites. Most of these properties are smaller, less contaminated sites, which we typically consider brownfields. I will have an updated inventory of these properties next month, and I would be pleased to provide this report to the Committee once it is available. Smaller, less contaminated, non-NPL sites need to be taken out of the shadow of Superfund. We are asking for legislation to clearly distinguish between Superfund and brownfield sites. The liability and remediation standards should be delegated to States with solid cleanup programs.

Question 2. On page 5 of your testimony, you advocate resolving the relationship between Federal voluntary cleanup programs and brownfields. You seem to imply that brownfields cleanups may best be handled outside of State voluntary cleanup programs. Could you expand on this, and do you believe that a brownfield cleanup that satisfies State and local governments should be final with respect to Federal liability, absent some extraordinary circumstance?

Response. Sites cleaned up under State programs should be final, absent some extraordinary circumstance. One practical way to handle this would be to limit further Federal action unless, at a particular site, there is: (1) an imminent and substantial threat to public health or the environment; and (2) either the State response is not adequate or the State requests U.S. EPA assistance.

RESPONSES OF MAYOR CHRIS BOLLWAGE TO AN ADDITIONAL QUESTION FROM SENATOR LAUTENBERG

Question. In your written testimony, you state that "[i]t will be important to strike a balance between giving redevelopers certainty that they will not be thrown back into the liability web after having invested in cleanups, and at the same time protecting the public against future contamination of these sites." Please describe how you, or how The U.S. Conference of Mayors, would strike such balance. Do you envision a Federal role anywhere in the equation?

Response. Your question addresses the issue of pollution prevention opportunities and ways to protect against recontamination. Much of the brownfields contamination goes back to industry practices from the turn of the century. We are much more sophisticated about environmental issues today than we were when CERCLA was enacted. There are regulatory and enforcement measures in place to limit the probability of recontamination. It will be up to industries and environmental enforcement agencies to strike the balance between industrial growth and practical pollution prevention.

We believe finality on a site should pertain only to the preexisting pollution and its subsequent cleanup activities. Pollution caused post cleanup by the redeveloper should be subject to current environmental laws.

IMPACT OF BROWNFIELDS ON U.S. CITIES

A 39-CITY SURVEY

January 25, 1996

The United States Conference of Mayors

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SURVEY REPORT

Prior to the 1996 Winter Meeting of The United States Conference of Mayors, St. Louis Mayor Freeman R. Bosley, Jr., chair of the Conference's Brownfields Task Force, directed that a survey of mayors be conducted to obtain examples of brownfields in cities and estimates of how such properties affect city tax revenues. Survey results were intended to support further review of these issues by the mayors in a special brownfields session on January 25 with the U.S. EPA Administrator, Carol Browner, and key Congressional leaders, such as Senator Christopher Bond (MO) and Representative Thomas J. Bliley, Jr. (VA).

The survey, conducted in January, was distributed to 200 cities with populations of 30,000 or more. This was a sample of cities consisting of the membership rosters of three of the Conference's standing committees. Thirty-nine cities completed all or part of the survey.

The findings of this survey are based solely on responses from survey participants who were asked to provide information on the number of brownfield sites (subject to each city's criteria), descriptions of such sites and estimates of local tax revenue that is lost each year by underutilization of these properties. Responses by individual cities, including their supporting materials, clearly show the great variability in what cities now know about brownfields, including, most notably, actual contamination on these sites. Some cities have invested time and resources in assessing the problem, while others are still in the early stages of examining such sites in their cities. Therefore, the data provided in Table 1 of this report must be viewed as a snapshot of the problem; comparisons of data on the nature and scope of brownfields across the cities would not be valid.

Among the key findings of this survey:

- The 39 cities reporting that brownfields are present in their community identified more than 20,000 such properties or sites of multiple properties. While these results do not allow for projections of total brownfields in the nation, the high counts of sites in this small sample of cities indicate the problem is a significant one.

- Thirty-six cities with brownfield sites estimate the land area of their brownfields totals more than 43,000 acres. In these 36 cities alone the total land area defined as brownfields exceeds the size of the nation's capital city.

- Thirty-three cities with brownfield sites say that more than $121 million is lost each year in local tax revenues -- using conservative estimates. More than $386 million is lost each year, using more optimistic estimates, suggesting that the more than 20,000 cities and other municipalities nationwide could be losing billions of dollars each year in local tax receipts due to the existence of brownfields.

The survey results allow a number of generalized observations on the nature and impact of brownfields in cities:

- Brownfields are found in cities of all sizes; nearly one-half of the cities responding to the survey were under 100,000 in population.

- Brownfields are diverse in size. In the survey they range in size from the vacant 700-acre site of the former United States Steel Ensley Works in Birmingham to the one-half-acre site of a former gas station and dry cleaning business in Normal, IL.

- Brownfields are the byproduct of varied land uses, largely industrial and selected commercial activities. A section of this report, Descriptions of Brownfields Sites, describes many types of business activities that have produced brownfields in cities.

- Brownfields are often the legacy of historic practices, with initial business uses at some sites dating back to the last century. It is suggested that contamination of buildings and/or land in many cities has occurred over time, with properties being held by several different owners and used for a variety of business purposes. On numerous sites, the current owners -- often cities -- did not cause the contamination of the site.

- Brownfields, found throughout cities, can diminish other important community assets and resources, from the abandoned Revere Copper and Brass facility which borders on the City of Detroit's major historical resource, Historic Fort Wayne on the Detroit River, to sites on the Village of Palatine's major commercial thoroughfare, Northwest Highway.

- Brownfields are now being addressed in several cities through partnership solutions that bring resources and support from other levels of government and the private sector. For example, the City of Houston is concentrating on site redevelopment in its federal Enterprise Community area; the City of Dearborn used a state grant to reclaim a property for productive use as a steel processing facility; and other cities noted how EPA's brownfields redevelopment pilot program supported their efforts.

The sections which follow in this report provide further explanation of these points. **Table 1** sets forth specific estimates of brownfield sites and estimates of local revenue loss, with such projections in most cases presumed to be conservative estimates. **Statements on Brownfields** provide descriptions which characterize city perspectives on the challenge of this problem. **Descriptions of Brownfields Sites** provide brief representative examples of sites in individual cities.

Table 1: Brownfield Sites and Estimated Revenues Lost

CITY (Ranked by Pop)		ST	Population	Number of Brownfields*	Total Acres	Est. Annual Local Tax Revenue Lost Conservative	Optimistic	
Chicago	{1}	IL	2,783,726	2,000	*****	$1,400,000	$1,400,000	**
Houston	{2}	TX	1,630,553	15	38.50	*****	*****	
Detroit	{3}	MI	1,027,974	2,500	*****	$6,080,000	$14,000,000	
San Francisco		CA	723,959	5,051	831.00	$16,000,000	$100,000,000	
Seattle		WA	516,259	800	2,070.00	$4,000,000	$4,000,000	**
Cleveland		OH	505,616	6,000	14,000.00	$5,000,000	$14,000,000	
Denver		CO	467,610	86	8,400.00	*****	*****	
St. Louis	{4}	MO	396,685	1,865	1,000.00	$25,000,000	$100,000,000	
Tulsa		OK	373,750	56	100.00	*****	*****	
Louisville		KY	269,063	2,000	5,500.00	$8,500,000	$10,000,000	
Birmingham		AL	265,968	200	2,500.00	$2,700,000	$5,000,000	
Rochester	{5}	NY	231,636	38	293.00	$1,700,000	$1,700,000	**
Lincoln		NE	191,972	1	50.00	$300,000	$885,000	
Fort Wayne		IN	191,839	64	2,975.00	$1,000,000	$10,000,000	
Dayton		OH	182,044	8	100.00	$2,423,000	$2,423,000	**
Tacoma		WA	176,664	3	400.00	$13,000,000	$17,500,000	
Knoxville		TN	165,121	40	250.00	$500,000	$1,000,000	
Providence		RI	160,728	74	2,290.00	*****	*****	
Salt Lake City		UT	159,936	15	250.00	$10,000,000	$50,000,000	
Erie		PA	108,718	12	125.00	$200,000	$600,000	
Clearwater		FL	98,784	3	150.00	*****	*****	
Green Bay		WI	96,466	10	*****	$100,000	$100,000	**
Dearborn		MI	89,286	10	150.00	$3,300,000	$5,400,000	
Richmond		CA	87,425	10	63.55	$230,000	$300,000	
Racine		WI	84,298	20	40.00	$250,000	$380,000	
Hammond		IN	84,236	3	175.00	$571,725	$2,858,625	
Canton		OH	84,161	7	109.00	$2,774,500	$3,225,000	
Carson		CA	83,000	8	70.00	$1,500,000	$2,000,000	
Lynn		MA	81,245	50	1,000.00	$5,000,000	$25,000,000	
Niagara Falls		NY	61,840	10	160.40	$844,800	$1,126,400	
Kettering		OH	60,569	1	3.00	$30,000	$100,000	
Yuma		AZ	54,923	3	60.00	$250,000	$1,000,000	
Elkhart		IN	43,627	30	50.00	$150,000	$360,000	
York		PA	42,192	10	400.00	$600,000	$750,000	
Normal		IL	40,023	6	39.00	$100,000	$150,000	
Palatine	{6}	IL	39,253	3	1.50	$6,750,000	$10,000,000	
Everett		MA	35,701	8	155.35	$1,500,000	$1,500,000	
DeKalb		IL	34,925	3	1.30	$79,000	$85,000	
Williamsport		PA	31,993	4	25.00	$50,000	$250,000	
TOTAL				20,827	43,825.60	$121,883,025	$398,893,025	

KEY:

{1} - Conservative estimated tax revenue was based on the 5 completed brownfield sites; this estimate was also used for tabulation of optimistic estimate.

{2} - Information based on brownfields within enhanced enterprise communities only.

{3} - Numbers reflect only industrial sites, total number of brownfield sites is higher.

{4} - Lost revenue estimates assume higher number of brownfield sites than provided.

{5} - This data includes only large sites, the city estimates they have between 200-500 additional sites. Estimated revenue only includes 15 of these sites.

{6} - The city estimates they could potentially have 25 more sites on 13 acres.

* - Respondents identified either individual properties and/or sites, many of which contain multiple properties.

** - These cities only gave conservative estimates for lost tax revenues; conservative estimates used for tabulation of optimistic estimate.

***** - Estimate not available.

SELECTED EXCERPTS FROM BROWNFIELD SURVEY

BURLINGTON, VT

The City's brownfields comprise about 40 acres of land and are located within a three-mile radius of the central business district. Most are located either within, or adjacent to, low- and moderate-income neighborhoods, contributing to a trend of disinvestment and increased health hazards.

The City is concerned that there may be additional brownfields in the future due to unknown questionable practices of existing businesses.

Redevelopment of brownfields will promote efficient land use patterns, reduce the air and water pollution associated with urban sprawl, and expand job opportunities in locations that are accessible to lower-income populations.

COLORADO SPRINGS, CO

Although the EPA has performed a Site Inspection under CERCLA and has determined not to seek further actions at the site, this site remains a wasteland due to fear of distributing heavy metals and other contaminants.

DAYTON, OH

The negative impact of brownfields extends far beyond numbers in a chart, or even dollars in our treasury. The presence of brownfields has a blighting influence on neighborhoods and is often perceived as further evidence of abandonment of communities and the people who live there.

DEARBORN, MI

With the help of a $803,000 site reclamation grant from the State of Michigan, a steel processing company has begun construction of a $20 million steel service center employing 150 people. This project is a model of public-private economic development in the reuse of brownfields.

DETROIT, MI

Because of its prime location on the Detroit River, adjacent to the major historical resource in the City, the nondevelopment of this property has a severe blighting impact on the neighborhood and the City as a whole.

ELKHART, IN

If the City were to pick up the funding for this cleanup, we would take resources away from our educational, recreational programs for the youth in the area.

FORT WAYNE, IN

This facility was most recently used at its full capacity as a heat treat shop. However, it has had prior industrial uses including arms production during the early 1900s. The site is from the era of on-site disposal of industrial waste and no environmental regulation.

GREEN BAY, WI

If this parcel is considered to be environmentally unsuitable for development, the property will not become privately owned and may never be placed back on the tax rolls.

HOUSTON, TX

Today, increasing environmental concerns and lack of incentives have compounded Houston's decentralization problems, leading to increased deterioration of the inner-city. The slightest suspicion of an environmental issue encourages companies to locate elsewhere due to lack of financing and fear of potential future liability. Currently, there are few outside incentives for inner city development, thereby discouraging the private sector from risking funds for remediation and redevelopment of a brownfield.

Over the last three years, numerous redevelopment efforts within or adjacent to the Enhanced Enterprise Community (EEC), which is a 20 square mile area located in the oldest area of the inner city, have been delayed or not fully realized due to the proximity of specific properties to potential environmental hazards.

KNOXVILLE, TN

The high visibility of this brownfield property from the Interstate Highway and the loss of medium- to high-paying jobs have helped create a very negative effect on the surrounding community in terms of image as well as economically.

NIAGARA FALLS, NY

Remediation at the site would consist of selected demolition, stabilization of walls and other structural work as needed, upgrading utility service as needed, cleaning of buildings, removal of contaminated soils, removal of the underground storage tank, removal of obsolete equipment and transformers, and removal of all asbestos on-site. The property is in arrears on taxes. Since remediation costs are prohibitive to the City at this time, foreclosure has been stalled and the property is not producing tax benefits.

PALATINE, IL

The Village of Palatine has three contaminated properties on different sites along its major commercial thoroughfare, Northwest Highway. These properties are a blighting influence upon adjacent businesses and Village residents and visitors who travel through the community.

PROVIDENCE, RI

Presently, over 4 million square feet of vacant space are listed for sale or lease. This is space perceived to have potential value as a manufacturing or business location. Many more former manufacturing facilities languish with potential users reluctant to consider them, and owners unwilling to discuss a use for fear of the financial burden of environmental remediation and responsibility.

RACINE, WI

The City has very little information about the extent of contamination of the possible brownfield sites. This is because owners of property are reluctant to have studies made for fear of exposing a problem and thus, financial exposure.

RICHMOND, CA

Contamination is perceived to be from spills which occurred when the company broke apart electrical transformers to recover and recycle the copper wires.

ROCHESTER, NY

The City assembled this land in the early 1980's with the intention of industrial redevelopment and generation of jobs for area residents. Approximately 24 acres of this site remain underdeveloped due, in part, to environmental problems caused by previous business owners and operators (junkyards, service stations, and metal fabrication).

SEATTLE, WA

A pending transaction with a local manufacturer was cancelled due to potential environmental liabilities. The prospective purchaser instead relocated to a site south of Seattle.

TACOMA, WA

Many of the sites in the study area require cleanup under the State of Washington's Model Toxic Control Act requirements. The risks associated with redeveloping contaminated properties have driven prospective development outside of the City to undeveloped areas.

BROWNFIELD SITES - A DESCRIPTION

Please note that certain sites that are described were chosen because of the variety and complexity of the issues presented. Other sites were chosen because their brownfield problems are common among most of the nation's cities.

BIRMINGHAM, AL

- The North Birmingham Industrial Redevelopment Project area encompasses approximately 900 acres of distressed industrial and residential land in the North Birmingham and Northside Communities, north of Village Creek. Dominated by the former Sloss-Sheffield Iron and Steel Company blast furnace site, the area has superb interstate and rail access and is located less than a mile from Birmingham's City Center. However, over 40 percent of its land is either vacant or under-used.

  The project site has been defined by a community-based industrial redevelopment planning process involving businesses, neighborhood residents and the City of Birmingham. It aims to coordinate activities, including site planning and public investments required to attract private investment into the area. The City's EPA Brownfield Pilot Program is an important part of the project.

  This redevelopment project would create sites for as many as two million sq. ft. of industrial and commercial facilities that could employ over 2,000 people. Project planners envision a four-phase, multi-use redevelopment, geared to existing trends in the metropolitan economy.

  In addition to environmental issues, major obstacles to redevelopment include flooding, lack of visibility, multiple ownerships and the distress of the surrounding neighborhood.

- The vacant 700 acre site of the former United States Steel Ensley Works has a unique attribute: it is the eastern terminus for three major rail carriers. In addition, it is served by the Birmingham Southern Railway, a local switching road. A proposed intermodal facility would make available the most modern technology to all carriers. The $38,000,000 facility would employ approximately 50 workers. Its construction would promote the intensive development of the remaining 500 acres of the USX site for distribution, heavy manufacturing and other rail sensitive industry. The project would enhance Birmingham's competitive advantage as a transportation center.

  The Ensley Works operated until 1979 when they were shut down and dismantled. The neighboring business district and residential areas, already stagnant from the long

term decline of the mill, were plunged into despair. In recent years, under the leadership of B.E.A.T. (the Bethel Ensley Action Task), a church centered, grass roots community development organization, residents and businesses in Ensley formed the Ensley Community Issues Forum. This organization has developed a long range economic development plan for the Ensley area that supports the redevelopment of the USX Ensley Works.

Major obstacles to redevelopment include difficult site topography, need for improved transportation access and the distress of the surrounding neighborhoods.

BURLINGTON, VT

Burlington is the home to 19 commercially and industrially-zoned brownfields and has only one unpolluted site available for industrial development. There are approximately 45 acres of developable commercial and industrial property of which about 40 acres are brownfields or polluted industrial or commercial sites. The liability associated with these sites prevents banks from financing and developers from making investments to create jobs. As a result, over the past decade, dozens of new industrial sites have been developed in prime agricultural soils within a ten-mile radius of Burlington. This land use pattern has created an overburdened road network that makes the City less accessible and more unattractive to prospective firms.

- The largest of these sites is situated adjacent to a main artery in this City and is the City's prime industrial location. The presence of this brownfield has prevented the construction of a major highway that would connect with the City's urban waterfront. Private waterfront development in a number of cases has been stalled due to the lack of sufficient road access. As a result, the City's efforts to create jobs have been much more difficult.

- Brownfields are also involved in the City's Riverside Eco-Park project. This project will create and develop a 430 acre agricultural-industrial ecosystem. The site is situated within an 830 acre tract of land that is the home to the largest wood chip electrical generating plant in the U.S., a leaf compost facility, community supported agriculture and a wood and metal recycling depot. The project will build on the forthcoming world's largest wood chip gasification demonstration project and involves a change in the City's zoning to encourage the development of environmentally friendly businesses.

  The Riverside Eco-Park project will be the first of its kind in the country and will become a model of sustainable development that could be duplicated in countries around the world. The presence of the brownfield site will make it more difficult to successfully develop this major job creation initiative that combines job creation with environmental protection.

CANTON, OH

- A 13 acre site at 15th and Henry S.W. is a former steel manufacturing facility that is under utilized presently. It is a site of a former forging plant. The buildings have been removed and appears to be an attractive site located immediately at the entrance/exit ramp system of a major highway and visible from two major highways. Healthy industries surround this unproductive, vacant site which is zoned for heavy industry.

CHICAGO, IL

The following are examples of the City of Chicago's Brownfield Pilot Sites. The City launched a pilot program in November, 1993 to cleanup and redevelop five abandoned properties over a two-year period. Chicago worked with local businesses and community industrial retention groups to identify sites. Originally funded with $2 million in general obligation bonds, the City found that two of the sites were cleaner than anticipated. All five properties will be returned to productive use for approximately $850,000. The Brownfield Pilot Site program is further judged a success in that it has retained 300 jobs in the city and helped to create 110 new jobs. Substantial private investment has also gone into the sites ranging from capital improvements to a private commitment to hire the developmentally disabled. Environmental cleanup has made these target communities healthier and safer.

- Site 1: Scott Peterson Meats wanted to expand its operations but was deterred by a major eyesore -- a former bus barn across the street that was full of garbage, tires, drums, scrap metal and other debris. The City removed the waste and tore down the building. Further investigation revealed underground storage tanks and vaults which were also removed and cleaned. The 1.8 acre site is now a flat, open lot to be used for secure parking. Scott Peterson, assured of expansion space and a safe lot for his employees, has invested $5.2 million in a new smoke house and added over 100 new employees. A city-funded social service agency is screening local residents for jobs and the company is establishing a program to hire the developmentally disabled.

- Site 2: An explosion closed this 7 acre site of a steel foundry in 1979 and the property became tax delinquent. Illegal scavengers demolished everything but a tottering 150-foot smokestack. The smokestack threatened train tracks next to the Verson Corporation, an automotive press manufacturer that was considering a move to Indiana -- a potential loss of 350 living-wage jobs. The City removed more than 200 truckloads of debris and 5 barrels of hazardous waste. Cleanup is nearly complete and the City will be working with a local industrial retention group to market the site. Verson Steel has not only decided to remain in Chicago, but also expanded its assembly plant.

- Site 3: This city-owned 3.3 acre site, vacant since 1982, was a target for vandals and illegal waste dumpers. Concern about environmental contamination stalled sale of the property to Blackstone Manufacturing for use as secure parking. The city has removed surface debris as well as underground storage tanks and contaminated soil below the surface. The site is being processed through the Illinois voluntary cleanup program and Blackstone Manufacturing will purchase the site from the City. In addition, the City is working with the company to close a bordering street and landscape the area for a secure, campus-like setting.

CLEVELAND, OH

- Collingwood Yard site is located in northeast Cleveland in the South Collingwood neighborhood. Collingwood Yard was the location of major railroad repair, painting, switching and administrative functions. Most of the 250 to 300 acre original yard is still used by Conrail. The 48 acre development site was formerly part of the Collingwood Rail Yards and was used for the repair and painting of rail cars and NYC's printing office. During its operation, most of the site was covered by industrial buildings. After closing of the repair facility, that portion of the property was sold off by the rail company in 1982. Conrail continues to operate a switching and a smaller repair facility south and west of the site. Fourteen years ago, the 48 acre parcel was sold off to a potential developer but the site remains underdeveloped. Many proposals have been developed but have not proceeded due, in part, to the unknown environmental problems of the site. In addition, the site suffers from a changing neighborhood with negative perceptions from developers. The site, however, does have good access. The Collingwood Yard site is located directly south of Interstate 90 and South Waterloo Road at the corner of East 152nd Street, a major north south street in Cleveland.

  Today only five of the original rail buildings, each in a varying stage of disrepair, occupy the site. One newer warehouse building and a number of billboards are also located on the subject property. Most of the 48 acres is vacant land.

- The 46 acre Coit Road GM Plant site is also located in northeast Cleveland in the South Collingwood neighborhood. The site is a vacant, 1.5 million sq. ft. former GM Fisher Body site. As part of an economic reuse effort, the State of Ohio took title to the site and the structures were scheduled for demolition. In the interim, PCB's were discovered on the site and as a result of vandalism, the PCB's were released across the site. The State is now in the fourth year of a six year clean-up of the site at a present cost of $40 million. The site clean-up is expected to be completed in 1997.

  The site is located in a working class neighborhood surrounded by residential land uses, except for freeway and rail to the north. Because the site has remained vacant

for so long, the neighborhood has experienced a significant loss of population as former employees of the site have moved from the area.

COLORADO SPRINGS, CO

- Gold Hills Mesa is an area comprised of millions of tons of mine tailings on about 170 acres of land that remain from the extraction of gold and silver from ore. It is located in the Colorado Springs City limits at the foot of Pikes Peak. Its impact to the City is that it is virtually undevelopable land, and it is an eyesore that lies directly beside the primary access from Colorado Springs into the mountains. Although the EPA has performed a Site Inspection under CERCLA and has determined not to seek further actions at the site, this site remains a wasteland due to fear of distributing heavy metals and other contaminants.

- Rocky Mountain Industrial Chrome is a small site near the center of Colorado Springs that was used for a chrome plating operation. It has been abandoned for almost 10 years, and is virtually unmarketable because of the stigma of contamination.

DAYTON, OH

- The Dayton Tire and Rubber brownfield consists of 37 acres located along Wolf Creek, one and one-half miles west of downtown Dayton. This manufacturing plant operated from 1905 until 1980 when it was closed and purchased by a salvage company that subsequently went bankrupt. The site was unsecured and salvagers and vandals operated freely. This situation, while long a concern to the adjacent neighborhood, finally received national attention due to a large spill of PCB's into Wolf Creek in April 1987.

  Between 1987 and 1989, the U.S. EPA spent $5.4 million on removal and encapsulation of PCB-oils, asbestos, and contaminated structures. However, even after U.S. EPA's largest emergency response operation ever, the Dayton Tire site still contained crumbling, asbestos-filled buildings. Therefore, in 1991, having exhausted the effort to have the owners of the property resolve the problems, the city of Dayton spent nearly $2 million of general funds to remove the remaining asbestos and level the site. Unfortunately, there is still no guarantee that the site is ready for development.

  This area of the city is critical to our long-term success. In a partnership between federal, state, and city government, over $80 million is being invested in the west Dayton transportation system. It is our intention that the system will revitalize west Dayton by creating improved access and new opportunities for development. The

Dayton Tire site is within the area targeted for service by the system. If this site is not available for redevelopment, a key opportunity will be lost.

The major impediment at the majority of our sites is potential environmental liability. Compounding the liability question is the fact that many of these sites are also located above our vulnerable aquifer which is a federally designated sole source aquifer. As such, ground water cleanup becomes a possible factor and likely cost driver. Given current state and federal direction, these types of sites are likely to go unaddressed or at a lower priority due to the greater $ investment/job created. This creates a specific disadvantage for cities like Dayton which rely on ground water for public drinking water. A more logical approach would place a high priority on these sites, provide CERCLA funds to address ground water cleanup. Such an approach would create jobs in the short-term and preserve long-term economic stability by protecting and preserving the water supply source.

DEARBORN, MI

- This 140,000 sq. ft. steel servicing center was built in 1930 and sits on approximately 12 acres. The property has several heavy overhead cranes with rail access possible. The property has been for sale for about $1.2 million since manufacturing operations ceased over five years ago due in part to a leveraged buy-out. The property has been reasonably maintained and several interested parties have proposed various reuse of the property, some of which the City would consider as unfortunate under-utilization. A complete environmental assessment is not available and accurate clean-up costs estimates is an impediment.

- This is a 10 acre parcel of vacant land which is zoned light industrial. The property is on the State of Michigan's list of contaminated sites due to the fact that it had been used as a landfill in the distant past. The City has not been aware of serious marketing attempts by the property owners until recently. A developer with experience in unstable soils has come forward. The developer has expressed interest in applying for a site reclamation grant. Whether or not this is critical to the development is not certain at this time. The property has excellent location, existing infrastructure and potential.

- This property was a 400,000 square foot manufacturing facility built during the 1920's. The property deteriorated to a dangerous eyesore and was used most recently as a machinery storage facility. With the help of a $803,000 site reclamation grant from the State of Michigan, a steel processing company has begun construction of a $20 million steel service center employing 150 people. This project is a model of public-private economic development in the reuse of brownfields.

DEKALB, IL

- Two of our three identified sites are old service stations. One service station site is presently being remediated and is a vacant lot on a corner in the Downtown Business District. Because the remediation method is ongoing, no building is being proposed for the property and since the vacant lot is in a highly visible area of downtown, the City has elected to construct a park at the site. Since no business is interested in purchasing this property, we lose TIF Funds, since it is in the TIF District, as well as other described taxes.

- The other site is not in the downtown business district but is a vacant lot originally stated for a new gas station/mini mart. This development came to a halt when they discovered excessive contamination during new construction excavation. It remains a vacant lot.

DENVER, CO

- The Northside Treatment Plant is a 50 acre, City-owned parcel in north Denver that was formerly used as a sewage treatment plant. Although the property has not yet been redeveloped, the project has generated some useful lessons.

  The city estimates cleanup at $500,000, demolition at $1.5 to $2 million, and improvements (street) at $1 to $1.5 million. In that area, property sells for about $1.50 per sq. ft., which for 30 acres would generate $1.8 million (20 acres goes to a park and to the Colorado Air National Guard for an armory). Taking the lower estimates, the project has a deficit of approximately $1.2 million. Remediation is thus one of only several impediments to the reuse of the site. Also, we have found that other governmental agencies can be difficult to deal with regarding issues of contamination. The armory involves two other government bodies: one is the National Guard; and the other is the capital spending committee for the State legislature. The National Guard recently voiced their concerns about the Colorado Air National Guard constructing an armory at the site; their concerns basically centered around a misunderstanding of liability. The capital committee had similar concerns.

- In Commerce City, the Woodbury site is a 14 acre, former Superfund site that has been completely cleaned up. The site had previously been used by a chemical manufacturer. Even though the property is certifiably clean, no one has expressed an interest in purchasing the site for redevelopment. EPA believes that factors such as the irregular shape of the property and poor access to the site hamper any interest in redevelopment.

DETROIT, MI

- The former Revere Copper and Brass Facility is a 29 acre site now owned by the City of Detroit and borders Historic Fort Wayne on the Detroit River. It was formerly used for the manufacturing of copper and brass products. The facility ceased production in 1985, but the former structures were not demolished, nor was the facility closed. The former owner left over 15 large structures in a severe state of dilapidation on the property, together with numerous pits, subbasements, underground storage tanks and other related facilities. Environmental concerns include underground and aboveground tanks, drums and cans, potential transformers, baghouses, VOC, SVOC and metal contaminated soils, concrete and wood blocks, lead based paint and asbestos containing materials. Because of its prime location on the Detroit River, adjacent to the major historical resource in the City, the nondevelopment of this property has a severe blighting impact on the neighborhood and the City as a whole. The City is currently working with the State of Michigan in attempting to address the condition of the site and demolition of the structures is underway. Subsurface contamination issues will have to be addressed before the property can be redeveloped.

- The former Lear-Siegler Facility is a 12 acre site of former automotive manufacturing facilities located on the Detroit's west side on Epworth between Kinsdale and Vancouver. It is located in a mixed commercial/industrial and residential area (three are homes facing the facility on Epworth). The site has been the subject of a Superfund removal action, during which acids, PCB's, asbestos, chlorinated liquids, flammable liquids and various sludges were removed. The former owner allowed the property to tax-revert to the State of Michigan, abandoning the facility with transformers in place, and without demolition of the substantial structures. The property in its state of disrepair became an easy target for illegal dumping; one side of the property became so infested with trash that only one car could travel the street at a time. Clearly, the site has had a major blighting influence on the immediate neighborhood. In addition, because of the condition of the structures and the remaining environmental concerns not resolved by the EPA action, developers are not interested in the site. The City has been working with the State of Michigan to address the condition of the site. Demolition of the structures is underway. Subsurface contamination issues will have to be addressed before the property can be redeveloped.

ELKHART, IN

- The City of Elkhart Redevelopment Commission acquired the Benham West site many years ago, a site that previously had a gas station and a dry cleaner. The commission acquired this site long before our understanding of the potential adverse effect on the environment of leaking underground storage tanks. This property is a .6 acre parcel

of land in an economically-disadvantaged area of south central Elkhart. In recent years, the City of Elkhart, with the help of partnership from the private sector and some state and federal grant assistance, has begun to turn this blighted area from a community liability into a community asset. We have set up programs which provide educational and recreational opportunities for inner city youth.

The Benham West site remains undeveloped due to the high cost involved in cleaning up the groundwater contamination at the site. If the City were to pick up the funding for this cleanup, we would take resources away from our educational and recreational programs for the youth in the area. The site continues to add to the condition of slum and blight in this neighborhood. It is a public eyesore. We are currently receiving no tax dollars from this property. It would be an excellent site for the City to recycle back into full use and put on the tax rolls as a productive piece of property. We even have a minority business enterprise that would like to construct and operate a small convenience shopping mini-mall. Our hope is to induce disadvantaged business enterprises to invest in this urban renewal program, creating through ownership, greater community pride and a sense of social justice in this inner city neighborhood.

Unfortunately, the cost of cleaning up the contamination is estimated to be in excess of $250,000. There are also lingering issues of "how clean is clean", who makes that determination and whether that determination will be held in the future at the same level. The minority business enterprise that is interested in the property has had great difficulty in receiving funding from any local banks. The question of lender liability has kept any financial lending institutions from redeveloping this land.

- The East Bank site is a 2.9 acre site located in downtown Elkhart along the Elkhart River. In 1991 the City of Elkhart was installing a storm sewer adjacent to this property when high concentrations of trichlorethylene (TCE) were found in the groundwater. This site had previously been used for many different commercial and industrial purposes and had been through a series of owners. The site is located in our central business district in a prime business location. However, due to liability issues associated with the contamination, it has been vacant for the past five years.

  The City of Elkhart has spent a lot of time and effort attempting to revitalize its downtown area. Unfortunately, this site has some real negative impacts on all of those efforts. The major impediments to redeveloping this property stem from the issues of uncertainty on the site. The extent of contamination is unknown as well as the cost to remediate the property. Once again there is always the lingering question of "how clean is clean" as well as lender liability issues and receiving the appropriate funding to redevelop the property. It appears that this site will continue to sit vacant as there are currently no solutions to these redevelopment obstacles.

EVERETT, MA

- The Monsanto/Rosen site is located along the Mystic and Malden Rivers. It consists of approximately 77 acres of vacant land located in a formerly heavy industrial section of the City. In October 1992 the Monsanto Chemical Company terminated all production of chemicals at this facility. Since 1992, the site has been undergoing environmental remediation. The owners of this site have received a waiver from DEP to conduct the remediation privately. This parcel of land has formally changed ownership from the Monsanto Chemical Company to Rosen Associates, a shopping center developer. The new owner is in the process of developing a major regional shopping center and has agreed to preserve the conservation land along the Malden River known as the Monsanto Fund Land.

  The resources used to clean this site are private; however, the City of Everett and the private owners have worked closely to assure that the reuse plans are favorable to the City. Thus, a public audience has been given to a private action. This openness will result in a new use of a formerly heavily industrialized section of the City, a recycling that truly meets the needs of residents today. The nature of this site's former use could have been a major barrier, yet the Monsanto Company sets an example for other owners of environmentally damaged land. Proper planning by this firm and their willingness to work with the City means that the site is now opened up to the public.

- The General Electric (G.E.)/U.S. Air Force Plant 28 site consists of approximately 50 acres of industrial plant space. Prior to 1988, this site was used for the manufacture of aircraft engines. Since 1988, the manufacturing facility has been shut down and some use has been made of the site for warehousing. G.E. was previously one of the largest employers in Everett. The site is one of the largest developable pieces of real estate in the City. The environmental issues confronting this site are relatively minor, mostly concerning heavy metal concentration. The major impediment to redevelopment is G.E.'s insistence on full indemnification for any environmental liability resulting from redevelopment.

- The Trimount Bituminous site consists of an approximately 3.3 acre vacant parcel of land located in a commercial district of Everett. The site had previously been used for parking of company-owned vehicles and storage of liquid asphalt and fuel oils. The site contained an above aground storage tank for liquid asphalt (100,000 gallons) and motor oil (1,000 gallons) as well as several underground storage tanks, 2 for kerosene (4,000 gallons each), 1 for fuel oil and 1 for gasoline (15,000 gallons). All were removed in 1982 and the site has been vacant since that time.

  The environmental issues confronting this site include metals, volatile organic compounds (VOC), semi-volatile organic compounds (SVOC) and petroleum hydrocarbons (THP).

The impediments to the redevelopment of this site rests with Bardon-Trimount Inc., owners of this site.

It is assumed that this site will be developed in the near future. The location of this parcel of land, along the Revere Beach Parkway, is an ideal site for a variety of commercial developments.

Two of the sites listed above, the G.E. site and the Trimount site have a negative impact on the community due to the deficiency in redevelopment of the vacant parcels of land. These unattractive, unused sites result in loss of tax revenue, reduction in business growth, decrease in employment, as well as continued environmental degradation.

FORT WAYNE, IN

- Bass Foundry is a 12 acre site which is bordered to the north by the railroad lines that divide the central city from east to west. The facility is adjacent to older, low-moderate income housing and industrial land uses, including the City's garage and supply yards. It is also a block from major arteries which provide north-south transit through the City. It is one to two miles southeast of the Central Business District. It currently has one minor tenant which operates a small construction service from one of the buildings. This facility was most recently used at its full capacity as a heat treat shop. However, it has had prior industrial uses including arms production during the early 1900s. Therefore, the site is from the era of on-site disposal of industrial waste and no environmental regulation. Due to its history of uses, it may have underground storage tanks and residual contamination of arsenic, cyanide and heavy metals. The City has outgrown its garage and yard facility and is currently undertaking planning efforts to expand or relocate. The planning team researched expanding into the Bass Foundry, but decided to abandon the idea once it considered the high possibility of contamination. It did not even want to do a Phase I assessment of the site given the history which indicated remediation would be necessary in turn substantially increasing the expense of the already costly project as well as potentially exposing the City to liability. Other problems that may pose hindrances to reuse of the site may be linked to the size of the site which is small for industrial reuse, the transportation access and the perception of high crime and a poor workforce.

GREEN BAY, WI

- One brownfield site is a 7 acre property located along the west bank of the Fox River, north of the Mason Street bridge and north of the Northern Coal boat slip.

The current land uses of the property are industrial, warehousing and vacant. In 1980, the land use was classified as open storage, wholesaling/enclosed storage, and manufacturing. Prior land uses also include industrial/manufacturing and heavy industry. The property was purchased by Northern Coal & Supply in 1928 and used for the storage and distribution of coal and salt. In 1975, the property was purchased by Fort Howard Corporation and had been used for the storage of coal. The City of Green Bay purchased the property in December 1984 as a part of the Roadway Concept Master Plan. Four underground storage tanks, containing kerosene, fuel oil, solvent and gasoline, were removed from the property in 1985.

The brownfield site is a highly desirable redevelopment site. A number of inquiries have been received from developers who are very interested in a large (7 acre), vacant riverfront site easily accessible from Broadway and Mason Streets. Remediation projects of this type will beautify the Fox River shoreline, maximize the relationship of the site to the waterfront, bring more people to the downtown area and increase our community's tax base.

Should this parcel be environmentally unsuitable for development, the property will not become privately owned and may never be placed back on the tax rolls. Creating a site with minimal environmental concerns will permit the City to market the property for redevelopment resulting in a multi-million dollar investment which will increase the property's assessed value and tax revenues to the City.

The site is presently an eye sore along the City's riverfront. Leaving the property in its present state will continue to make redevelopment of adjoining commercial and residential areas more difficult. The Broadway Concept Plan places extreme importance in the improvement of the riverfront as a key to redeveloping the Broadway Concept Plan area.

HAMMOND, IN

- West Point Industrial Park is a site consisting of approximately 70 acres of heavy industrial zoned property located immediately north of one of Hammond's largest Industrial Parks and is well suited in terms of access to transportation networks. While the property is vacant, frequent dumping is a constant problem. Dumping is not only traditional garbage, but also includes various types of industrial waste. The property is owned by the City of Hammond, located adjacent to several new light Indiana Manufacturing companies and could be marketed very easily by clearing the existing liability hurdles, along with an incentive for clean-up costs.

- Universal Auto Parts is a site that consists of approximately 22 acres of heavy industrial zoned properties and is located in the central portion of the city and is well suited for light industrial development. Contamination may be limited to automobile

related petrochemical waste, although thorough testing has not been done. The property is severely tax delinquent and could be eligible for acquisition through tax title deed.

HOUSTON, TX

Today, increasing environmental concerns and lack of incentives have compounded Houston's decentralization problems, leading to increased deterioration of the inner-city. The slightest suspicion of an environmental issue encourages companies to locate elsewhere due to lack of financing and fear of potential future liability. Currently, there are few outside incentives for inner city development, thereby discouraging the private sector from risking funds for remediation and redevelopment of a brownfield. However, the Mayor's plan to revitalize the inner-city, the Houston's EEC designation, and funding from this grant, a mechanism will be established to convert a liability into an asset. Funds targeted for brownfields would provide a catalyst for further revitalization of this area.

Over the last three years, numerous redevelopment efforts within or adjacent to the Enhanced Enterprise Community (EEC), which is a 20 square mile area located in the oldest area of the inner city, have been delayed or not fully realized due to the proximity of specific properties to potential environmental hazards. The following list constitutes several brownfield sites within or contiguous to the EEC that have delayed or negated neighborhood redevelopment efforts:

- SITE 1: This 3.5 acre site within the EEC is currently undergoing a Phase 2 assessment. A proposed 25,000 sq. ft. retail center will complement the Harrisburg-Wayside Commercial Revitalization Project. This neighborhood demonstration project is a City-sponsored retail initiative. The environmental assessment process has taken one and one-half years to date. The property is strategic in the revitalization of an entire corner that will act as a retail hub for the predominantly Hispanic neighborhood.

- SITE 2: This 4.2 acre site is within the EEC and is currently under contract by the Latino Learning Center, a local nonprofit corporation. The nonprofit is proposing a 100 unit plus senior citizen housing complex to be developed within the predominantly Hispanic neighborhood. However, historical land use data suggests the potential for groundwater and soil contamination. Negotiations over the responsibilities for testing and any subsequent remediation have stalled the project for over two years. This development is an integral part of the Second Ward Master Plan currently being formulated for adjacent neighborhoods.

- SITE 3: This 10 acre site within the EEC was originally targeted for development as single-family, affordable housing. However, remediation efforts have changed the focus of redevelopment. Currently, the site is being examined for potential retail development to provide services to the predominantly Hispanic neighborhood. This site is extremely strategic for the implementation of Second Ward Master Plan.

- SITE 4: This site is within the EEC and is comprised of two entire city blocks in a predominantly African-American neighborhood. It had been targeted by Habitat For Humanity to develop an entire subdivision of single family affordable homes. Over the last year, Habitat has rejected the site for housing development due to the perceived potential for contamination attributed to past land uses. Such uses include linen and uniform cleaning services with the potential for solvent storage and disposal. Currently, planning efforts for the site have focused on economic development initiatives (i.e. light manufacturing/warehousing). This site is strategic to the objectives of the Third Ward Master Plan and the Dowling Street Corridor Project.

- SITE 5: This 2.3 acre site is within the EEC and is currently targeted by the Shalom Zone Community Development Corporation of the Methodist Church. The local nonprofit is currently investigating the feasibility to develop the site for economic development (i.e. light manufacturing and warehousing). Parcels adjacent to the site are characterized by past land uses that are indicative of the U.S. 59 corridor. Such uses include heavy manufacturing/industrial and many abandoned sites along the corridor have not been remediated. This site is located in a predominantly African-American neighborhood.

- SITE 6: This 18.5 acre site is contiguous to the EEC and is located within a predominantly Hispanic neighborhood. The site was formerly a trucking terminal and had been targeted by developers for a potential retail center. Such a development would have complemented the Zona Rosa Commercial Revitalization Project. However, due to the need for significant remediation of the soil and groundwater, retail developers rejected the site. Instead, an adjacent truck terminal expanded its operation onto the site without any remediation.

- SITE 7: This site is comprised of one entire city block, is located in a predominantly African-American neighborhood and is contiguous to the EEC. The Freedmen's Town Association, a local nonprofit, has targeted the site for the development of single family, affordable housing. Past land use patterns suggests the potential for contamination. Currently, a Phase 2 assessment is being conducted to determine the need for any remediation.

The above sites represent opportunities for neighborhood redevelopment, but development has been delayed due to the perceived threat of environmental contamination. Each site is located in a distinct neighborhood within or adjacent to the

EEC. In each case, local nonprofit organizations are in the process of overcoming perceived environmental hazards. Furthermore, the successful redevelopment of each site will help contribute to the revitalization of surrounding neighborhoods.

Based on EPA's recent "No Further Remedial Action Planned" (NFRAP) sites list of the CERCLIS list, there are at least 15 potential brownfield properties located within the EEC. Investigation of sites included on the state suspected sites list and knowledge of contamination from the private sector should increase this number. Although the NFRAP list indicates there will be no further action by the federal government, the mere listing of these sites may have discouraged developers from investing in the area. All of these sites will be included in a review by the Land Redevelopment Committee for selection of candidate projects.

KETTERING, OH

- A dry cleaning establishment was demolished as part of a Community Development Block Grant (CDBG) Neighborhood Cleanup (cleanup costs were in excess of land value). The uncertainty of future requirements is stalling efforts to proceed with reuse of the property even though there are no environmental problems caused by the site.

KNOXVILLE, TN

- One site is a former steel fabrication plant that covers approximately 8.5 acres. It is adjacent to an Interstate Highway and has three railroad spurs entering the property. This property sits in between three neighborhoods within two miles of downtown Knoxville. The high visibility of the property from the Interstate Highway and the loss of medium- to high-paying jobs have helped create a very negative effect on the surrounding community in terms of image as well as economically.

  The major impediment to the development is the uncertainty of the amount of environmental remediation that will be necessary to clear the property as well as the issue of liability. Because the site has sat dormant for more than 15 years, there will be a substantial amount of restoration and general cleaning of the existing structure necessary for it to be usable.

  Financing for the site assessment and remediation is another major barrier to redevelopment. The purchase price that is being sought is in the neighborhood of $1 million. Add to that the assessment and testing expenses and clean up costs, the amount needed just to acquire the property could easily exceed $1.25 million, if not more.

- Another site is a former textile manufacturing plant that covers approximately 19.5 acres. It is also adjacent to an Interstate Highway and has one railroad spur entering the property. This property is approximately one mile from downtown Knoxville. Most of the surrounding property is commercially or industrially zoned so that the physical impact on any residential neighborhoods is minimal, however, the economic impact is substantial because of the jobs lost since the closing of the plant.

  Several factors impede the redevelopment of this property. The first and largest is the condition of the structures on the property, which, for the most part, would necessitate demolition before any development could take place. The second factor is to what extent the land has been contaminated. The third factor is the expense of remediation on a site bordered for approximately one-half mile by a stream that then flows through the World's Fair Park and part of the University of Tennessee. One last factor is the unwillingness of the property owner to sell, redevelop or even clean up the site except on his own terms.

LINCOLN, NE

- SW of 9th and Calvert is an area that covers approximately 50 to 100 acres now zoned for industry and commerce. Past and current use is agricultural, with the area subject to subsurface contamination by chemicals. Origin of chemicals is thought to be from a former military armory.

LOUISVILLE, KY

- The former Louisville Street Railway Complex, known as the Trolley Barn located in the City's Empowerment Zone at 1701 W. Muhammad Ali Boulevard, has been considered for several neighborhood renovation projects in the 18th Street Corridor redevelopment. On the site sits a 40,000 square foot complex of buildings which once housed both horse-drawn and mechanical trolleys. The area, in the City's Russell Neighborhood, has been designated a Significant Historical Site. The buildings would require substantial structural and exterior restoration to stabilize them. A Level 1 investigation has showen enough evidence of potential contamination that a Level 2 study is indicated, but thus far, no one has come up with the estimated $81,000 needed for the Level 2 study, much less funds for remediation and redevelopment. One proposed use for this structure is for an African-American Cultural Museum. The complex is held by a private owner who is interested in selling, but has not addressed the environmental problems on his land.

- Finzer Brothers Tobacco Works, located in the Smoketown Neighborhood of the Empowerment Zone at 419-429 Finzer Street, was most recently in use as a warehouse for Stewart Dry Goods Co. This building was constructed between 1875

and 1899. It is currently held in private ownership. The property covers half a city block, and is situated near the City's medical center complex. One of the Empowerment Zone strategies devised by the Community Board was to centralize a medical supply operation that would serve all the hospitals in the complex in such a location as the warehouse. Environmental conditions are unknown at this time.

LYNN, MA

- General Electric West Lynn Complex is a property of 23 acres, where previously, there were 25 to 27 major buildings in use. The lot is currently occupied by one building which is 67,000 sq. ft. The ground is contaminated with solvents primarily the chemical TCE. The major impediments for redevelopment include the cost of addressing the environmental concerns and the transfer of liability to potential new owners.

NIAGARA FALLS, NY

- One site is a complex of buildings known as the Hysen Property, located at the intersection of Buffalo, Portage and Adams Avenues. The property is divided into three parcels. The main building complex, Building "44" behind Adams Avenue, and Parcel "3", a one acre parking lot across Buffalo Avenue.

  The first building was constructed in 1926 and originally occupied by Acheson Graphite. Known as the Dobbie Foundry, buildings were added throughout the years, and the sole activity at the facility consisted of graphite production. In 1982, the facility was closed due to new technologies.

  Hysen Supplies, an industrial supplier of pipes, valves and fittings, acquired the property soon after. Their use of the property consisted of warehouse and storage of those pipes, valves and fittings. They occupied the site from 1982-1986 and eventually filed for bankruptcy.

  Two buildings have been renovated. The remaining buildings are in fair condition. The large coke-storage silos and several other structures at the site have no apparent value other than the specific purpose for which they were constructed.

  Environmental concerns include: heavy dusts and residence from past industrial manufacturing, and underground storage tank exists on the site, a large accumulation of pigeon feces in several locations, several existing transformers, several small acres of apparently contaminated soils, and large amounts of asbestos insulation in the buildings.

Remediation at the site would consist of selected demolition, stabilization of walls and other structural work as needed, upgrading utility service as needed, cleaning of buildings, removal of contaminated soils, removal of the underground storage tank, removal of obsolete equipment and transformers, and removal of all asbestos on-site. The property is in arrears on taxes. Since remediation costs are prohibitive to the City at this time, foreclosure has been stalled and the property is not producing tax benefits.

- Another site is comprised of vacant land and abandoned buildings located at the intersection of Highland and Beech Avenues. The 27 acres of land cannot be marketed in its present condition and is not economically feasible to be privately redeveloped. The City of Niagara Falls obtained this property, and any environmental concerns, through foreclosure.

  One substantial vacant building was demolished on the site several years ago. However, a vacant 200,000+ square feet building and an underground garage, which was attached to the demolished building is to remain on the site. The vacant building, built in 1912, is 2 to 3 stories tall and is constructed of brick, wood, concrete and asphalt/tar roof materials. The building was formerly a Moore Business Products factory and warehouse and has since been occupied by a number of warehousing concerns over the years.

  The building appears to be structurally sound, though its layout may preclude its effective reuse. Demolition of this building may be the most beneficial to the city as clean, vacant land is scarce in Niagara Falls. An environmental study of the site is necessary as asbestos and ground contamination are expected to be present.

  The cost to remove the underground ramp/garage was financially prohibitive due to its thick concrete construction. Though occupying almost an acre of land, removal or renovation is not anticipated, although sealing and filling the structure may be possible. Further study of the site is necessary and cleanup costs are expected to be substantial in order to return this property to private and productive use.

NORMAL, IL

- Ft. Jesse Road - A former railroad property that is about 1/2 acre and probably contaminated by railroad spillage or dumping.

- Highway 51 North is the site of a former truck stop. Gas and diesel fuel leaks have contaminated the 7 acre site as well as the building, which has asbestos tile, etc. The building was built in the County before the property was annexed; the County has no building codes.

- South Highway 51 at Osage is a 1/2 acre site of a former gas station. The ground is contaminated and the building has deteriorated.

- A former dry cleaning business and a gas station are two sites totalling 1/2 acre. The gas station has had fuel leaks and the cleaner had asbestos and perchloroethylene leaks and dumping. Both buildings are continuing to deteriorate.

- ISSCS is a former State-owned facility that housed youth who were wards of the State. A 35 acre site that has 14 unoccupied buildings that have varied degrees of problems with asbestos, fuel spills, tunnels with asbestos lined pipes, areas used as illegal dump sites, etc.

PALATINE, IL

- One site is a former Phillips Petroleum service station, a property owned by Phillips and closed about a year ago by their corporate office as part of a downsizing program. They would like to redevelop the site with a modern station but have been unable to because of limited capital. They are currently taking bids to remove the underground tanks. It is believed that the soil is contaminated, because the station site is over 35 years old. They have previously removed the above ground pumps, fenced off the property with bright orang fencing, and boarded up the building. The site is located at a primary intersection along Northwest Highway and is next to a popular Italian restaurant with insufficient off-street parking. The Village would like to see the property either redeveloped with the new station, sold or leased to the adjacent restaurant owner for parking, or sold for a new business venture. The Phillips' representative indicates that they like the site for their own use, but would be willing to consider a substantial offer to purchase.

- Another site is the former Clark Oil service station, a property leased to Clark Oil for approximately 20 years, until the lease was not renewed about four years ago. Unbeknownst to the owners, Clark's underground tanks were leaking, which was not discovered until the owners recently removed the underground tanks. The owners

tried but were unsuccessful in getting Clark Oil to clean up the site. When the tanks were removed and the contaminated soil discovered, the owners did not clean up the site at that time. They now face a major expenditure to go back and do the necessary clean-up. State financial assistance has been available for clean up in the past, but is very uncertain at the present time. The owners are considering two methods of cleaning the site, landfill and thermal. Because the extent of the clean-up is unknown and could be very significant in cost, the owners are reluctant to do anything. In the meantime, prospective purchasers have expressed interest in the property for various commercial establishments (e.g. a shoe store, and a fast food restaurant).

- Another site is a former dry cleaning establishment that was proposed to be sold for a quick oil change facility. The prospective purchasers intended to demolish the building and construct a new building on the site. They applied for and received the necessary zoning approvals from the Village for the proposed oil change facility about two years ago. Unfortunately, the proposed sale never took place. It was discovered prior to the closing that the previous tenant operator of the dry cleaning business on the property had been dumping dry cleaning fluids into the soil for years. The oil change business prospect has terminated interest in the property. The contaminated site remains with an unoccupied building and a neglected appearance. This property is located across the street from the former Clark Oil Service Station and it likewise is a desirable location for a new commercial venture. Recent attempts to contact the owner about his intentions regarding this property have been unsuccessful.

PROVIDENCE, RI

In 1960, 50 percent of the total employment of the City of Providence was in manufacturing. That figure dropped to less than 20 percent of total employment in 1992 in the City of 17,506 jobs. That decline is a result of the closing of many of the large manufacturing plants, such as the 350,000 sq. ft. Gorham Silversmiths, the 450,000 sq. ft. Uniroyal Company on 21 acres or the one million sq. ft. Brown and Sharp Foundry on 40 acres. In addition, many smaller factories sit empty.

Presently, over 4 million square feet of vacant space are listed for sale or lease. This is space perceived to have potential value as a manufacturing or business location. Many more former manufacturing facilities languish with potential users reluctant to consider them, and owners unwilling to discuss a use for fear of the financial burden of environmental remediation and responsibility. Their neighborhoods are stricken with pervasive poverty and high unemployment as a large percentage of productive capacity sits idle. This includes a 17 acre parcel adjoining Providence's deep water port and adjacent to an Interstate exit. It also includes the 385,000 sq. ft. former American Tourister plant located in 25 acres of wetlands along the West River and the 5.79 acre Riverside Mill site.

- After several changes in ownership and through complex legal proceedings, the City of Providence in 1992 took title to the Gorham Manufacturing Site. This 45 building, 37 acre site is bordered by 5.3 acres of wetlands over to the North and West, a residential area to the South and railroad tracts to the East. The site had been used for the manufacture of silver, silver-plate and bronze products since 1890 and was operated by Testron-Gorham from 1967 to 1986. As with many industrial sites, no conscious effort was made to protect the environment and as a result there is both soil and groundwater contamination.

  The City has undertaken a comprehensive assessment of all environmental issues in connection with the site. Recently, the City negotiated an agreement with Textron, Inc. whereby Textron would assume the responsibility for cleaning the soil, ground water and asbestos contamination. The work is presently underway.

  As part of developing the Gorham site into a prime industrial park in the heart of the city with public parkland around the pond, the City is working with the Providence Preservation Society to determine which buildings will remain on the site. After demolition of some of the existing buildings and redesigning and upgrading the infrastructure of the site including utilities and road, the lots and buildings will be sold.

  Impediments to the final development of this site are a lack of funds for demolition and infrastructure. An interim plan now being considered is the long term leasing, at a greatly reduced rent, of the more suitable buildings in "as is" condition. There is presently a need in Providence for large manufacturing space (up to 100,000 sq. ft.) on one floor.

- The Steer Worsted Mill was founded as a part of the Wanskuck Mills and built to manufacture worsted yarn. The mill is a long, 3-story, brick, flat-roofed structure with a projecting central tower under a peaked roof, ornamented with a cooper crescent. The most interesting feature of this rather typical mill is the short tower with brick pilasters and bulls-eye windows. Attached to the main mill is a wool storehouse and dyehouse. The buildings total 385,000 sq. ft. and are situated in 25 acres of wetlands along the West River.

  The Steer Mill made its first shipment of worsted yarn in 1884. By 1930, the mill contained 39 worsted cards, 28 combs and more than 10,000 spindles. At this time the mill employed 395 workers. The Steer Mill was closed in the 1950s, when the Wanskuck Company sold all of its textile mills; it was next occupied by American Tourister, a luggage manufacturer. It is completely empty at present. The site located in a neighborhood where 15.7 percent of the population is below the poverty level and the unemployment rate is 10.6 percent.

RACINE, WI

The City of Racine is an older Midwest industrial urban city of about 85,000 people located on the west shore of Lake Michigan between Milwaukee and Chicago. The City comprises about 15 square miles, little of which is vacant land. With little vacant land for new development, growth has been occurring through the redevelopment of land, most of which was developed before the 1930s.

The City has very little information about the extent of contamination of the possible brownfield sites primarily because owners of property are reluctant to have studies made for fear of exposing a problem and thus, financial exposure. Until the brownfield sites are remediated and sold for re-use, the potential tax base is lost, employment will not increase, and the vacant sites and buildings will continue to be a blighting influence on the surrounding neighborhood.

- A 1 acre site at 2720 Golf Avenue has buried oil tanks.
- A 2 acre site at 1402 Durand Avenue is unable to be sold because of contamination from above ground fuel tanks.
- A 1 acre site at 1501 Clark Street will cost over $150,000 to clean up.

RICHMOND, CA

- Fass Metals is a 3 acre site located at 818 Gertrude Avenue. The soils at the Fass Metal Sites contain polychlorinated bephenyls (PCB's), a group of chemical known to cause cancer. Contamination is perceived to be from spills which occurred when the company broke apart electrical transformers to recover and recycle the copper wires.

  Fass Metal Sites is undergoing remediation as of April 1995. Cal. EPA is treating the groundwater through a treatment system to filter out PCB's, capping the site with clay and concrete to prevent human contact with the contaminated soil and prevent rainwater from seeping into the contaminated soil, etc. This site gives rise to public health and environmental concerns.

- The former Witco facility is located at 850 Morton Avenue and is a site of approximately 8 acres. The site currently consists of empty warehouses, unused lots, and administration offices. Located in a mixed industrial and residential area. Past industrial activities included production of chemicals related to making plastics and an active ingredient in face creams used for acne treatment. Various wastes, including an alkaline waste water collected in ponds at the site. The facility received stored and treated hazardous waste in the early 1980s. The type of contamination includes soil and groundwater contamination (i.e., chlorinated solvents - volatile organic chemicals used as solvent or to produce other chemicals). This site gives rise to public health and environmental concerns as well as a loss of tax revenue to the city.

ROCHESTER, NY

- One brownfield site example includes the 230 acre Emerson Street Landfill site, a former municipal ash and refuse dump that was partially redeveloped into an industrial park in the late 1970s and early 1980s. Continued redevelopment of the site has been severely hampered by the stigma associated with the landfill, liability concerns, the listing of the site on the New York State Department of Environmental Conservation registry of inactive hazardous waste disposal sites, and cautious lending policies by local banks. The site is an important source of vacant land suitable for industrial redevelopment. The City of Rochester has completed a four year program of investigation and targeted a cleanup of the landfill. Twenty five acres of undeveloped land of the former landfill are now considered safe for redevelopment. An additional 25 acres may also be appropriate for some types of redevelopment after additional environmental testing is performed. Industrial redevelopment of this vacant land would generate over $750,000 in tax revenues.

- Another brownfield is on portions of the Erie Canal Industrial Park located just northwest of downtown Rochester. The City assembled this land in the early 1980s with the intention of industrial redevelopment and generation of jobs for area residents. Approximately 24 acres of this site remain underdeveloped due, in part, to environmental problems caused by previous business owners and operators (junkyards, service stations, and metal fabrication). Soil and groundwater contamination is present in various areas of the site. Several recent redevelopment opportunities have failed as a result of the stigma associated with contaminated sites, liability concerns, and the inability of the City to provide a remediated site within the potential developers construction schedule. The City of Rochester has identified funding for site cleanup and is addressing this site through its National Brownfield Pilot Project with the U.S. Environmental Protection Agency. Redevelopment should result in approximately $350,000 annually in new taxes in addition to job creation and retention.

  Many other privately owned brownfield sites exist in Rochester, and the City is establishing a pilot revolving fund to stimulate the environmental characterization needed to redevelop some of these properties.

ST. LOUIS, MO

- Dr. Martin Luther King Business Park is a 26 acre industrial part, assembled by the Planned Industrial Expansion Authority, a public agency. The previous uses, gas stations, dry cleaners, plating companies, pharmaceutical company, ect., present a $2.5 million demolition and environmental remediation challenge.

The Dr. Martin Luther King Business Park is the St. Louis Brownfield Pilot Project. The business park has attracted two new companies, and allowed a third to expand. The businesses represent about 70 new jobs, and retention of another 50 full time and 75 part time jobs.

The businesses are able to economically reuse the land because of the Brownfield Tax Credits, tax abatement, Enterprise Zone Tax Credits and realistic clean-up standards, based on the property's reuse.

- The Continental Building is a 22 story art deco vacant office building, adjoining St. Louis University's complex, and within the Grand Center Cultural District. The building has $1.5 million of asbestos remediation before the property can be renovated.

  Environmental Assets Corporation is exploring the redevelopment of the site as office space, with the upper floors being renovated as apartments. The Brownfield Tax Credits will be used to offset the environmental remediation costs and the tax abatement and historic tax credits will help subsidize the renovation. The developer estimates 200+ office jobs will be attracted to the renovated landmark building.

- Carondelt Coke is an abandoned 40 acre coal gasification and coke producing facility. The property has three previous owners, all still in business, one being Laclede Gas, the areas natural gas provider. The property was abandoned to the Land Reutilization Authority after the last company had not paid $500,000 in property taxes.

  Laclede Gas has agreed to do preliminary testing; LRA has selected a consultant and MDNR is watching the progress of this project.

  The site is highly desirable as an industrial site; it has 1000 linear feet of Mississippi shoreline, with 8 docking coves, is rail served and is a mile from a major highway. The site is adjacent to a new 750,000 square foot Borden pasta plant.

  Once the contamination is known, a remediation plan, based on a redevelopment plan, can be prepared and a user sought. The user can take advantage of the credits and abatements discussed earlier. The site can easily generate 100-200 jobs.

SAN FRANCISCO, CA

- Parcel E in the Hunters Point Shipyard is a 135 acre property located in the South Bayshore area of San Francisco. The Hunters Point Shipyard is under jurisdiction of the U.S. Navy although there are plans to start transferring other parcels in the Shipyard to the City later this year under the base closure program. Parcel E is thought to be highly contaminated and is a Superfund site, as is the entire Shipyard

area. Parcel E, formerly used by the U.S. Navy, is currently vacant with some buildings on the site and offers water access. Parcel E offers very attractive terms and is ideally suited for a private industry partnership with the U.S. Navy. Parcel E is currently under consideration by an Australian paper recycling company hoping to open a West Coast location. The company is a 100 percent waste paper recycling operation, producing corrugated boxes and limeboard estimated to employ 530 people. Parcel E is an excellent example of a brownfield site that would bring the community jobs if the environmental cleanup could be performed in a timely manner.

- The Western Pacific site is one of five multi-acre brownfield sites owned by the Port of San Francisco. The Western Pacific site is a 30 acre parcel that was acquired by the Catellus land development company for the Port in exchange for development of other Port property. The site is no longer needed for maritime uses and is ideally suited to light and medium industrial or research and development park. The vacant site has water access and rail access and was formerly a rail yard. The site is thought to have some contamination through rail yard dumpings but Catellus has agreed to cover some remediation costs. A recent proposal for a cogeneration power plant nearby would provide an inexpensive energy source. The Western Pacific site is an ideal brownfield site since some private cleanup money has already been assured.

SALT LAKE CITY, UT

- The Gateway Project Area served as a railroad switching yard for over 100 years. It has become the dividing line between the downtown business community and a less desirable manufacturing/industrial area.

  Major impediments to redevelopment include moving the train tracks and cleaning up whatever environmental contamination has occurred. Relocating four large businesses which use rail may also require substantial efforts. Redevelopment of this area offer the potential to expand our downtown community and include housing, office, educational facilities and museums opportunities.

TACOMA, WA

- The Thea Foss Waterway is a 1.5 mile waterway adjacent to Tacoma's downtown core. The Thea Foss Waterway was historically the hub of industrial and maritime industry. As businesses and industries closed or relocated, they left a legacy of soil and sediment contamination. In 1981, Thea Foss Waterway was included as part of the Commencement Bay/Nearshore Tideflats Superfund area. Many of the sites in the study area require cleanup under the State of Washington's Model Toxic Control Act requirements. The risks associated with redeveloping contaminated properties has driven prospective development outside of the City to undeveloped areas. The west

side of the waterway is vacant or has significantly under utilized buildings. It is over 40 acres in area and primarily publicly owned.

Tacoma has made major commitments through property acquisition, long range planning projects, environmental studies and coordinated agreements with regulatory agencies.

WILLIAMSPORT, PA

- One site is a property where the company went out of business. Uncontaminated areas had been subdivided and sold to be developed as privately owned and operated dormitories for the neighboring college. If this area were cleaned up, the site could be used for this purpose, or the adjacent light manufacturing firm could utilize the site for expansion of its facilities.

YORK, PA

- The rail corridor consists of approximately 400 acres of primarily vacant industrial facilities. The majority of the structures are multi-story built circa 1900. The current assessed value of the corridor including buildings is an average of $101,530 per acre compared to an average of $206,666 per acre at the new city industrial park ("greenfield" development). Most of the properties along the corridor are suspected of having environmental problems of varying degrees. The fear of such has greatly staggered out ability to attract new users to these sites. This City is hopeful that with the cooperation of DEP, and liability protection provided through Pennsylvania's new "brownfields" legislation, we will be able to remove some of the uncertainties associated with these sites and attract new development.

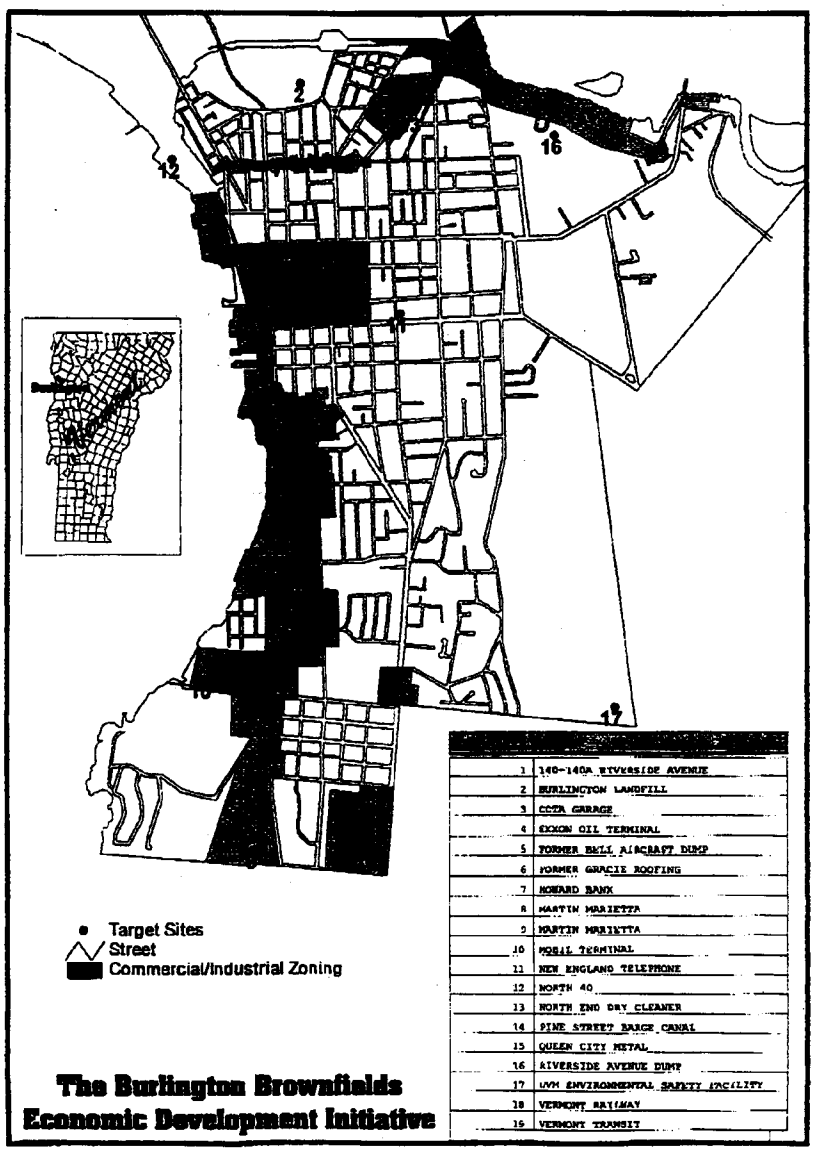
YUMA, AZ

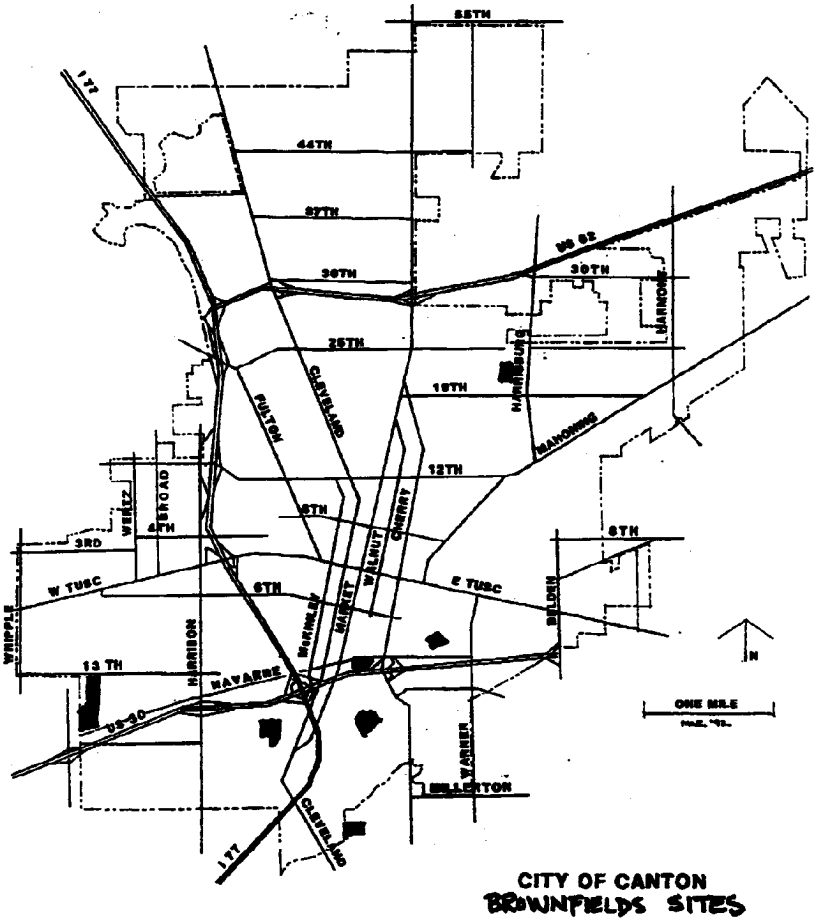
- A portion of downtown Yuma, Arizona, informally known as the Giss Parkway Project (Giss Project) containing 33 separate parcel numbers; with a total aggregate size of approximately 34.92 acres. A large portion of the Giss Project has been operated by the Southern Pacific Railroad throughout the recent history of City of Yuma. The Giss Project is bordered to the west by South Madison Avenue, Giss Parkway to the north, East Fifth Street to the south and the I-80 corridor to the east.

  This Giss Project is located within an incorporated commercial/residential area of Yuma, Arizona. The Southern Pacific Railroad (SP) controls the largest of the Giss Project parcels with two large parcels on the west side of the project and a third

parcel on the east. The smaller parcels included in the project contain storage yards, truck maintenance facilities, a cardlock automobile fueling station, several residences, gift store, and various industrial structures. A known leaking underground storage tank site (LUST Site) is located at 439 S. Gila Street, at the former CoCa-Cola distribution plant. Access to the properties is via Giss Parkway from the north and Gila Street Maiden Lane and Main Street which run north and sound from Giss Parkway.

The surface runoff is to the storm drains located on the surrounding streets. The northern boundary of the Giss Project is located approximately 2000 feet to the south of the Colorado River. The Colorado River represents the major hydrologic groundwater control in the area.


Target Sites
Street
Commercial/Industrial Zoning
The Burlington Brownfields
Economic Development Initiative
1 140-140A RIVERSIDE AVENUE
2 BURLINGTON LANDFILL
3 CCTA GARAGE
4 EXXON OIL TERMINAL
5 FORMER BELL AIRCRAFT DUMP
6 FORMER GRACIE ROOFING
7 HOWARD BANK
8 MARTIN MARIETTA
9 MARTIN MARIETTA
10 MOBIL TERMINAL
11 NEW ENGLAND TELEPHONE
12 NORTH 40
13 NORTH END DRY CLEANER
14 PINE STREET BARGE CANAL
15 QUEEN CITY METAL
16 RIVERSIDE AVENUE DUMP
17 UVM ENVIRONMENTAL SAFETY FACILITY
18 VERMONT RAILWAY
19 VERMONT TRANSIT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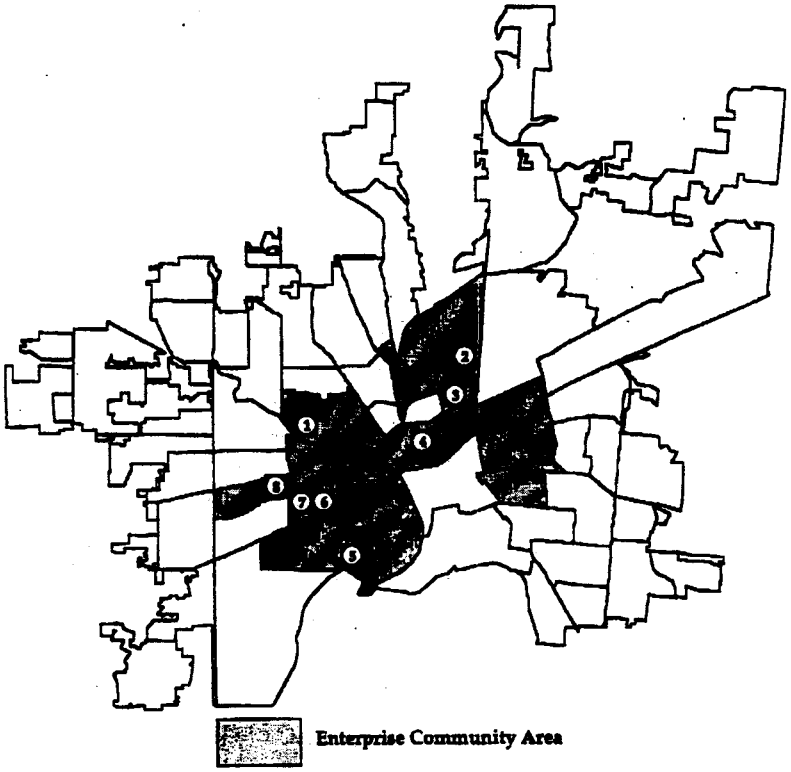
BROWNFIELDS SITES

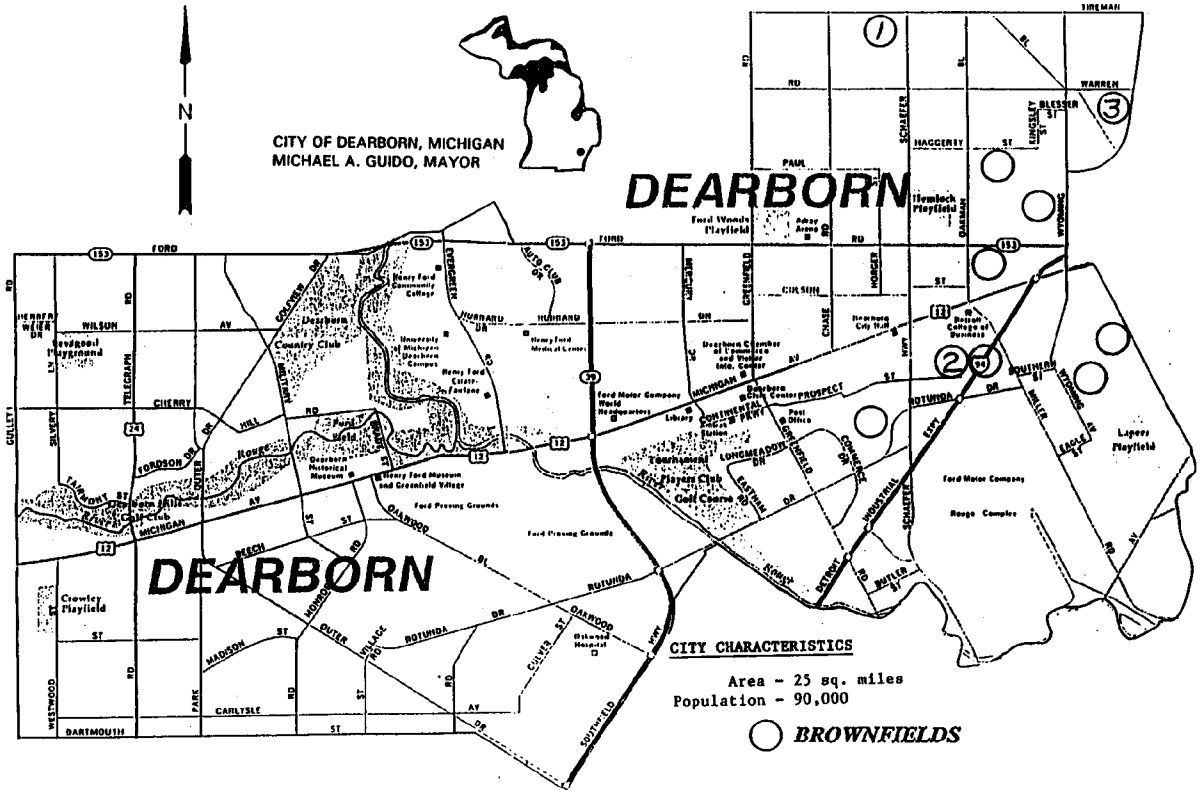
"Brownfield" Sites



1. Dayton Tire & Rubber: 37 acres
2. 300 Kiser Street: 5 acres
3. GH&R Foundry: 9 acres
4. Lazarus Dept. Store: 1 acre
5. Dayton Walther: 11 acres
6. Kuhn's Foundry: 10 acres
7. Dayton Press: 25 acres
8. 327 S. Kilmer: 2 acres

City of Dayton
Department of Planning
Office of Comprehensive Planning
March 1, 1995 mao

REVISED 1/17/96



ELKHART URBANIZED AREA POTENTIAL GROUNDWATER CONTAMINATION SITES

MUNICIPAL/COMMUNITY WELLFIELDS

6 ELKHART OAKWOOD STREET WELLFIELD	10 SUNNYSIDE UTIL. SHORLINE
7 NORTH MAIN STREET WELLFIELD	11 SUNNYSIDE UTILITIES-CL. PARK
8 ELKHART MOBILE HOME PARK	12 CEDAR GREEN MOBILE HOME PARK
9 HUBBARD HILL SERVICE	13 ELKHART MAINTENANCE WELLFIELD
13 SHAMPAGNE MOBILE HOME PARK	20 ELKHART SOUTH WELLFIELD

NON-COMMUNITY/NON TRANSIENT WELLFIELDS

8 JAMISON SCHOOLS	19 LITTLE LAMB DAY CARE
10 BARLEY HOLDEN ELEMENTARY	20 ENVIRONMENTAL TEST SYSTEMS
11 DE-SOM ELEMENTARY	21 ERI MEDICAL INC
12 OSWEGO SEMINARY	30 SPALDING CORPORATION
14 CLEVELAND ELEMENTARY	31 E-MART
15 [illegible]	40 ACADEMY CORPORATION
17 OSWEGO HALL	45 PARKWAY HOMES
18 ELK CHURCH DAYNAP SCHOOL	47 YOUR ELEMENTARY SCHOOL

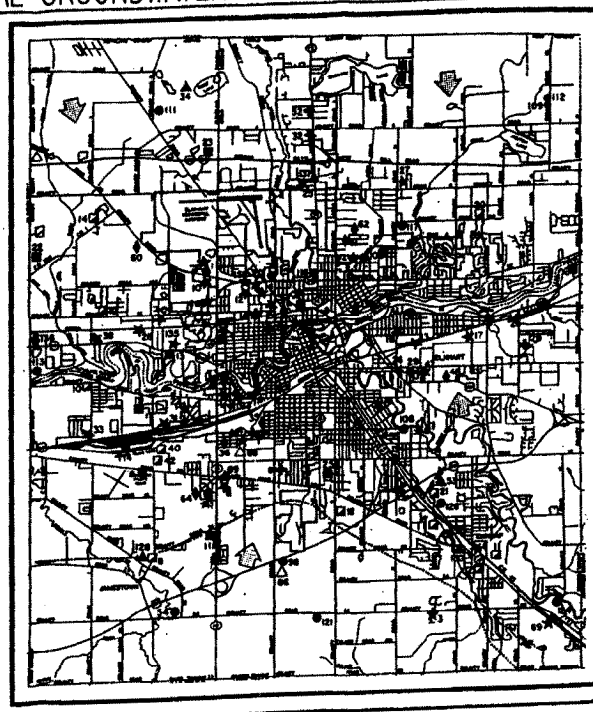
POTENTIAL GROUNDWATER CONTAMINATION SITES

1 OLD CITY LANDFILL	47 SUPER SAVE
2 EAST JACKSON ELKS AREA	48 DAVIS METALS
3 DOUGLAS SUBDIVISION	50 WOW-RED-O-MART
4 OAKWOOD STREET AREA	53 PLUMPROSE
5 NORTH MAIN STREET WELLFIELD	54 SHERWOOD SWAMP
6 SHELLAND INCHAIC	56 PRAIRIEVIEW-LUSHER OPEN DUMP
7 REDHEL, INC	60 TOM'S AUTO SALVAGE INC.
8 CONTAINMENT, INC. AREA	61 NORTHWEST AUTO SALVAGE
9 FRANKLIN-NORMAN-ST JOE RIVER	62 NICHOLS TOWING
10 ELKHART SCHOOL TRANSPO CTR	63 CEP'S AUTO PARTS AND SALVAGE
12 ELKHART PRODUCTS INC	64 SCHAFER SALVAGE
13 SHERWILL LABORATORIES	66 WS33 AND CR39
14 VALES LABORATORIES	72 ELKHART SWMP
15 ADAMS & MCCLURE LTD-VALES	80 FIELDING INC.
16 STS CORPORATION	81 FIELDING INC.
17 SHERWILL-SHERWIN RD AREA	90 COUNTY SALT PILE
18 SUPERIOR-SHAFFER ROAD AREA	92 ELKHART CITY SALT PILE
19 NORTH-DELAWARE STREET AREA	93 STATE HIGHWAY DEPT SALT PILE
20 PAR INDUSTRIES	93 INTERSTATE 80/90 SALT PILE
21 LAURIE-PLUM STREET AREA	97 GENERAL STREET DEPT SALT
22 LA RUE-ELKHART ROAD AREA	98 COUNTY LANDFILL
23 WEST NORMAL AVENUE AREA	100 FORMER OSCELA TWNSHP LANDFILL
24 SHERWILL INCHAIC	108 FORMER ELKHART CITY LANDFILL
25 CASSOPOLIS STREET AREA	109 FORMER OSCELA TWNSHP LANDFILL
26 OSWEGO AVENUE AREA	111 FORMER ELKHART CITY LANDFILL
27 OSCELA ELEMENTARY SCHOOL	112 FORMER DAVIS LANDFILL
28 VANDERBURG TOOL COMPANY	113 FORMER ELKHART TWNSHP LANDFILL
29 OSWEGO STREET AREA	114 FORMER VIRGINIA TWNSHP YARDS
30 SHERWOOD STREET SWMP	115 FORMER OSCELA TWNSHP LANDFILL
31 GENERAL GAS	116 FORMER OSCELA TWNSHP LANDFILL
32 AMERICAN STANLEY SUPPLY	117 FORMER OSCELA TWNSHP LANDFILL
33 CITY & WS33 AREA	121 EARTHWORKS INC.
34 ELKHART CITY SWMP NAPIER LOP	124 FORMER LANDFILL
35 STURGIS GRAIN & METAL, INC.	130 WARNER WRECKING CO.
36 JOHNSON'S AUTO SERVICE, INC.	136 JAMISON SCHOOLS SWMP
37 BAR MACK & CO., INC	137 WARNERSHOP
38 WS30 NEXT SWMP	138 OSWEGO MONOCHROM SWMP
39 PRIMARIC STREET	139 BUD GAS
40 PHILLIPS STREET	140 7-ELEVEN
42 SR10-LUSHER INCHAIC	141 K & K SHACK SALES
43 17TH STREET, LUSHER	142 WOW-RED-O-MART
44 NEW NORMAL FRANKLIN AVE	143 CONTINENTAL INDUSTRIES
45 FORMERLY COAST AV	144 CR CSWM
46 VOSER OIL	146 INDIANAPOLIS OF NEW PARIS

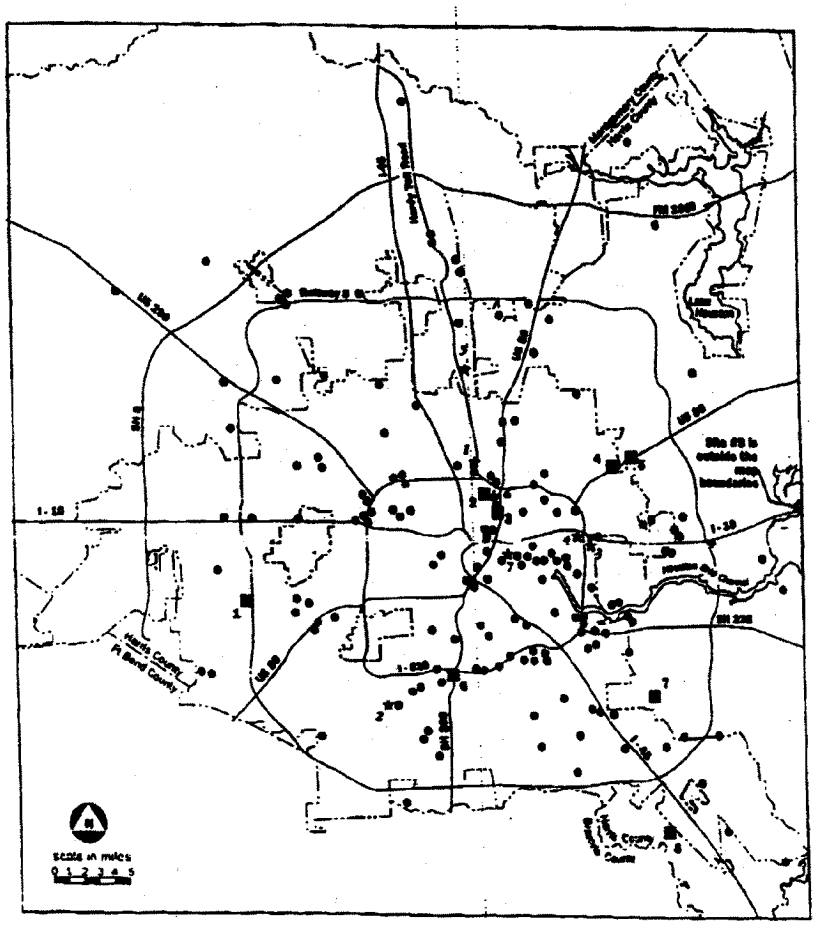
N
W E
S

LEGEND

- MUNICIPAL/COMMUNITY WELLFIELDS
- NON-COMMUNITY/NONTRANSIENT WELLFIELDS
- LANDFILL
- DUMPSITE
- DEEP WELL INJECTION
- KNOWN GROUNDWATER CONTAMINATION
- WASTE TREATMENT, SLUDGE POND, WASTE LAGOON
- LEAKING UNDERGROUND STORAGE TANK -- LUST
- SALT STORAGE
- AUTO/JUNK/SCRAP
- BULK STORAGE
- MINING OPERATIONS
- PROBABLE NATURAL GROUNDWATER FLOW



Potential Hazardous Waste Sites; Houston, August, 1992

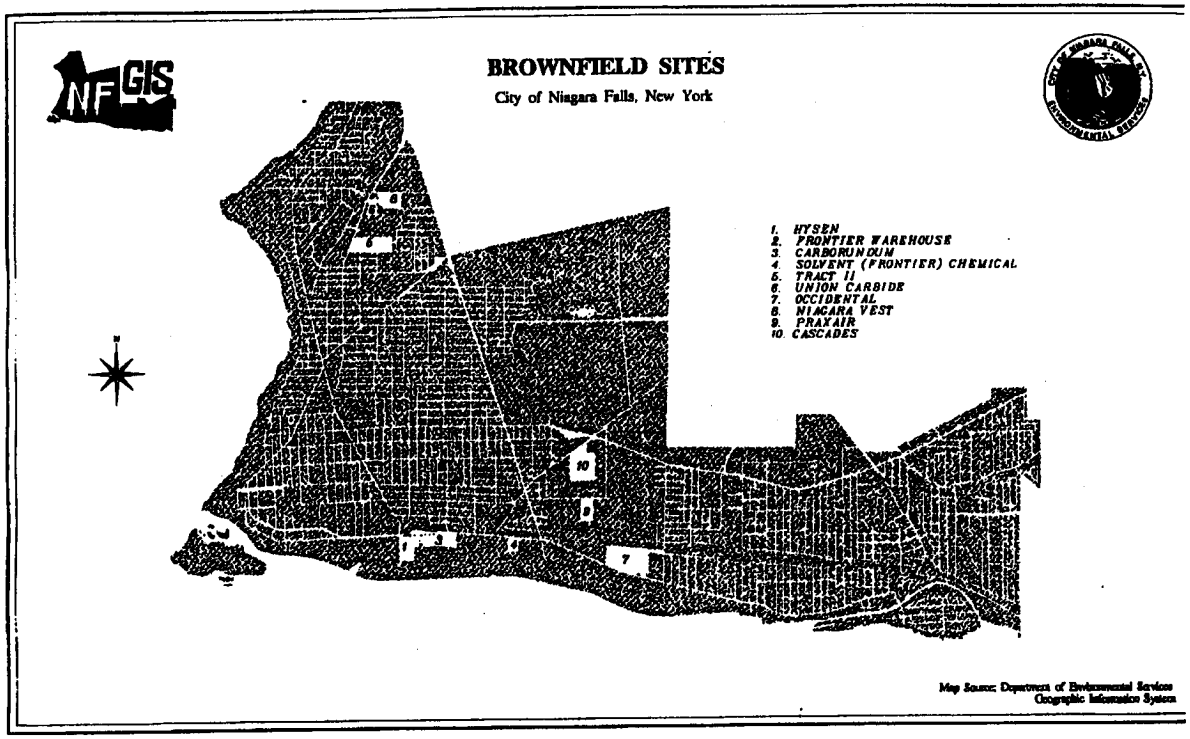


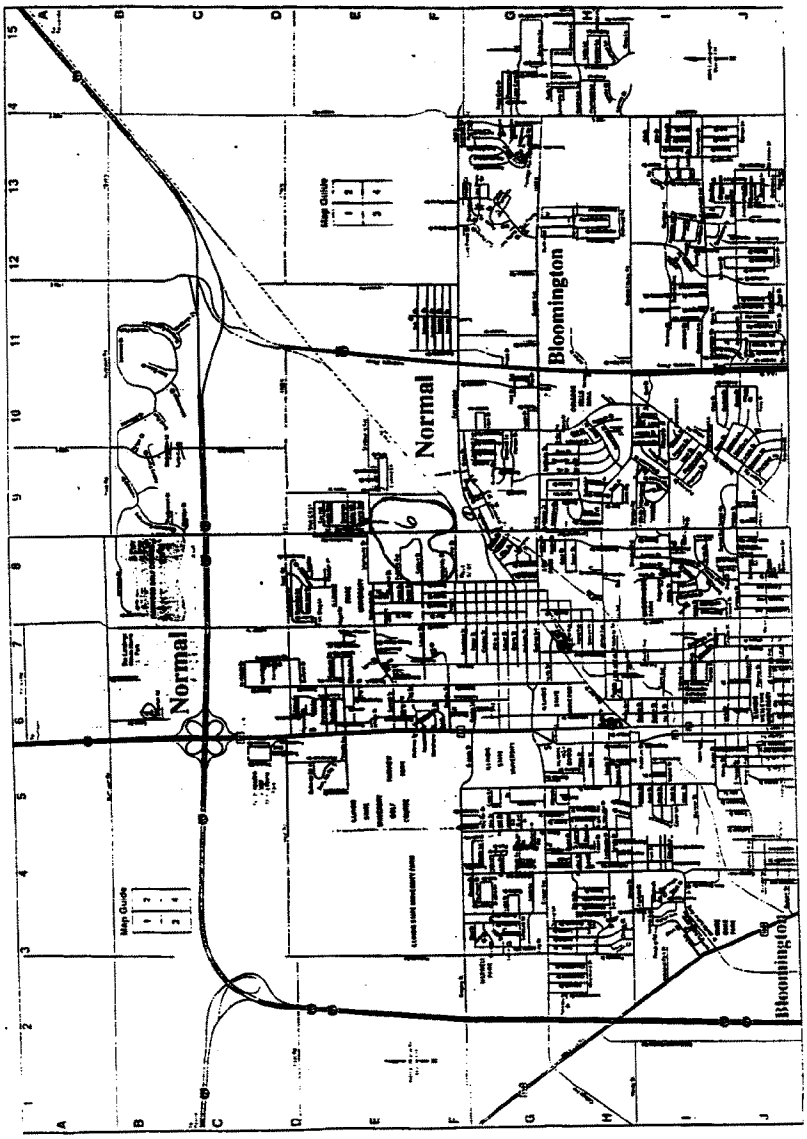
Legend

Data Source: Superfund Management Branch, United States Environmental Protection Agency

- Other potential hazardous waste sites
- Federal Superfund sites
- State Superfund sites
- Houston city limits
- Harris County

Note: Potential hazardous waste sites are reported to EPA for investigation under CERCLA - see table bar page V10 for Superfund sites


NF GIS
BROWNFIELD SITES
City of Niagara Falls, New York
1. HYSEN
2. FRONTIER WAREHOUSE
3. CARBORUNDUM
4. SOLVENT (FRONTIER) CHEMICAL
5. TRACT II
6. UNION CARBIDE
7. OCCIDENTAL
8. NIAGARA VEST
9. PRAXAIR
10. CASCADES
Map Source: Department of Environmental Services
Geographic Information System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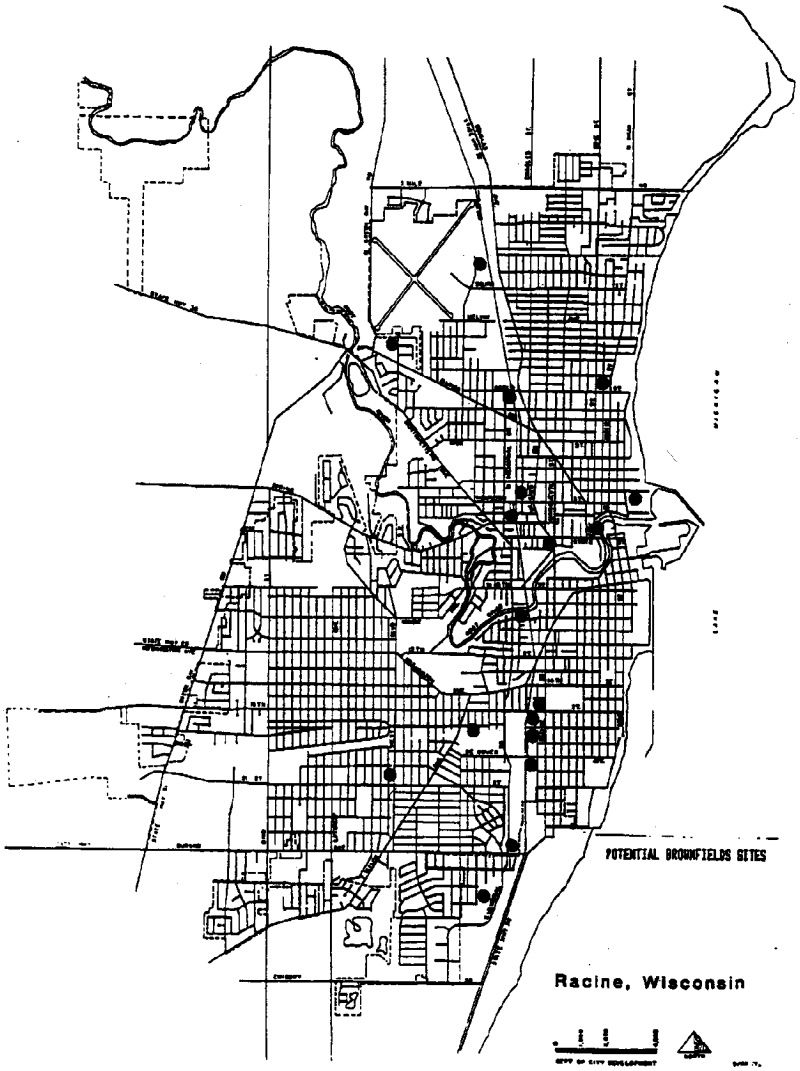
POTENTIAL BROWNFIELDS SITES
Racine, Wisconsin

THE UNITED STATES CONFERENCE OF MAYORS

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Mayor of Winston-Salem
Executive Director:
J. THOMAS COCHRAN

December 21, 1995

The Honorable William J. Clinton
President
The White House
Washington, D.C. 20500

Dear Mr. President,

On behalf of The U.S. Conference of Mayors, we are writing to request that you include funds in your FY 97 budget for creation of a major, federal brownfields redevelopment program. Such a program would complement and expand EPA's current Brownfields Initiative that Administrator Browner announced last year at our Winter Meeting.

We recommend that a comprehensive federal brownfield initiative include the following:

- funds for preparation and implementation of brownfield redevelopment strategies;
- capitalization of local revolving loan funds for cleanup activities;
- cleanup standards based on future end-use;
- targeted remediation tax credits; and
- liability protections for lenders and redevelopers of brownfield sites.

A national brownfield redevelopment strategy would help cities, both large and small, attract private investment, increase our local tax base, create jobs and aid workforce development efforts, use our existing infrastructure more efficiently, and preserve farmland and forests.

Superfund and related efforts have been successful in dramatically reducing hazardous chemical use by business and industry. An unintended consequence of that program, however, has been the creation of hundreds of thousands of brownfield sites where the private sector has been discouraged from investing in redevelopment activities due to fear of liability claims.

We, therefore, urge you to work with us to encourage Congress to enact comprehensive brownfield redevelopment

legislation that would include funding to local governments, tax incentives, and essential liability reforms that provide protection for redevelopers, financial institutions, and innocent third-party purchasers who invest in brownfield sites.

Such a comprehensive brownfield program will help cities overcome the stigma of 15 years of federal liability policy that has deterred economic development within communities nationwide. The blight of abandoned, contaminated land should not be allowed to continue to erode our neighborhoods. We believe the federal government should share in the responsibility of returning these brownfield sites to productive economic reuse. This need for a partnership with the federal government is further underscored by the fact that many communities hold title to contaminated land through tax foreclosures and condemnation--land which they did not pollute and cannot redevelop because of existing Superfund law.

We look forward to working with you and Congress in addressing Superfund reauthorization in 1996, including reform of its overall liability structure. To that end, we support extension of the Superfund taxes currently under negotiation in the budget talks to ensure that EPA can continue cleanups of hazardous waste sites and respond to emergency chemical spills.

By developing a creative and comprehensive brownfields program that includes Superfund liability reform, remediation tax credits and federal assistance for redevelopment of brownfields, we can capture one of the most exciting opportunities in this decade to encourage both environmental and economic development in our nation's cities.

Sincerely

Norman Rice
Mayor of Seattle
President

Freeman R. Bosley, Jr.
Mayor of St. Louis
Chair
USCM Brownfields Task Force

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STATEMENT OF

MAYOR FREEMAN R. BOSLEY, JR.

ON BEHALF OF THE

THE UNITED STATES CONFERENCE OF MAYORS

ON

BROWNFIELDS REDEVELOPMENT

BEFORE THE

SUBCOMMITTEE ON COMMERCE, TRADE & HAZARDOUS MATERIALS

HOUSE COMMERCE COMMITTEE

U.S. HOUSE OF REPRESENTATIVES

MARCH 16, 1995

Good morning. Mr. Chairman and members of the Subcommittee, I am Freeman Bosley, Mayor of the City of St. Louis, and Co-Chair of The United States Conference of Mayors Brownfields Task Force. My colleague, Mayor Richard Vinroot of Charlotte, North Carolina, serves with me as co-chair of the Task Force. I am appearing on behalf of The United States Conference of Mayors, which represents the more than 1,000 cities nationally with populations over 30,000. It is an honor and privilege to appear before you today on behalf of the nation's mayors and cities.

Before I begin, Mr. Chairman, let me thank Administrator Browner for coming to The U.S. Conference of Mayors Winter Meeting this last January to unveil her Agency's brownfields agenda. We believe that the EPA's Action Agenda to address the barriers to brownfield redevelopment is a good first step and we support it. But we also agree with critics of the Superfund program that Congress never intended Superfund to thwart the redevelopment of land and investment within the nation's cities. Unfortunately, Mr. Chairman, Superfund has done just that. We urge this Committee to develop legislation on brownfields redevelopment that can move forward as part of Superfund reform or on a stand alone basis to strike down barriers to and provide incentive for the reuse of these properties.

Almost every city, urban or suburban, has a brownfield story to tell. Last June, at the Conference of Mayors annual meeting in Portland, Oregon, I was amazed

when over 200 mayors packed the room to hear about how cities could not attract investment because of the current structure of our liability laws. These mayors were not just from center cities, but from suburban areas and smaller towns. Mr. Chairman, we had to finally call off the discussion, but I am here to tell you that we could have stayed in that room all afternoon hearing the frustration of mayors about the current system that provides only barriers to the redevelopment of our land and expansion of tax base.

So we are very pleased to testify before you this morning. We look forward to working with the Subcommittee throughout the year as you struggle with how best to reform the Superfund program. Today, we have been asked to testify on the issue of brownfields and we will limit our remarks to that issue, but let me say that we also are extremely interested in other Superfund reform issues such as limiting the liability for generators and transporters of municipal solid waste, local government owners and operators of Superfund landfills, and making sure that known polluters of sites are required to pay for clean ups, as opposed to taxpayers who were not responsible for the pollution.

Mr. Chairman, let me speak to you about my own city, St. Louis, and how the brownfields issue negatively impacts us.

St. Louis, like many other cities, has experienced dramatic disinvestment as a result of the environmental contamination of its industrial sites, commonly known as brownfields. The St. Louis experience is shared by many cities across the nation and within your districts. Right now, there is no way the City of

St. Louis can attract businesses to abandoned industrial sites; the existing clean-up standards and related costs exceed the property's value and there are no compensating incentives. Federally imposed policies and regulations must be changed to reflect the overwhelming challenge that older industrial cities face and begin to provide the relief and resources we need to meet the challenge of recreating our cities.

At the turn of the century, St. Louis was a city of 850,000 residents. St. Louisans lived in 2- and 3-story brick homes and apartments built with style, craftsmanship and great beauty. We are now a city of 370,000 residents. We have lost almost half of our residents and jobs. Through hard work and reinvestment, we are rebuilding our city. But our efforts to truly rebuild are stymied by an atmosphere of rules, regulations, opinions and lack of incentives or resources that make reinvestment nearly impossible.

Many older cities like St. Louis have been fully built-out, and then abandoned by businesses as population shifted to the suburbs. What was left behind was contaminated property that no one wants to take responsibility for. Today and in the future, suburban and rural areas will find that this phenomenon is not unique to urban areas, and is a pervasive problem in the reuse of nearly all industrial sites. This will be the case as long as greenfields, or virgin land development opportunities, remain available and relatively inexpensive because of existing barriers to brownfield redevelopment. Speaker Gingrich made this point very forcefully when he met with the mayors in January.

The City of St. Louis was built for a 19th to early 20th century society. Residents walked or took public transportation to work, to shop and to relax at one of our 104 parks. When the automobile arrived, the city saw hundreds of gas stations go up, seemingly on every street corner.

Now we are left with the thousands of sites that once were the properties where people lived or worked. These sites must be available to the 21st century City of St. Louis or there will be no St. Louis. When I look at what it costs to reclaim the sites and consolidate them so reuse can become our future, I wonder if large sections of the city will remain a vast wasteland.

Let me share with you the following series of maps that depict the disinvestment within the City of St. Louis. The red dots represent 5,000 people moving and black dots represent 5,000 people added to an area. The maps graphically depict our residents and businesses leaving for the greenfields of the surrounding counties. The 1940-50 map shows how World War II temporarily reversed this trend.

The 1950-80 maps show the results of the federal housing policies, construction of interstate highways, the construction of high density public housing, and the change from an industrial economy to an information, distribution and retail economy. Federal policies have helped to create disinvestment in cities. At the same time, they prevent the brownfields, which have been polluted, from being reclaimed or neutralized.

The next set of graphs show the growth of city owned properties. In 1972, the land reutilization authority law was passed by the State of Missouri and adopted by the City of St. Louis. This law allows for a cost effective procedure for reclaiming tax delinquent property and clearing their titles. The Missouri law has been duplicated in many states with similar disinvestment experiences.

Initially, LRA inventory grew at a dramatic pace due to abandonment prior to passage of LRA law. In the late 1970's and first half of the 1980's, this inventory began to attract reinvestment from individuals, developers and businesses. The return to the city was fueled by high gasoline prices, high interest rates (city property is less expensive), the investment tax credit for historic renovation, and a coming of age of the 60's generation.

By 1987, however, it all came to an abrupt halt. The Tax Reform Act of 1986 eliminated historic tax credits and restricted tax exempt industrial development bonds. Federal policies effectively stopped urban reinvestment through elimination of the UDAG program, imposition of tough environmental regulations affecting asbestos, lead-based paint and other environmental conditions impacting real estate transactions. LRA now owns 38,000,000 square feet in the city which equals 15% of the city's land mass. The agency expects to acquire 600-800 abandoned parcels per year for the foreseeable future. While the LRA owns 15% of the city, at least another third of the privately held city parcels is greatly under utilized because owners and lenders cannot comply with the environmental regulations reinvestment would require. The St.

Louis riverfront, the railroads, the turn-of-the-century multistory warehouses and offices all suffer in the present climate.

I would like to share with you the actual costs to convert our inventory into buildable sites. These costs do not consider loss of employment taxes or holding costs prior to demolition.

The brownfields chart shows our current publicly held redevelopment properties. We have calculated the costs to convert each site from abandonment to a site capable of reinvestment, then we compared it to the appraised value. The gap amounts are dramatic-but where do they come from?

This gap is presently filled by the limited available resources from local taxes and block grant funds. Present tax policies, clean up standards and available resources make reinvestment impossible and fuel additional disinvestment. St. Louis has made great strides in economic development, but without a change in regulations, resources or incentives, the number of abandoned and underutilized properties will continue to grow.

I have been asked to calculate the costs to convert all our brownfields into greenfields. Since every demolition, every commercial/industrial sales transaction, every renovation in a city of beautiful turn of the century buildings exceed its market value, the cost is the City of St. Louis.

I would like to share with you typical examples of how remediation costs impact the city's ability to redevelop abandoned sites.

Retail example: Most cities have deteriorated commercial districts that impose a blighting effect on adjoining residential neighborhoods. The storefronts that once supplied the daily needs of the surrounding residents now can no longer compete with the 70,000+ square foot grocery stores and the 500,000 to 1 million square foot mall. The users pay insufficient rent to maintain the structures and businesses that attract antisocial behavior - adult bookstores, liquor stores, check cashing services - not establishments that provide a positive front door to neighborhoods. The city's development agencies have worked to turn around our commercial districts. We have success stories with what we call theme districts, but at great costs.

An important corner in one of these districts required $850,000 in public funds to assemble and clean and clear a site so a business could invest $1.5 million. The business employs 20 full time employees, generated $2 million in sales in the first year and is attracting patrons to the retail and eating establishments along this reutilized commercial district, but it cost the city $26.25 per square foot to reclaim this site, whose value is $2.00 per square foot.

I would love to duplicate this kind of investment in 20-25 of our declining neighborhood commercial districts; but cannot with existing federal regulations and lack of resources.

Industrial: Cities are made up of 2-3 acre city blocks, occupied by multiple users. Since businesses no longer build up but out, cities need to assemble and prepare 2-10 acre ready to build sites if they are going to compete for businesses with the greenfields. No business is going to spend the time and money to do this even if they prefer the hub location of the city.

St. Louis has spent $7,600,000 to assemble a 50 acre industrial park; that translates into $6.00 per square foot for ground valued at $1.50 per square foot. The property has attracted many users, but in the end, no takers, because of the remaining remediation clean-up costs.

The first phase of this industrial park filled the 24 acres with six businesses and 664 employees, but this was during the less regulated atmosphere of the late 70's and early 80's.

Office: St. Louis has many architecturally significant vacant buildings; one is a 22 story, 300,000 square foot, 1920 art-deco structure adjacent to St. Louis University and Grand Center, the region's cultural district. The owner, LRA, has determined that it will cost $1.5 million to remove the asbestos. The university would consider renovating this landmark structure, but cannot justify the clean-up costs. It is hard to pay $1.5 million and still have a property with the same value. If we do not attract reinvestment, the city will have to spend $1.5 million on remediation and another $1 million for demolition. The resulting site would have a value of $1.50 per square foot but would cost $72.30 per square foot.

Gas stations: Gas stations were once installed everywhere; at least it seems like it when you are trying to rebuild a city. LRA has 25 abandoned gas stations it knows about and many yet to be discovered.

Last year, LRA sold a green corner lot to a church so they could build a new structure. The church paid an architect, obtained a $600,000 loan, sold their existing church and at the groundbreaking located leaking underground tanks. LRA has agreed to use its limited resources to cover the $70,000+ remediation costs. The lot was sold to the church for $11,855.00.

Each of these stories can be told over and over again by mayors across the country. There are not enough resources, time and money to completely clean every site before reuse. I am not in favor of undermining the health of city residents, but I want all regulations and clean-up standards to reflect true health risks based on reuse. I also want incentives that attract investment and give the city a fighting chance to attract jobs for its residents.

As mayor, I must attract businesses, homeowners and jobs to the city. This will not happen if our land costs are higher than anywhere in the region.

So what do we, the mayors of the historic and cultural centers of this great nation, need to help us in our continuous struggle to become self-sufficient. We need:

- Federal policies that control tax laws and environmental clean-up standards and financial resources that ensure our brownfields can be redeveloped. Clean-up standards should reflect the nature of the site's end use, and local governments should be the key decision maker in determining what the long-term end use should be, i.e. industrial, residential, etc.

- The federal government to evaluate the real health risks and compare these with the costs of remediation.

- The federal government to require relocating companies to clean up abandoned facilities before they can receive building permits and licenses.

- The federal government, working with state and local government, to assess impaction fees on new developments in the greenfields that will be used to renovate and update abandoned properties in the brownfields.

- The EPA to establish funds that can be used to reclaim sites desired by new users.

- To break down the barriers to brownfield development created by unnecessary and ill-conceived federal laws and regulations.

- To place as a national priority, the need to create a level playing field for the development of brownfields so that cities may effectively compete in attracting business investment and reinvestment.

- To create incentives for companies to reinvest in existing facilities in urban areas, and to clean-up those facilities they no longer use.

- To create safe harbors for investors and financial institutions, to enable them to secure their investments in brownfields without being subjected to liability for prior contamination.

- And finally, we need to create sustainable, revolving loan funds for the reclamation of abandoned urban properties for productive reuse.

Mr. Chairman, we need a national brownfield redevelopment strategy that includes a variety of tools to bring these properties back to productive, economic life. As my examples have indicated, not all brownfields are alike. Some brownfields can be redeveloped by protecting third party developers and investors from liability. But others, particularly those with signficant negative value, will need other tools and incentives to attract private investment.

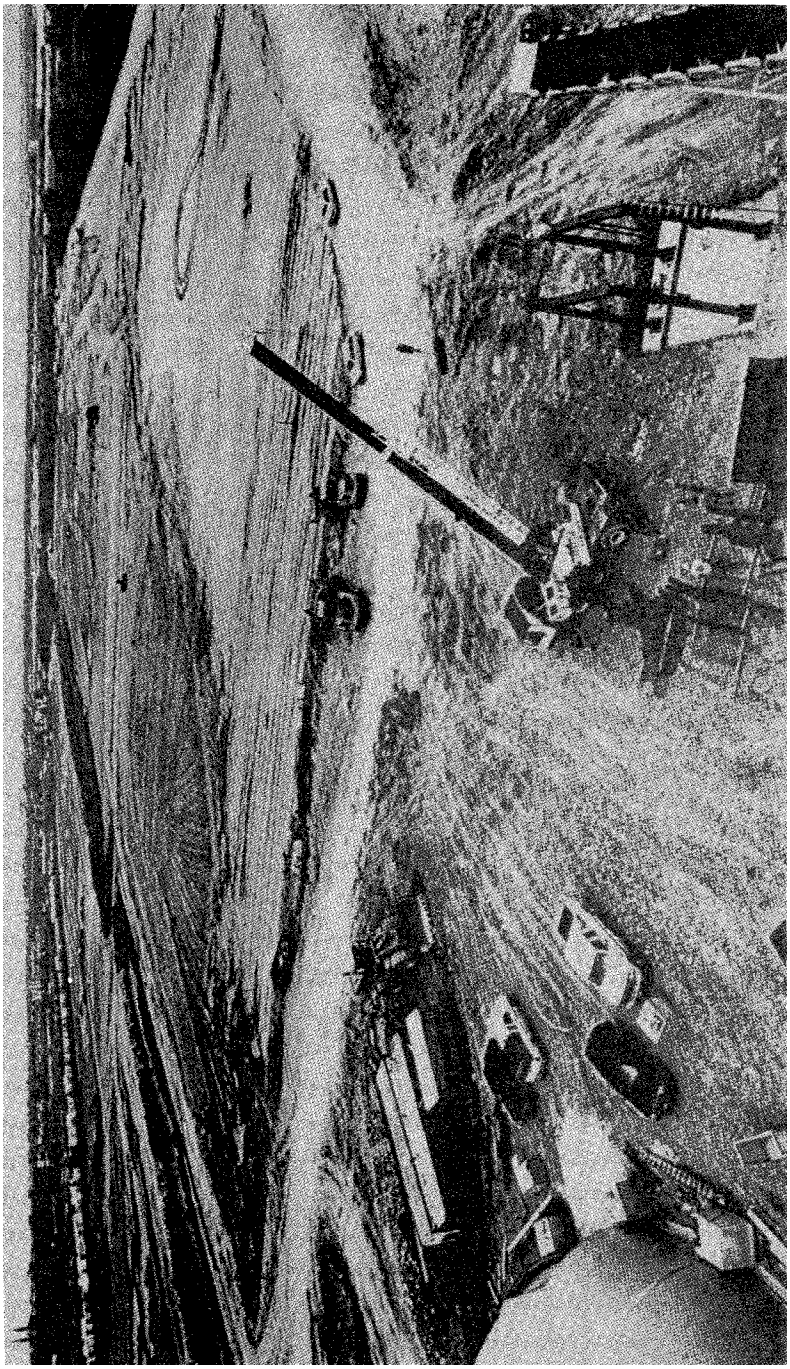
Federal and local government must ease restrictions that make it difficult or undesirable for businesses to reinvest in urban areas - and cure some of the ills

plaguing our society such as unemployment, economic and racial tension - by returning jobs to the urban core of all our metropolitan areas.

Mr. Chairman, we believe current Superfund resources could be used more effectively not only to clean up polluted sites, but to return them to economically productive reuse for local communities. Today, we have talked about the problem. We will be providing detailed recommendations to you in the coming weeks as our task force completes its work.

There has been much national discussion about recycling, preserving our environment, and protecting endangered species.

But unless we, as a society, place more emphasis on recycling our existing industrial sites instead of eating up the greenfields, America's cities and older suburbs are at risk of becoming endangered species as well.



ORION PROJECT

KAPKOWSKI ROAD
ELIZABETH
NEW JERSEY

OENJ CORPORATION
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ELIZABETH, NJ 07201
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JULY 1995

1.0 SUMMARY

The Orion Project consists of 166-acres of privately owned land on Kapkowski Road in Elizabeth, located at Exit 13A on the New Jersey Turnpike. More than 60 million cars pass the project site every year. The project site has rail access, is located on Newark Bay, and is adjacent to Port Elizabeth and Newark Airport. The project is also located in Elizabeth's Urban Enterprise Zone (UEZ), which allows a reduced 3% sales tax to be charged. The IKEA Store, which is located north of the project site, is IKEA's best performing store in North America, with more than two million visitors and over $100 million in sales each year.

The project site, which was used as a landfill until 1972, has been selected by the Regional Plan Association, with the support of the State, the Union County Alliance, the Union County Economic Development Corporation and the City of Elizabeth, as a model for the redevelopment of environmentally impacted land in urban areas. All landfill closure, remediation and wetland mitigation approvals have already been obtained from the New Jersey Department of Environmental Protection ("NJDEP") and the United States Army Corps of Engineers.

Substantial infrastructure improvements have been agreed to, in concept with the Department of Transportation, New Jersey Turnpike Authority, Port Authority of New York and New Jersey, Union County and the City of Elizabeth. The improvements include a flyover bridge directly from Exit 13A of the New Jersey Turnpike to Kapkowski Road. It also includes the extension and improvement of Kapkowski Road into four lanes through to Trumball Street, thereby opening up the Elizabeth waterfront.

These achievements are the result of close cooperation between OENJ Corporation, the City of Elizabeth, NJDEP, Regional Plan Association, County of Union, Union County Alliance, Union County Economic Development Corporation, New Jersey Economic Development Authority ("EDA"), New Jersey Department of Commerce and Economic Development, State of New Jersey Department of State, New Jersey Department of Transportation ("DOT"), New Jersey Turnpike Authority and Port Authority of New York and New Jersey. Financial assistance has also been given by EDA, New Jersey Urban Development Corporation and Elizabeth Development Company.

The landfill closure plan consists of several elements. The Great Ditch, a manmade watercourse which transverses the project site, will be piped and covered. That design is regarded as key to the practical environmental solution to the overall closure plan. A leachate collection system will also be installed. Ten acres of wetland will be created on Newark Bay, constituting the largest wildlife habitat in the area.

The site will be developed into a manufactures and value outlet mall, consisting of a main structure of 1,200,000 square feet, plus 300,000 square feet of separate retail buildings. The main mall, MetroMall, will contain 12 major retail tenants, 250 shops and 18 restaurants.

The development will create a significant number of jobs. Construction will generate 2,679,000 man-hours or 1,700 construction jobs and the finished mall will generate 5,200 permanent jobs. The New Jersey Department of Labor has used the Regional Industrial Multiplier System ("RIMS") to measure the impact of the project. They concluded that the project would result in 18,300 permanent jobs once construction is completed.

This project will powerfully demonstrate how state and local government bodies, working in close cooperation with the private sector, can achieve and extensive array of mutual benefits. Job creation, environmental cleanup, natural habitat restoration, the economic revitalization of one of New Jersey's oldest urban areas; all are being made possible because officials at every level have resolved that this development is very important to the future of Elizabeth, Union County and the State.

2.0 LOCATION

The location of the Orion Project is remarkable and is unparalleled on the east coast. It is adjacent to Newark Airport, Elizabeth Seaport, New Jersey Turnpike, IKEA and Newark Bay with direct water access. The demographics makes the site ideal for a retail value outlet development, which will draw people from a 40 mile radius.

Demographic Highlights	Population	Households	Average Household Income.....
10miles	1,317,166	469,555	$52,035
20 miles	5,616,616	2,132,569	$47,556
30 miles	11,983,077	4,543,005	$51,893
40 miles	14,689,250	5,518,396	$54,444

The New York-New Jersey Metropolitan Region, the largest and most diversified in the nation, consists of New York City, the four suburban New York counties of Nassau, Rockland, Suffolk and Westchester, and the eight northern New Jersey counties of Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset and Union. The population of this area is 15.7 million with a labor force of 7.6 million. The total annual retail sales is $ 111 billion. The total annual personal income is $ 388 billion.

2.1 Turnpike Exit 13 A

New Jersey Turnpike Exit 13A is one of the two exits serving Newark Airport, the other is Exit 14. Besides serving Newark Airport, Exit 13A also serves Elizabeth Seaport, IKEA and the Orion Project.

The New Jersey Turnpike is very heavily travelled in this area as shown by the following traffic counts between Exit 13A and 14.

	Northbound	Southbound	Total
1991	30,479,270	31,912,157	62,391,427
1992	30,261,234	32,101,135	62,362,369
1993	30,155,739	32,836,638	62,992,377

Source: New Jersey Turnpike Authority, February 17, 1994

2.2 Elizabeth Seaport

The Port of Elizabeth, which is a 2,463 acre area, represents an estimated 75 % of the regions ocean-bourne traffic and therefore is the most active container port in North America. The Port of Elizabeth has a status as a Foreign Trade Zone and for the fiscal year of 1994, finished with a milestone $ 1.635 billion in foreign merchandise received. In all, it was responsible for $ 3.5 billion of both domestic and international freight moving into and out of the zone.

2.3 Newark International Airport

The Orion Project is situated five minutes from Newark International Airport, the third largest airport handling international flights in the country. It currently handles more than 25 million travellers per year, and this figure is projected to increase to 49 cities in 25 foreign countries.

Not only is MetroMall's business potential enhanced by its close proximity to Newark Airport, the airport itself will benefit by providing its travellers with the availability of MetroMall's extraordinary shopping experience. Travellers waiting for connecting or delayed flights can be transported to the site in a few minutes.

In addition, specific shopping travel packages for MetroMall can be implemented. This would be similar to the air charter program now in effect at the Mall of America in Minneapolis where shoppers fly to Minneapolis-St. Paul International Airport in the

morning, do their shopping, and fly back the same day. The Orion Project is ideally positioned to adopt such a concept.

Newark Airport has begun the construction of an automated people mover transport system, which will link the airport's three terminals, long term parking lots, rental car facilities, and a new train station on the Northeast corridor Rail Line. It represents a total investment of $378 million and the system is scheduled to begin passenger service in 1995. The entire project is scheduled for completion by 1998.

Newark Airport is also constructing a new international terminal. The project includes construction of a multi-level building between two boarding concourses at Terminal B. Construction began in 1993 and is expected to be completed by the spring of 1996.

2.4 Newark Bay

The Site borders on Newark Bay. A ferry/hydrofoil service to Manhattan is being evaluated at this time. This facility could service both the Orion development and Newark Airport.

2.5 Rail

Railroad tracks currently exist on the north, south and west sided of the property. The possibility of train access to the project is under study. Additionally, this capability could serve as a possible link between a ferry/hydrofoil and the airport.

2.6 IKEA

Ikea's store which opened in 1990 has been the top performing store for IKEA in North America. In 1993 it had more than 2 million visitors and revenues in excess of $100 million. Of particular interest is the fact that 47% of their sales comes from customers in N.Y. State or beyond a 20 mile radius in New Jersey.

IKEA has acquired 25 acres adjacent to its store and plans to construct 375,000 additional square feet of retail space. IKEA expects to complete construction by 1996.

3.0 CITY OF ELIZABETH

The City of Elizabeth has been very cooperative in the development of the Orion Project. The following is a quote from Mayor J. Christian Bollwage at a press conference:

"This development is unique because of its nature and location. This project is arguably one of the largest, most important undeveloped parcels of land on the East Coast. We will transform what was once a landfill into a world class development with easy access to every major transport artery in the area."

The Orion Project lies within an **Urban Enterprise Zone** (UEZ), which offers significant benefits for a 20 year period. In brief, these benefits are as follows:

a. State sales tax exemption for building materials, most tangible personal property and most services.

b. Authorization to reduce state retail sales tax to 50% of the regular rate. The regular sales tax is 6% in New Jersey and 8.25% in New York. Within the UEZ the present sales tax will be only 3%.

c. Employment and training programs.

d. Utility incentive rates.

4.0 TRAFFIC

A traffic impact study for the development has been performed. In addition the Port Authority of New York and New Jersey have analyzed the regional traffic impact of the project and identified necessary infrastructure improvements. A conceptual agreement for the infrastructure improvements has been reached by the New Jersey Department of Transportation, New Jersey Turnpike Authority, Port Authority of New York and New Jersey, Union County and City of Elizabeth. The improvements are as follows:

Kapkowski Road 1b. Construction has already been completed for a four lane road from North Avenue to The Great Ditch.

Reconstruction of the **Intersection of North Avenue and Kapkowski Road/Center Drive**. Modification of the existing traffic signal. Widening of **North Avenue** from its intersection with Kapkowski Road westward to the New Jersey Turnpike overpass will provide three lanes in each direction. Construction is expected to be completed during 1996.

Construction of **Kapkowski Road Section 1C**. This project will extend Kapkowski Road southward from the Great Ditch to Trumball Street. This will connect North Avenue with Trumball Street and thereby open up the Elizabeth Waterfront. Construction is scheduled to commence late 1995 with expected completion in 1997.

Construction of a **flyover/bridge** from Exit 13A on the turnpike to Kapkowski Road. The flyover will be north of the toll plaza and will connect directly with Kapkowski Road. Construction is scheduled to commence late 1995 with expected completion in 1997.

The **New Jersey Turnpike** is in the process of being expanded. The project will add one lane in each direction along a 14 mile stretch from Exit 11 in Woodbridge to Exit 14 in Newark. Construction began in 1991 and is expected to be completed by December 1995.

There are plans to expand the **Goethals Bridge** which connects Union County, New Jersey with Staten Island, New York. The existing bridge has 2 lanes in each direction. The new bridge is planned with 3 lanes in each direction with a possible rail line across the new bridge. Construction can begin in 1997/98.

5.0 ENVIRONMENTAL PERMITS AND LANDFILL CLOSURE

OENJ has worked closely with New Jersey Department of Environmental Protection (NJDEP) in order to obtain the necessary permits to close the former landfill and develop the project. The project has been classified as a high priority project within NJDEP. OENJ has signed a Memorandum of Agreement (MOA) with NJDEP which enables OENJ to conduct the remedial activities under NJDEP supervision. When the landfill closure work has been completed, NJDEP will issue a "No Further Action" letter (NFA) which is proof that the proper remediation and landfill closure has been done.

Extensive testing has been performed on the site, and a remedial investigation report and a remedial action plan has been approved by NJDEP. All the environmental permits have been obtained, which include: Statewide General Wetlands Permit No. 4, Wetlands Mitigation Plan, Stream encroachment permit, Treatment works approval for leachate management, U.S. Army Corps of Engineers wetland permit, Remedial soil erosion and sediment control plan, Solid Waste Facility Disruption and Closure Approvals, including Closure - Post Closure Plan, Upland waterfront development permit and Construction air permit.

The remediation and landfill closure work include the following activities:

Closure and piping of the Great Ditch. These activities will include the construction of a 4,875 foot long, double barrel culvert, consisting of a 6 foot diameter and a 7 foot diameter RAP, and 2 stormwater detention basins. A tide gate will be installed at the downstream end of the pipes to control tidal influx during extremely high tide.

Wetland mitigation. The piping and closing of the Great Ditch will eliminate approximately 10 acres of wetland. As a substitution, 10 acres of wetland will be created directly on Newark Bay. Tidally influenced wetland systems in two locations will be created. The majority of the constructed wetland systems will consist of intertidal wetland. The focus of the design is to create a habitat suitable for the establishment of a fishery for small fish.

Installation of a leachate collection system. This system will collect the leachate above the "meadow mat" and will convey it to the local public sewer network. This leachate collection system will consist of a total of sixteen 4-inch diameter perforated PVC pipes spaced across the entire site. Suction pumps will be to force the leachate into the main collector piping system. The main collector pipes will consist of a 10-inch diameter PVC pipe, which will run parallel to the Great Ditch west of Kapkowski Road, and a 14-inch diameter PVC pipe which will run along the east side of Kapkowski Road.

Regrading of the site and placement cover material. The regarding of the site will consist of the leveling hog the elevated portions of the site and the filling of the depressions present throughout the area. The solid waste removed from the mounded areas will be used as fill material for the depressions. In this way, the volume of solid waste to b e disposed of , will be kept to a minimum. When the regrading of the site has been completed, cover material will be placed throughout the site. A portion of the site will be developed into green areas. These areas will be covered with two feet of soil cover. The remainder of the site will either be covered by buildings or parking lots and roadways. The portions of the site that will be covered by buildings will receive at least 9 feet of structural fill material and 1 foot of imported clean soil. The structural fill will be recycled concrete, masonry material, subsoil, coal ash, or other approved recycled material. The paved areas will be covered with 18 inches of subbase material and 6 inches of pavement. The pavement will consist of 4 inches of stabilized base and 2 inches of top course.

Installation of gas control system. A positive methane gas control system will be installed beneath the floor slabs of the buildings. While monitoring has established that landfill gases are not a concern, the buildings are confined areas, and therefore, a gas control system will be installed as a precautionary measure against methane emissions. This system will consist of rigid pipes supported by straps underneath the floor slabs and on top of 9 inches of 3/4-inch crushed stone. Fresh air will be circulated below the floors via fresh air vents and air driven turbines installed above the roof line of the buildings.

Installation of a storm water management system. The storm water management system will consist of piping from developed areas and control by use of detention basins.

6.0 DEVELOPMENT

The main development will be the **Metromall,** a two story enclosed factory outlet mall which will be located on 95 acres east of Kapkowski Road. The mall will have a total of 1,200,000 square feet GLA and consist of 12 major tenants, 250 shops and 18 restaurants in a food court. The mall is laid out in a two level "racetrack" fashion, in order to reduce customer walking distances and maximize store visibility. Three specially designed theme courts, plus four two story street, each with a distinctive design and theme, will provide shoppers with a sense of place, rest, entertainment and food. The MetroMall will have a light, bright, comfortable environment with over 2000 lineal feet of skylights providing soft, natural, diffused lighting. Mall areas will be high ceiling, wide, spacious, and column-free. Floors will be mostly constructed of wood, for ease of walking. Parking will be ample and free. Special business loading/unloading areas will be provided for organized shopping tours and linked with other major area attractions. The mall will have approximately 6000 parking spaces. the MetroMall has been received with great enthusiasm by the value oriented retailer community, as evidenced by the progress of pre-leasing negotiations with tenants.

The property west of Kapkowski Road consisting of 30 acres will be developed into a 300,000 square foot **retail power center**. There will be four one story buildings with approximately 10 tenants and 1,400 parking spaces. The flyover bridge from the Turnpike Exit 13A will come to grade on the southern border of the parcel and connect into Kapkowski Road.

Site plan approval for the MetroMall has already been obtained. Construction is planned to commence in the fall of 1995 with an anticipated opening in the fourth quarter of 1997.

The **wetlands mitigation** will be provided on parcels of land bordering the northern and the southern border of the property. A total of 10 acres of wildlife habitat will be created.

Brown & Root Building Company together with Walsh Construction and Sordoni Skanska will be responsible for construction management. The Rouse Company will provide operations and property management services for the MetroMall. The financing will be arranged by the Sonneblick-Goldman Company, New York with the equity provided by a consortium of construction trade pension funds led by the Southern California and Arizona Glaziers, Architectural Metal and Glassworkers Pension Plan.

ORION ELIZABETH, NEW JERSEY (OENJ) DEVELOPMENT PROJECT SUMMARY

Orion proposes to take a 166 acre track, which was formally utilized as a landfill, properly close that landfill, and redevelop the site for a manufacturers discount outlet/retail building of approximately 400,000 square feet, and international trade, exposition, and convention center of approximately 1 million square feet, and a restaurant along the waterfront. The property is located within the Redevelopment Area proposed by the City of Elizabeth.

As part of the landfill closure, the Great Ditch, a man made waterway which traverses the site, must be piped. This piping must occur in order to effectively collect the leachate from the landfill. This piping will necessitate the filling of wetlands and State Open Waters. This requires an Individual Wetlands Permit from the State of New Jersey and the United States Army Corps of Engineers. Even if the State of New Jersey assumes the Army Corps of Engineers Program, an Army Corps of Engineers permit would be required since these are tidal wetlands and the State will not be assuming the Army Corps Tidal Wetlands Program.

The Army Corps of Engineers is advised by the US Fish & Wildlife Service of the Department of Interior, the National Marine Fisheries, and the USEPA. We believe that we can successfully demonstrate that there are no feasible alternatives to piping of the Great Ditch in order to close the landfill and

redevelop the site. We also are considering wetlands mitigation plans and are currently exploring the feasibility of mitigation by creating three acres of tidal wetlands on property also owned by OENJ in the area. This wetlands would be the largest contiguous area of wetlands along North Bay.

The wetlands to be filled on our site consist of approximately ten acres and are of low quality and can generally be classified as "degraded". We believe that they are heavily influenced by the contamination in the leachate and are composed of primarily phragmites, which are the lowest value wetlands vegetation. The wetlands we propose to create would be high value vegetation and would not be degraded by contaminants from leachate.

The Army Corps of Engineers process can be lengthy and frustrating. It took approximately three months to schedule a pre-application conference at which the advisory agencies were not present. We were given some guidance by lower level staff. Our plan is to submit our application by the end of April and the staff indicated that they would schedule a meeting with the three advisory agencies shortly thereafter. We feel that it is imperative that this meeting be scheduled as soon as possible with high level Army Corps staff and that the public notice be issued by the Army Corps of Engineers as soon as possible to get the process moving.

There are obviously numerous other approvals and permits that must be obtained from local, county, and State agencies. In order for the project to be viable all major approvals must be obtained in the fall of 1993. It is our understanding that the City of Elizabeth, the Union County Economic Development Corporation, the New Jersey Economic Development Authority, and the Regional Plan Association all support this project. The Regional Plan Association has chosen this project as its demonstration project for New Jersey, because this is an urban site which can be redeveloped, but faces numerous regulatory hurdles. We have also closely coordinated our efforts with DEPE, including a meeting with Assistant Commissioner John Weingart.

The project would obviously be an economic stimulus to the City of Elizabeth, Union County, and the Region. It is projected that 3,500 new permanent jobs, in addition to construction jobs would be created. The development would also financially benefit the City of Elizabeth and there would undoubtedly be spin-off positive economic impacts from people visiting the area to use the retail/commercial facilities.

The project is also designed to improve the waterfront area with appropriate access and walkways so that it can be utilized, enjoyed, and appreciated by the people in the area. Currently, it is almost impossible to gain access to the waterfront in this area.

Numerous infrastructure improvements must also be made to the area. These include the extension of Kapkowski Road to the Orion site for Phase I and the extension of Kapkowski Road to Trumbull Street for the opening of Phase II. In addition, improvements are contemplated at the intersection of North Avenue East and Kapkowski Road. We also understand that there may be some federal roadway improvements contemplated.

In the Region/ New Jersey

Turning an Elizabeth Landfill Into a Retail Center

Site will be a model for redeveloping urban wastelands.

By RACHELLE GARBARINE

A GRUBBY wedge of Elizabeth that was a municipal landfill until 1972 is poised for a metaphormosis into a major retail hub. In the process, it is to become a model for redeveloping derelict and environmentally damaged sites in other cities in the state and the metropolitan region.

On a recent Sunday the 166-acre site off Kapkowski Road and bounded by Newark Bay and Exit 13A of the New Jersey Turnpike looked like an urban wasteland. But by the end of this year ground is to have been broken on a 30-acre, 300,000-square-foot retail center.

The five-year project may have, in addition to the retail center, up to 1.1 million more square feet of retail space, possibly as a manufacturers' outlet mall, or a mix of retail and commercial uses, the latter tied to Port Elizabeth and Newark International Airport, both in the city. To replace wetlands that will be filled in, 10 acres of wetlands will be created elsewhere along Newark Bay.

As now envisioned, the project will be done in two phases, costing a total of more than $150 million, and would be the largest in 40 years in Elizabeth, which missed the economic growth that took place in other urban areas during the mid-80's. Estimates are that it will bring the city 3,150 construction and permanent jobs and $3.6 million in tax revenue a year, $600,000 from the first phase alone. The site now generates $92,000 a year in land taxes.

"We need to be ready to take advantage of the next economic cycle," said Mayor J. Christian Bollwage. "This project is the first step that will stimulate other investment."

The OENJ Corporation of Princeton, made up of a group of European investors, is the land developer, making its first foray into this country.

The New Jersey office of the Regional Plan Association, which is working with OENJ, is using the project as a model to demonstrate the opportunities and constraints of urban redevelopment, said Linda P. Morgan, its executive director.

The demonstration is part of an association study on recycling urban sites begun three years ago. The effort dovetails with the State Development and Redevelopment Plan, which encourages growth in cities, as does Federal legislation calling for cleaner air and better public transportation.

The study's first phase was an inventory of Union County, which includes Elizabeth, that showed that 2,515 acres of vacant land at 185 sites could be reused. Most of the sites are in Elizabeth and Linden, two old industrial strongholds, and many have been or are being cleaned of contaminants, helping to dispell the notion that contamination is the main hurdle to redevelopment. Among the constraints found, however, were poor access, community opposition and inadequate infrastructure, some of which are issues at the OENJ property.

The second phase of the study, co-sponsored by the nonprofit Union County Economic Development Corporation, involves developing a site as a prototype for reuse, tracking the approval process, analyzing problems of redevelopment and recommending solutions.

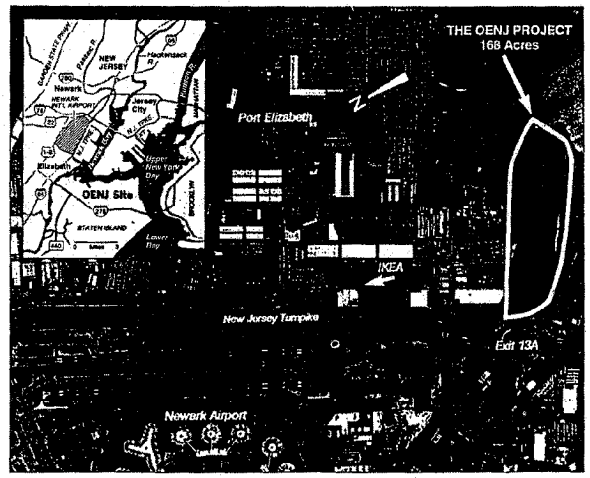
Ms. Morgan said the former landfill had been chosen because a developer had already bought the land and supported its redevelopment, as did the City of Elizabeth.

IT is also one of the largest vacant urban sites in the state and one of the most complex to redevelop, requiring 15 state, local and Federal permits, many of them to seal off the landfill. The sealing and "soft costs" — getting permits, doing studies and the like — will cost an estimated $11 million.

The difficulty of navigating through the extra channels of review is what many say fools urban redevelopment projects, but the Regional Plan Association established a task force, comprising the developer and state and local officials, to speed approvals, shaving about a year off the process so far.

"The difference with this project is that when the time came to seek approvals, all the major policy questions, such as identifying the site suitable for reuse, were addressed," said John Weingart, assistant commissioner of Environmental Protection and Energy.

H. Claude Shostal, the Regional Plan Association president, said that his group did not "pretend that it is easy to redevelop contaminated land," adding that "a lot more can get done if the public and private sectors marshal their resources."



An aerial view of the landfill area that will become a 166-acre retail project in Elizabeth.

OENJ bought the site in 1992 from a Dutch company in which the partners owned stock, paying $15 million in cash and stocks, said Peter Aagaard, OENJ's managing director. He said they did so despite the property's history because it had a minimal amount of contaminants and because so large a site in so good a location was rare.

The site is near the airport and seaport, is served by rail and has access to the turnpike. More than 65 million cars a year pass it. It is also in Elizabeth's Urban Enterprise Zone, where retailers can charge a 3 percent sales tax, instead of the normal 6 percent. Just north of the site is an IKEA store that opened five years ago and attracts more than 2 million shoppers a year.

Crucial to the project are road improvements planned nearby. Among other things, Kapkowski Road will be extended and widened and its intersection at North Avenue improved. The work, to start next month and expected to cost $6 million, is being financed with public funds.

For the project to succeed, the end use must justify the expense, and all indications point to retail, Mr. Aagaard said. Retail analysts agree.

"Big space users continue to expand and want to be in northern New Jersey, but there is a lack of available land," said Ted Kraus, who heads the TKO Advisory Group, a retail consulting firm in Mercerville.

MR. AAGAARD said he would do in Elizabeth what he has done at old industrial sites in Spain and his native Denmark: get the needed approvals, clean the site and redevelop it in phases with a local developer or sell off parcels to other builders to develop.

Sealing off the landfill, for which a preliminary state permit has been granted, consists of filling in the wetlands that traverse the property, piping and treating the leachate and stopping its discharge into Newark Bay. Final approval is expected by this fall.

State law requires that wetlands affected by development be restored or replaced. At the Elizabeth site a 19-acre tidal wetlands will be created along the bay, providing a wildlife habitat to serve as a feeding area for terrons and a nesting place for an endangered species, the least tern.

Once the landfill is closed, which is expected in December, first-phase construction will start, Sheldon S. Nasar and Partners, a national retail developer in Washington, is to build the 300,000-square-foot center, which is to house up to four tenants, said Mr. Aagaard, noting that negotiations were under way with national chains. There will be parking for 1,800 cars.

Mr. Aagaard said he did not expect difficulty in getting financing once the space had been leased and the site given a clean bill of health. Completion of phase one is expected by the end of 1995. A date for starting the second phase has not yet been set. ■

phone 1-800-650-METRO
fax 1-310-323-2811

OCTOBER, 1995
FOR IMMEDIATE RELEASE

N.J. METROMALL FACT SHEET

Concept:	Factory Outlet Megamall
Project description:	One of America's largest, fully enclosed, two-level malls for manufacturer's outlet stores and retailers' clearance stores. Project to contain 12 anchor stores and in excess of 250 specialty store tenants.
Location:	New Jersey Turnpike (I-95) at Exit 13-A, Elizabeth, New Jersey
Site size:	166 acres
Total GLA:	1,500,000 sq. ft.
Anchor GLA:	330,000 sq. ft.
Store GLA:	717,000 sq: ft.
Food Court:	19,000 sq. ft. with 18 restaurants, and 1,000 seats
Parking:	7,400 surface spaces
A.D.T.	Over 176,000 cars per day
Population:	14.7 million within a 40 mile radius
Developer:	N.J. MetroMall, LLC
Architects:	David Jacobson Associates and Keeva J. Kekst Architects, Inc.

General Contractor:	Joint venture of Brown & Root Building Company, Sordoni Skanska Construction and Walsh Construction Company
Number of Est. Construction Jobs:	2,000
Number of Est. Permanent Jobs:	5,000

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UNION COUNTY LAND RECYCLING PROJECT

INVENTORY OF RECLAIMABLE SITES
(PRELIMINARY)

REGIONAL PLAN ASSOCIATION - NEW JERSEY
JUNE 1992

SOURCES & NOTES

SOURCES:

CONTAMINATED SITES:
NJDEPE, 1991. "UNION COUNTY: INDEX OF REMEDIATION ACTIVITIES".
NJDEPE, 1991. "KNOWN AND SUSPECTED SITES IN UNION COUNTY".
NJDEP. "HAZARDOUS WASTE PROGRAMS: ECRA SITES IN UNION COUNTY".

UNDER-UTILIZED SITES:
UNION COUNTY BOARD OF TAXATION, 1991. "LISTS OF 4A AND 4B PROPERTIES".

VACANT SITES:
UNION COUNTY DIVISION OF PLANNING AND DEVELOPMENT, 1990. "VACANT LAND INVENTORY".
UNION COUNTY BOARD OF TAXATION, 1991. "TAX RECORD".

NOTES:

ECRA
TRANSFORMATION TYPE (TT)
P = PROPERTY SALE
S = SALE OF BUSINESS
C = CESSATION OF OPERATIONS
T = TRANSFER OF STOCK
B = BANKRUPTCY
FINAL DISPOSITION (FD)
N = NEGATIVE DECLARATION
C = CLEANUP PLAN APPROVAL
F = FULL COMPLIANCE LETTER ISSUED
S = SAMPLING PLAN IN-HOUSE FOR REVIEW
E = EXEMPTED FROM ECRA
D = DUPLICATE FILE
W = WITHDRAWAL FROM PROCESS
R = REFERRAL FOR ENFORCEMENT ACTION
K&S: KNOWN & SUSPECTED HAZARDOUS SITES
NON-SUPER: NON-SUPERFUND
SUPER: SUPERFUND
UNDER-U: ASSESSED LAND VALUE EXCEEDS IMPROVEMENT VALUE
VACANT: VACANT LAND WITH SIZE LARGER THAN 5 ACRES
CLASS
1 VACANT
4A COMMERCIAL
4B INDUSTRIAL
15C EXEMPT

UNION COUNTY LAND RECYCLING INVENTORY
REGIONAL PLAN ASSOCIATION - NEW JERSEY

ELIZABETH
07/01/92

ELIUPD4
DRAFT/INCOMPLETE
NOT FOR CIRCULATION

DRAFT

STATUS	ACRES	BLOCK	LOT	CLASS	ADDRESS	LAND VALUE	IMPVALUE	RATIO	TT	FD	OWNER/AGENT	
CONTAMINATED SITES												
ECRA	8.2	1	118	4B	321 FIRST ST	NOT UNDER-U			CP	F	SINGER CO.	or ENAL DEVELOPMENT CO?
ECRA	118.4	1	1314	4B	100 NORTH AVE E	4,715,700	990,900	4.76	ST	S	ALLIED CHEMICAL CORP	
ECRA	13.6	1	1430	4B	700 KAPKOWSKI RD	945,600	105,200	8.99	C	C	VULCAN MATERIALS INC.	
ECRA	1.6	1	414.A1,415	4B	325 PINE ST	NOT UNDER-U			CP	F	BONART INTERNATIONAL/C&S DIS	or CLASSIC TILE INC?
ECRA	39.6	1	953.B	1	107 TRUMBULL ST	NOT UNDER-U			CP	W	GENERAL FILM PRODUCTS	
ECRA	1.8	1	998.A	4B	442 YORK ST	NOT UNDER-U			CP	F	AMERICAN STANDARD	or A & J PARTNERSHIP?
ECRA	8.8	10	554	4B	865 W GRAND ST	NOT UNDER-U			C	F	ALISON PLASTICS, INC	
ECRA	4.5	2	461	4B	51 FIRST ST	NOT UNDER-U			CP	R	BETHLEHEM STEEL	or LOMMA, JAMES?
ECRA	11.7	4	67	4B	726 ROCKEFELLER ST				C	S	REICHHOLD CHEM INC	
ECRA	6.2	6	1297	4B	1000 S ELMORA AVE	NOT UNDER-U			CP	C	WILSON JONES COMPANY	or 1000 S ELMORA ASSOC?
ECRA	2.0	8	1178,1179,	4B	830 MAGNOLIA AVE	27,200	19,800	1.37	PST	C	NUODEX INC.	
ECRA	5.4	8	1338.D	4B	879 E NORTH AVE	NOT UNDER-U			CP	F	ALOYCO, INC	
K&S				4B	MCLESTER ST						REALTY TRANSFER CO	
K&S	85.0	1	1380	4B	2-330 NORTH AVE E	1,025,500	5,600	183.13			CENTRAL RR OF NJ	or C & CS LTD?
K&S	2.6	2	479.A,480	4B	125 FRONT ST						IRON OXIDE	
K&S	1.7	2	864	4B	217 S FIRST ST	83,500	70,600	1.18			PERK CHEMICAL CO, INC	or 201 S FIRST ST CORP?
K&S	29.2	4	44	4B	555 S FIRST ST						JOINT MEETING SEWAGE TREATMENT	
K&S	24.2	5	1381	4B	ERIE ST & THIRD AVE	1,265,400	374,300	3.38			ELIZABETH COAL GAS SITE #1 -- [illegible] see below	
K&S	1.8	8	1195	4B	830 BOND ST						BOND ST DUMP	or GK & P ASSOC?
K&S	4.0	8	4280	4B	714-22 DIVISION ST	237,000	123,900	1.91			BROWNING-FERRIS INDUSTRIES	or GENTEMPO, T?
K&S		8	428H	4B	123 DOWD AVE						CONRAIL-ELIZABETHPORT YARD	
K&S	1.5	8	741,3,4	4A	847 FLORA ST	122,400	46,500	2.63			FLORA GARAGE	or POTASH, R?
NON-SUPER	6.9	4	1468-9	4B	600-616&632-650 S FRON	77,400	22,600	3.42	ABANDON		BORNE CHEMICAL CO	
NON-SUPER	3.0	8	4281	4B	471 DIVISION ST				CEASED		TREE REALTY/KIT ENTERPRIS	or SALSTAN CO?
NON-SUPER	2.7	9	1151	4B	406 SOUTH ST	74,000	36,100	2.05	CEASED		ELIZABETH COAL GAS SITE #2 -- [illegible] GAS -- all of them	
SUPER	2.0	4	1438.C	1	23 S FRONT ST				CEASED		CHEMICAL CONTROL CORP.	

TOTAL
26 386.3

DRAFT

(UPDATED DEPE INFO)

ECRA	4.6	11	846	4B	801 NEWARK AVE	NOT UNDER-U			SC	N	BOORUM & PEASE CO - VERNON ROYAL PLANT	or EMPIRE-ORR INC?
ECRA	3.0	4	1463	4B	330 S FRONT ST	NOT UNDER-U			C	S	CHEVRON BAYWAY LUBE PLANT	
ECRA	1.5	8	1863	4B	855 WOODRUFF LANE	NOT UNDER-U			C	S	CONTAINER RING CO, INC	or EACO REALTY?
ECRA	5.8	8	428.Y4	4B	700 DOWD AVE	NOT UNDER-U			C	N	DIEBOLD, INC	or ELBERON DEVELOPMENT CO?
ECRA	2.7	1	101.B	4B	529 DOWD AVE	NOT UNDER-U			C	N	FOUR M MANUFACTURING GROUP, INC	or E & P ENTERPRISES?
ECRA	2.1	8	428.Y18A	4B	777 DOWD AVE	NOT UNDER-U			C	N	HAYWARD INDUSTRIES, INC	or DRESNER, CAREN?
ECRA	2.9	11	849	4B	1027 NEWARK AVE	NOT UNDER-U			C	N	MARBANK, INC	or A & J ASSOC?
ECRA	2.9	8	1481C	4B	582-612 PROGRESS ST	NOT UNDER-U			CP	C	METAL LITHO CORP	or JULIUS REALTY CORP?
ECRA	5.0	8	1699D	4B	701 SPRING ST	NOT UNDER-U			SCP	S	METAL POWDER & CHEMICAL WOKRS INC	or SPRING ST DEVELOPMENT CORP?
ECRA	4.6	8	1338.F	4B	901 NORTH AVE E	459,000	70,000	6.56	C	E	METALWASH MACHINERY CORP	or MALL MOTEL?
ECRA	1.8	8	428L	4B	533-45 DIVISION ST	NOT UNDER-U			CP	S	NAN YA PLASTICS CORP USA	or EVANS ENTERPRISES?
ECRA	15.8	1	1350	4B	201 BAY AVE	NOT UNDER-U			C	N	NEW YORK BRONZE POWDER CO	or HARTZ ELIZABETH INC?
ECRA	3.8	4	1458	4B	MYRTLE & AMBOY ST	NOT UNDER-U			C	N	NIMROW PAPER PRODUCTS CO, INC	or COREY WAREHOUSE?
ECRA	3.2	3	105	4B	26-30 PAPETTI PL				C	N	NORTHERN CHATHAM BEDDING CO, INC	
ECRA	9.2	4	1472	4B	700-760 S FRONT ST	NOT UNDER-U			C	N	PHELPS DODGE COPPER PRODUCTS CO	or COREY WAREHOUSE?
ECRA	2.7	8	1860	4B	850 WOODRUFF LANE	NOT UNDER-U			C	S	PULEO'S MANUFACTURING CO	or J A S CORP?
ECRA	3.1	8	1180	4B	900 MAGNOLIA AVE	NOT UNDER-U			C	W	SHAMPAIN CITRON CLARK, INC	or SURVEY HOLDING CO?
ECRA	1.9	8	428S	4B	615 DIVISION ST	NOT UNDER-U			C	N	W.A. BUTLER CO	or ELBERON DEVELOPMENT CO?
ECRA	16.3	11	847	4B	947 NEWARK AVE	NOT UNDER-U			CB	I	WILLIAM BAL CORP	or INTERBAKE FOODS INC?

TOTAL

19 92.7

UNDER-UTILIZED SITES

UNDER-U	18.4	1	1040.B	4B	984-1176 MCLESTER ST	1,032,600	347,200	2.97	THE PORT AUTHORITY OF NY & NJ
UNDER-U	8.3	1	120	4B	349-369 FIRST ST	495,000	339,800	1.46	S A J REALTY
UNDER-U	20.0	1	1317	4B	1-71 NORTH AVE E	1,400,000	482,500	2.90	SHEVELL, M P C/O N ENGLAND MTR FRT
UNDER-U	14.3	1	1318	4B	101-141 NORTH AVE E	1,002,700	254,700	3.94	GIBBONS & LAUDENSLAGER/VAN ARSDALE
UNDER-U	8.0	1	1390	4B	104-42 NORTH AVE E	557,000	63,600	8.76	MEL NOV REALTY CO.
UNDER-U	9.0	1	1390.A	4B	687-747 KAPKOWSKI RD	620,000	124,400	4.98	MEL NOV REALTY CO.
UNDER-U	6.0	4	1464	4B	346-532 S FRONT ST	360,000	300,000	1.20	CROWN CENTRAL CORP
UNDER-U	9.3	4	1582	4B	530-614 TRENTON AVE	465,500	234,900	1.98	P S ELECTRIC & GAS CO.
UNDER-U	14.7	8	1873	4B	653 715 YORK ST	774,800	311,900	2.48	WAKEFERN FOOD CORP
UNDER-U	12.7	8	428.I	4B	459-485 DIVISION ST	719,200	400,000	1.80	KIT ENTERPRISES INC
UNDER-U	7.2	1	1.A	4A	63-87 ATALANTA PLAZA	430,800	234,700	1.84	PRIDE URBAN RENEWAL CORP

DRAFT

UNDER-U	5.5	1	1.B	4A	89-147 ATALANTA PLAZA	328,200	196,500	1.67		SHALHON URBAN RENEWAL CORP
UNDER-U	4.7	1	999	4A	511 537 YORK ST	281,100	70,000	4.02		WAKEFERN FOOD CORP
UNDER-U	8.5	8	822	4A	525 97 HENRY ST	511,200	235,700	2.17		J A G REALTY

TOTAL
14 146.5

VACANT SITES

VACANT	10.8	1	119, 120	1	ATLANTA PL	645,600				DANIC URBAN RENEWAL
VACANT	66.7	1	1206.C	15C	929-973 MCLESTER ST	5,336,600				PORT AUTHORITY
VACANT	52.0	1	1206.D	15C	RIPARIAN GRANT	400,200				PORT AUTHORITY
VACANT	21.3	1	1371	1	EAST NORTH AVE	1,700,000				IKEA URBAN RENEWAL
VACANT	47.5	1	1375	1	EAST NORTH AVE	570,400				C&CS LTD
VACANT	8.7	1	1411	15C	201-203 E NORTH AVE	693,500				PORT AUTHORITY
VACANT	8.3	1	2104.B	15C	318-772 E NORTH AVE	661,600				PORT AUTHORITY
VACANT	7.1	1	659	1	497 SCHILLER ST	213,500				CRR OF NJ%CONRAIL
VACANT	6.7	1	660	1	PAPETTI PL	404,600				JERSEY PRIDE FOODS
VACANT	46.3	1	940	1	333 THIRD ST	1,389,500				CRR OF NJ C/O CONRAIL
VACANT	7.6	1	951.B	1	TRUMBULL ST	226,500				CONRAIL
VACANT	6.2	1	999.B	1	651-81 SULLIVAN RD	149,400				WAKEFERN FOOD CORP
VACANT	9.9	1	999.C	1	635 SULLIVAN RD	265,000				WAKEFERN FOOD CORP
VACANT	5.2	1	953	1	100 TRUMBULL ST	251,000				A&A URBAN RENEWAL
VACANT	5.3	3	93	1	PAPETTI PL	317,800				NEW MARINE U.R.
VACANT	12.8	8	1308.F	1	668 EAST NORTH AVE	230,700				WAKEFERN FOOD CO.
VACANT	6.2	2	480	1	FRONT ST					PUBLIC (COMMUNITY COMMERCIAL)
VACANT	36.0	1	1440	1	ELIZABETH INDUSTRIAL PARK					PORT AUTHORITY
VACANT	5.8	1	1286, 1287	1	TRUMBULL ST					CENTRAL CITIES & SECURITIES

TOTAL
19 370.4

GRAND TOTAL
78 995.9

RPA

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January 6, 1997

Marie Krupinski
City of Elizabeth
Department of Policy and Planning
Office of the Director
50 Winfield Scott Plaza
Elizabeth, NJ 07201

Dear Marie:

I am happy to provide this letter of support to the U.S. EPA for a brownfields pilot planning project in the City of Elizabeth. As you know, RPA has had a very successful working relationship with the Mayor and Policy Planning staff in the City of Elizabeth. Our working together on the OENJ model site redevelopment project, which is soon to become the Metro Mall, is ample demonstration of both the need and potential for successful brownfields remediation in the city of Elizabeth.

The RPA inventory of derelict and contaminated sites in Union County pointed out that the majority of the sites - 56 out of 185 - were located in the City of Elizabeth. The advisory group process established for the RPA project at the OENJ site provides a good basis upon which the City can expand the brownfields cleanup approach by appointing a full-time brownfields coordinator to oversee redevelopment of five key sites. The City should also strive to significantly involve Elizabeth's diverse community groups in the redevelopment process. I am confident that Elizabeth is a good candidate for an EPA pilot brownfields project, and wish you the best in pursuing the application.

Sincerely,

Linda P. Morgan

Linda P. Morgan
Director

BUILDING A BROWNFIELDS PARTNERSHIP FROM THE GROUND UP

LOCAL GOVERNMENT VIEWS ON THE VALUE AND PROMISE OF NATIONAL BROWNFIELDS INITIATIVES

NATIONAL ASSOCIATION OF LOCAL GOVERNMENT ENVIRONMENTAL PROFESSIONALS

PROJECT MANAGED AND REPORT AUTHORED BY:

KENNETH A. BROWN
MATTHEW W. WARD

FEBRUARY 13, 1997

THE NATIONAL ASSOCIATION OF LOCAL GOVERNMENT ENVIRONMENTAL PROFESSIONALS

Founded in 1993 by a group of local officials, the National Association of Local Government Environmental Professionals ("NALGEP") represents local government personnel responsible for ensuring environmental compliance and developing and implementing environmental policies and programs. NALGEP is the only national organization devoted exclusively to addressing local government environmental program development and implementation. NALGEP's membership includes more than 50 local government entities located throughout the United States, ranging in size from the largest cities to much smaller communities. NALGEP's diverse membership includes environmental managers, solid waste coordinators, public works directors and attorneys, all working on behalf of towns, cities, counties and municipal associations.

NALGEP provides its members with opportunities for networking, assistance and advocacy that promote innovative environmental solutions to local environmental problems. By participating in NALGEP, members gain access to a network of local government professionals engaged in environmental compliance and policy matters. NALGEP members exchange practical advice -- based on strategies undertaken by colleagues elsewhere -- on resolving environmental compliance issues, implementing local environmental programs, and developing strategies to finance environmental programs and services. Given the broad base and expertise of its membership, NALGEP is a unique vehicle for providing a national voice for local government environmental professionals.

NALGEP is managed by Spiegel & McDiarmid, a national law firm that specializes in assisting local governments to solve problems in the fields of environment, energy, communication and transportation.

ABOUT THE AUTHORS

Kenneth A. Brown is the Public Affairs Director for Spiegel & McDiarmid and serves as the Executive Director of NALGEP. Mr. Brown provides policy, coalition building, project management and public relations services for local governments and businesses. Mr. Brown previously served as the Executive Director of Renew America, the National Program Director for Clean Water Action, and the Director of the New Jersey Environmental Federation. He has also served as a consultant to government, business, and non-profit clients. Mr. Brown received his Master of Public Policy degree from the University of Michigan.

Matthew W. Ward is an environmental and energy attorney with Spiegel & McDiarmid, where he specializes in legal, regulatory and policy issues affecting local governments. He serves as NALGEP's Program Director. Mr. Ward assisted the City of Anaheim in obtaining the first Project XL for Communities award from the U.S. EPA, and recently co-authored an article on Project XL for Communities which appeared in the Nov./Dec. 1996 publication *Municipal Lawyer*. He received his JD from the University of Virginia Law School, where he was a member of the *Virginia Environmental Law Journal*.

ACKNOWLEDGMENTS

NALGEP wishes to convey its gratitude and appreciation to several people that have provided the vision, support, time, funding and insight that contributed to the NALGEP Brownfields Report. NALGEP thanks the U.S. Environmental Protection Agency, Office of Regional Operations and State/Local Relations for contributing funding to the NALGEP Brownfields Project.

NALGEP thanks Shelley Metzenbaum, the U.S. Environmental Protection Agency Associate Administrator for Regional Operations and State/Local Relations. Her leadership on local government environmental issues, her vision of NALGEP's potential and the overall support from her office are the foundation for this project. Thanks also to Jim Wieber and Anna Raymond in Associate Administrator Metzenbaum's office.

NALGEP also offers its appreciation to the U.S. EPA staff in the Brownfields Program offices of the Office of Solid Waste and Emergency Response ("OSWER") and the Office of Enforcement and Compliance Assurance ("OECA"), who have provided substantial guidance and time to the development of this project and report. In particular, NALGEP wishes to thank Timothy Fields, Jr., Principal Deputy Assistant Administrator of OSWER; Linda Garczynski, OSWER's Director of Outreach and Special Projects; Marjorie Buckholtz, OSWER's Brownfields National Coordinator; Beau Mills, Program Analyst in OSWER; and Lorie Boughton, Team Leader in OECA's Office of Site Remediation Enforcement.

We also wish to recognize the NALGEP Board of Directors for their support and guidance in the development of this project, and their belief in the critical role of local governments in environmental protection. Thanks to Board Co-Chairs David Padgett of Colorado Springs, Colorado and Randy Grant of Scottsdale, Arizona, and to Board members John Hills of Anaheim, California, Anne Klumpp of Rochester, New York, Richard Mendes of Cincinnati, Ohio, Don Stypula of the Michigan Municipal League and Steve Venezia of the Massachusetts Department of Economic Development.

NALGEP also thanks and commends the members of its Brownfield Advisory Committee, listed on the next page, for their outstanding contribution to this project and report.

Finally, NALGEP acknowledges the staff of Spiegel & McDiarmid who helped to produce this project and report, including Scott Strauss, Lisa Dowden, Robert Roach, Carol Gloss, Kristina Paszek, Wendy Pizer and Inga Frievalds.

NALGEP BROWNFIELDS ADVISORY COMMITTEE

NALGEP would like to give special thanks and appreciation to our Brownfields Advisory Committee. Comprised of 14 of the nation's top local government brownfields leaders, the Advisory Committee members have provided critical leadership in the development and implementation of this project and report. They devoted substantial time and energy to developing the overall project game plan, the interview questions, and the project findings. They offered invaluable guidance, reviewed and commented on several drafts of the report and participated in numerous conference calls to discuss the various aspects of the project findings.

These local brownfields officials and their colleagues in other communities are the nation's true brownfields leaders. They are on the front lines developing local programs, establishing partnerships, leveraging resources and revitalizing their communities. The enthusiasm and energy which they bring to their daily responsibilities, and which they have contributed to this project, are commendable. NALGEP appreciates your efforts.

The members of the NALGEP Brownfields Advisory Committee are:

Mark Gregor, Manager, Division of Environmental Quality, City of Rochester, NY

Joseph James, Director of Economic Development, City of Richmond, VA

David Levy, Brownfields Project Coordinator, City of Baltimore, MD

Judith Lorbeir, Environmental Coordinator, City of Tacoma, WA

Lorrie Louder, Director of Industrial Development, Saint Paul Port Authority, Saint Paul, MN

Lisa Maack, Deputy Director, Mayor's Office of Environmental Affairs, City of New Orleans, LA

Richard Mendes, Deputy City Manager, City of Cincinnati, OH

Douglas MacCourt, Environmental Manager, Office of Transportation, Portland, OR, and Director, Portland Brownfields Initiative

Beverly Negri, Brownfields Liaison, Economic Development Department, Dallas, TX

Jacqueline Ritchie, Brownfields Coordinator, Environmental Services Cabinet, Boston, MA

Mary Beth Schmucker, Brownfields Coordinator, City of Indianapolis, IN

Martin Soffer, Environmental Review Officer, Planning Commission, City of Philadelphia, PA

Gary Stephens, Deputy Director, Department of Natural Resources Protection, Broward County, FL

William Trumbull, Assistant Commissioner, Department of Environment, City of Chicago, IL

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EXECUTIVE SUMMARY

The cleanup and revitalization of urban "brownfields" represents one of the most exciting, and most challenging, environmental and urban initiatives in the nation. Brownfields are abandoned, idled, or under-used industrial and commercial properties where expansion or redevelopment is hindered by real or perceived contamination. The brownfields challenge faces virtually every community; experts estimate that there may be as many as 500,000 brownfields sites throughout the country.

The brownfields issue illustrates the connection among environmental, economic and community goals that can be simultaneously fostered through a combination of national leadership, federal and state incentives, and the innovation of local and private sector leaders. Cleaning up and redeveloping brownfields provides numerous environmental, economic and community benefits including the following:

- expediting the cleanup of thousands of contaminated sites;
- renewing local urban economies by stimulating redevelopment, creating jobs and enhancing the vitality of communities; and
- limiting sprawl and its associated environmental problems such as air pollution, traffic and development of rapidly disappearing open spaces.

> *Brownfields renewal is one of the most important environmental and economic challenges facing our nation's communities, calling for partnership among our federal and local governments, businesses and community and environmental leaders. We must work together to build a national brownfields partnership from the ground up.*
>
> Douglas MacCourt, Environmental Manager, Office of Transportation, City of Portland, Oregon; and Director of Portland Brownfields Initiative

To respond to the challenge of addressing the national brownfields issue, the U S. Environmental Protection Agency launched its Brownfields Economic Redevelopment Initiative in 1995, which was implemented through the Agency's BROWNFIELDS ACTION AGENDA. The Action Agenda contained four key components for returning brownfields to productive use: (1) clarifying liability and cleanup issues; (2) initiating local brownfields pilot programs in communities across the nation; (3) building partnerships among public and private stakeholders; and (4) fostering local job development and training initiatives.

The EPA Brownfields Action Agenda represents a new generation of partnership between the federal government and local communities. Since EPA Administrator Carol Browner's announcement of the Brownfields Action Agenda in January, 1995, the Agency has successfully

promoted a national message about the value of brownfields renewal, launched nearly 100 pilot projects and successfully implemented policies for the clarification of liability, job training and development, and federal/local partnerships and outreach. These EPA efforts have helped spur genuine results in communities across the Nation.

This year presents an exciting opportunity to build upon the initial successes of EPA's Brownfields Action Agenda and establish a long-term, sustainable federal/local brownfields partnership. The timing is especially good given that: (1) many communities are emerging from the pilot stage of the EPA Brownfields program; (2) several federal agencies are preparing to expand the Administration's commitment to brownfields redevelopment by launching the **BROWNFIELDS NATIONAL PARTNERSHIP AGENDA**; and (3) Congress is considering opportunities for legislative solutions to address local government brownfields needs.

Local government leaders are a key link in the success of brownfields partnerships, for it is the environmental, health, development and political leaders in our cities, counties and towns who can best build a brownfields partnership "from the ground up." The National Association of Local Government Environmental Professionals, or "NALGEP," is working to promote a national brownfields partnership by bringing together local and federal government leaders to find solutions to the many brownfields challenges facing our communities.

This NALGEP report, ***Building a Brownfields Partnership from the Ground Up***, presents the views of a network of local government brownfields leaders on the value of EPA's brownfields programs and policies to those who use them at the community level. It also provides proposals for building the next phase of federal brownfields programs. Launched with the support of the EPA Office of Regional Coordination and State/Local Relations, the NALGEP Brownfields Project is seeking to promote new models of federal/local communication and cooperation.

PROJECT METHODOLOGY

NALGEP performed the following steps in conducting the Brownfields Project:

- Establishing a 14-member Advisory Committee composed of local government brownfields officials from EPA pilot and other leading brownfields communities;
- Developing, in conjunction with the Advisory Committee, a comprehensive set of brownfields interview questions;
- Conducting interviews with more than 25 brownfields stakeholders across the nation;
- Developing, based on this series of interviews and collaborative discussions with the Advisory Committee, focused findings on:

- The value of EPA ***liability clarification policies*** to local government brownfields programs;
- How the ***next phase of federal brownfields policies and programs*** can best meet local community needs;
- ***Improving communication*** among local, state and federal brownfields officials;
- ***Legislative opportunities*** to stimulate brownfields cleanup and redevelopment.

SUMMARY OF KEY FINDINGS

NALGEP proposes that the EPA and other key agencies involved in the federal brownfields effort consider the following specific findings:

CLARIFYING AND LIMITING LIABILITY TO PROMOTE BROWNFIELDS CLEANUP AND REDEVELOPMENT

- EPA's overall leadership and its package of liability clarification policies have helped establish a climate conducive to brownfields renewal.
- To facilitate cleanup and redevelopment, EPA and state liability policies should clearly distinguish between: (1) Superfund NPL-caliber sites; and (2) less contaminated brownfields sites.
- EPA should delegate the authority to limit liability and issue no further action decisions for less contaminated brownfields sites to States with cleanup programs that meet minimum requirements to protect public health and the environment.

BUILDING A NATIONAL BROWNFIELDS PARTNERSHIP: *LOCAL GOVERNMENT VIEWS ON THE NEXT PHASE OF THE BROWNFIELDS AGENDA*

- The administration should establish a "Brownfields Partners Program" offering to local governments a package of funding, incentives and recognition, to build on the successes and meet the needs of EPA pilot communities and other established, local brownfields programs.
- The federal government should: (1) establish positive incentives for brownfields cleanup and redevelopment; and (2) identify and correct policies that favor development in greenfields over brownfields.

IMPROVING COMMUNICATION AMONG LOCAL, STATE, AND FEDERAL BROWNFIELDS OFFICIALS

- Overall, communication between EPA regional brownfields coordinators and local brownfields pilot coordinators has been excellent. Local officials consistently give EPA regional personnel high marks for their accessibility, their knowledge and assistance and, most importantly, their willingness to work together in a positive partnership to get the new brownfields programs off the ground.

- EPA should facilitate the establishment of ongoing local government work groups to focus on advancing solutions to the following critical brownfields issues: establishing new financing mechanisms for brownfields cleanup and redevelopment; ensuring effective state voluntary cleanup programs; correcting incentives that encourage greenfields over brownfields development; promoting the use of innovative assessment and cleanup technologies in brownfields; and ensuring interagency coordination.

LEGISLATIVE OPPORTUNITIES TO STIMULATE BROWNFIELDS CLEANUP AND REDEVELOPMENT

There is strong agreement that EPA's ability to further clarify and reduce environmental liability for brownfields activity is limited, and that legislative solutions are needed to advance the brownfields agenda. Specific legislative solutions that would promote brownfields cleanup and redevelopment include the following:

- Ensure that federal liability policies clearly distinguish between: (1) Superfund National Priority List ("NPL") caliber sites; and (2) less contaminated brownfields sites.

- Give EPA the ability to delegate the authority to limit liability and issue no further action decisions for less contaminated brownfields sites to States with cleanup programs that meet minimum requirements to protect public health and the environment.

- Provide additional federal funding to: (a) build upon the existing successful local pilot programs; (b) establish more new local brownfields pilot programs; (c) enable cities and states to establish Revolving Loan Funds for brownfields site assessments and cleanups; and (d) encourage other federal agencies to participate in the effort to clean up and redevelop brownfields.

- Provide tax credits and/or deductions for expenses related to the assessment and cleanup of brownfields sites as well as other tax incentives for brownfields redevelopment.

- Establish a "National Brownfields Partners Program" that provides funding and encourages other federal agencies with a community and economic development mission (*e.g.*, HUD and

the Department of Commerce) to play a leadership role in the effort to cleanup and redevelop brownfields. (See Partnership Section 2 for more details).

- Codify into law existing administrative policies that clarify liability.
- Require the federal government to identify and propose corrections for federal policies and programs which promote greenfields development over brownfields development.
- Amend the National Environmental Policy Act to reflect the environmental and cultural benefits of brownfields redevelopment over development in greenfields by requiring that Environmental Impact Statements consider alternatives that would promote brownfields development over greenfields development.
- Expand ISTEA authority to include transportation spending for brownfields revitalization, and increased overall funding for mass transportation systems, including through ISTEA.

NALGEP welcomes the opportunity to work in partnership with federal officials, additional local government leaders and other brownfields stakeholders to implement the proposals contained in this report.

> *Local governments are leading innovative brownfields efforts that can simultaneously reach our environmental, economic and community goals. NALGEP calls upon the federal government to work with local officials to create the tools and incentives that will achieve long-term renewal in our communities.*
>
> David Padgett, Environmental Affairs Manager, Colorado Springs, Colorado, and NALGEP Board Co-Chair

SECTION 1: CLARIFYING AND LIMITING LIABILITY TO PROMOTE BROWNFIELDS CLEANUP & REDEVELOPMENT

INTRODUCTION

A key component of the EPA Brownfields Action Agenda has been the issuance of liability clarification policies designed to reduce the fear among parties involved in brownfields renewal that they will be vulnerable to the threat of Superfund liability. EPA has used these liability clarification policies to send the signal that the liabilities associated with the remediation and redevelopment of brownfields can be managed in a common sense fashion and that the Administration is supportive of those in the public and private sector who are willing to step forward and take this risk.

Based on interviews and collaborative discussions with local government and other brownfields leaders from across the nation, the NALGEP Brownfields Project has developed findings regarding the ***value of EPA liability clarification policies*** to local governments involved in brownfields renewal. These findings demonstrate which policies have been used and useful, which policies have been insufficient or counterproductive, and which policies should be further developed in the future phases of the federal brownfields program. The NALGEP Brownfields Project focused primarily on the following specific liability clarification policies:

- Prospective Purchaser Guidance
- Lender and Municipal Acquisition Liability Guidance
- Guidance on Future Land Use
- Owners of Property Containing Contaminated Aquifers Guidance
- Underground Storage Tank Lender Liability Rule
- EPA Deferral to State Policy in Taking the Lead on Cleanup (including both deferral for individual sites and general delegation pursuant to established state cleanup programs and/or State Memoranda of Agreement with EPA)
- Soil Screening Guidance

SPECIFIC FINDINGS -- Following are specific findings developed from the interviews and discussions conducted under the NALGEP Brownfields Project with regard to the value of EPA's liability clarification policies:

Finding 1 -- EPA's Overall Leadership and its Package of Liability Clarification Policies Have Helped Establish a Climate Conducive to Brownfields Renewal.

- It is widely viewed by local government brownfields leaders that EPA's leadership and administrative action to clarify and reduce federal liability for brownfields activities have provided critical support to local communities. EPA's brownfields liability policies have both fostered an overall national change in perception regarding the feasibility of brownfields renewal, and helped give some developers and lenders the confidence to move forward with specific brownfields renewal projects.

- The overall effect of EPA's liability clarification effort has been to reduce the magnitude of environmental liability factors in the redevelopment of brownfields sites, by better placing environmental considerations in the context of other factors that promote or hinder redevelopment. Environmental liabilities are less frequently viewed as the primary "deal-breaking" factor.

- There is strong agreement that EPA's ability to further clarify and reduce environmental liability for brownfields activity is limited, and that legislative solutions are needed which address the broad range of liability, funding and partnership tools necessary to ensure the long-term sustainability of community brownfields efforts.

Finding 2 -- While EPA Liability Clarification Policies Have Been Used Only in a Limited Fashion Thus Far, Several Have Contributed to the Cleanup of Specific Sites Across the Nation.

- Local governments widely view effective delegation to the states of cleanup authority for non-NPL caliber sites through EPA / State Memoranda of Agreements ("SMOAs") as one of ***the most important liability policies*** for facilitating brownfields cleanup and redevelopment. (*See* Liability Findings #3 and #5 for further discussion of SMOAs and state delegation.)

- Some EPA clarification policies tend to be utilized more often than others by local community leaders and stakeholders. In particular, the municipal acquisition liability guidance, the underground storage tank liability rule, the future land use guidance, and the aquifer guidance have helped facilitate the cleanup of specific brownfields sites.

- However, despite excellent EPA efforts, use of these policies has been limited thus far because, among other reasons: local programs are often too new to begin such use; the EPA policies may not have the force of law; the federal policies have occasionally conflicted with state policies or state priorities; or the process for utilizing these federal policies can be viewed as too long and burdensome to meet development needs.

- In particular, the EPA prospective purchaser guidance is viewed as ineffective by many local governments because it is too cumbersome, and too inflexible to meet local brownfields needs and provide sufficient long-term liability protection.

Finding 3 – States with Effective Voluntary or Independent Cleanup Programs Have Stimulated the Most Significant Brownfields Cleanup and Redevelopment Activities Thus Far and are Likely to Continue to Do So in the Future.

- EPA should encourage the creation of additional voluntary and independent cleanup programs in states where they do not yet exist.

- EPA should help identify the key components and provisions of successful state cleanup programs and work with local governments to determine which components are most important from a local perspective.

- EPA should help publicize the most important components of successful state programs so that others can learn from these models.

- EPA should enhance the effectiveness of successful state programs by signing State Memoranda of Agreement (SMOAs) delegating increased cleanup authority to states with programs that meet minimum requirements to protect public health and the environment. (*See* Liability Finding #5 for more details on delegation of authority to state programs.)

Finding 4 – EPA and the States Should Clearly Distinguish Between NPL-Caliber Sites and Less Contaminated Brownfields Sites to Better Foster Brownfields Redevelopment.

- The EPA Brownfields Action Agenda, which has emerged from the EPA Superfund Program, is still too connected to and oriented toward a Superfund (*i.e.*, NPL-caliber sites) perspective. Although the remediation and redevelopment of Superfund sites remains a vital environmental and economic need in communities, the Superfund perspective should be effectively separated from activities at lesser contaminated brownfields sites. The Superfund perspective sends conflicting messages to the private sector, involves an enforcement-oriented approach too substantially in brownfields decisions, and fails to encourage certain efforts by local governments to foster brownfields activity (*e.g.*, municipal efforts to aggressively acquire abandoned sites for brownfields renewal are not protected by the existing EPA guidance regarding municipal involuntary acquisition of contaminated sites).

- Local governments need brownfields liability clarification and protection tools that are flexible and geared toward the quick time frame demanded by economic development -- qualities that are generally inconsistent with policies and practices geared toward Superfund. Several localities have remarked that the most effective tools they have used are phone calls to EPA Regional Coordinators that produce quickly-issued comfort letters to potential developers who have certain concerns about environmental liability at a particular site. This need for flexible, timely liability clarification practices suggests the need for expanded use of comfort letters and streamlined, customer-service oriented EPA decision-making processes for liability clarification at non-NPL sites.

> *The revitalization of less-contaminated brownfields sites requires a new perspective and different tools than what is needed at a Superfund NPL site. EPA and the states need to draw the line between NPL-caliber sites and those properties that can be put on a brownfields track.*
>
> Mary Beth Schmucker, Brownfields Coordinator, City of Indianapolis, Indiana

- EPA and the states should establish policies to clearly distinguish between NPL-caliber sites and less-contaminated sites that can be put on a "brownfields track." The keys to allowing such distinction are policies that ensure effective site assessments, and adequate methods at the state level for the categorization of sites.

- EPA should seriously consider the issuance of guidance designed to clearly distinguish between the application of EPA policies to CERCLA NPL-caliber sites and the application of EPA policies and incentives to those sites with a lower level of contamination that are unlikely to provoke federal action. EPA liability clarification policies designed specifically for non-NPL caliber brownfields sites will provide local governments with a superior tool for the facilitation of brownfields activities that should be disconnected from Superfund. These brownfields-specific policies could include, for example:

  - protections for voluntary municipal acquisition of sites for brownfields renewal;
  - federal and other funding for site assessment activities designed to identify non-NPL-caliber sites so that they can be channeled into the "brownfields track";
  - the transfer of EPA "environmental liens" on contaminated sites to local governments, both to remove a barrier to redevelopment and to provide local governments with a tool for better exercising control over particular abandoned sites and thereby commencing assessment and remediation activities;
  - incentives, technical assistance, funding and appropriate liability protections for municipal or private sector voluntary assessment of sites not included on the Superfund NPL. Such incentives for voluntary site assessment activities will

encourage landowners to responsibly step forward and commence the remediation and renewal process at dormant sites; and

- the expanded use of EPA and state "comfort/status letters" to local governments, lenders and developers, as described in the EPA Policy on the Issuance of Comfort/Status Letters in 62 Federal Register 4624 (January 30, 1997).

- In appropriate circumstances determined by states and EPA, many brownfields tools may be beneficial to the remediation and redevelopment of Superfund sites.

- The most important actions for fostering brownfields track activities at non-NPL caliber sites are: (1) the creation of effective state voluntary and independent cleanup programs; and (2) the delegation of liability clarification authority to approved state programs. Clearly distinguishing between NPL and non-NPL caliber sites will help facilitate the delegation of cleanup authority to the states, and consequently lead to the cleanup and redevelopment of more brownfields sites.

Finding 5 -- EPA Should Delegate Authority to Limit Liability and Issue No Further Action Decisions for Less-Contaminated Brownfields Sites to States with Cleanup Programs that Meet Minimum Requirements to Protect Public Health and the Environment.

- Local communities in states that have negotiated "State Memoranda of Agreement" or "SMOAs" with EPA Regional Offices providing for the delegation of liability authority to the state are in a substantially better position to foster brownfields redevelopment activities. Therefore, EPA should make the execution of additional SMOAs a top administrative priority, and should make information regarding model SMOAs available to local governments.

- As explained above, EPA delegation of authority to approved states should include delegation of clear authority to clarify and limit liability at non-NPL caliber brownfields sites. Such delegation should include the ability of the state to issue "no further action" decisions for non-NPL sites, subject to exceptional circumstances.

- Several local officials expressed significant concern about delegating too much cleanup authority too fast to their states. The quality of established state cleanup programs varies widely across the country. Specifically, some local officials have questioned whether their states have the technical expertise, the resources, the staffing, the statutory authority, and the commitment to ensure that adequate cleanups (*i.e.*, sufficiently protective of human health and the environment) are conducted under their cleanup programs. NALGEP believes that EPA should remain involved to protect public health and the environment by requiring that certain minimum standards be met by those states receiving delegated authority to clarify liability at brownfields sites. In addition, EPA should maintain the ability to withdraw delegation from states that fail to conform to these minimum standards that are incorporated into SMOAs.

> *A critical element to successfully redeveloping brownfields is to give the states more authority and localities more flexibility in brownfields cleanup. The key to safeguarding our public health and environment in brownfields areas is to make sure that EPA only delegates this authority to states that show that they have the ability and commitment to get the job done right.*
>
> Mark Gregor, Manager, Division of Environmental Quality, City of Rochester, New York

- Because there is substantial variation among State cleanup programs, local governments support the establishment of "baseline criteria" for the approval of SMOAs. These baseline criteria for adequate state programs should build upon the positive approach with regard to standards adopted by the Interim EPA Memo on State Voluntary Cleanup Programs issued November 14, 1996. The criteria should reflect the needs of the local communities that have ultimate responsibility for brownfields activities, and ensure the protection of human health and the environmental consistent with community and economic goals.

- In addition to the Six Baseline Criteria developed in EPA's Interim Guidance, the Final Guidance on state voluntary cleanup programs should include criteria designed to ensure that state programs which are granted the delegation of authority for non-NPL-caliber sites have the following elements:

> *The foundation of effective brownfields cleanup must be the adequate assessment of the sites. EPA and the states should make site assessment a top priority, and back this priority with funding, technical assistance and a means to ensure that assessment results are clear and reliable to local governments and developers.*
>
> Martin Soffer, Environmental Review Officer, City Planning Commission, Philadelphia, PA

1. **Strong requirements to ensure adequate site assessments early in the process.** Good site assessments will help prevent unanticipated problems from surfacing, and facilitate efforts to direct particular sites into a "brownfields track." EPA should encourage the **use of ASTM standards or other acceptable minimum standards for the assessment of sites.** Such minimum standards should serve the dual purpose of determining the level of remediation necessary for protection of health and environment, and increasing the knowledge and confidence of lenders, developers and others regarding assessments and the potential remediation costs at a site. Minimum standards would also allow local authorities to require additional assessment standards, if necessary, to meet local needs.

2. Adequate state **technical expertise, staff and enforcement authority** to ensure effective implementation of voluntary action activities in compliance with SMOAs.

3. An **adequate method to distinguish between NPL-caliber sites and those less-contaminated sites** that can be placed on a brownfields track.

4. Use of **risk-based cleanup standards**, which can be tied to reasonably anticipated land use, established through an adequate public approval process.

5. **Institutional controls** such as deed restrictions, zoning requirements or other mechanisms that are enforceable over time to ensure that future land uses tied to certain cleanup standards are maintained.

6. **Commitment to establish community information and involvement processes, and assurance that state and local brownfields activities will consider community values and priorities.** State programs should ensure adequate community participation in brownfields renewal activities. In addition, an approved state program should commit to state and local consideration of community values in the brownfields renewal process. These community values could include, depending upon local circumstances and needs, job creation, environmental justice concerns, or community aesthetics.

7. Commitment to build the capacity, through training and technical assistance, of **local government health and environmental agencies** to effectively participate in the brownfields development process and ensure protection of public health and the environment.

8. **Adequate mechanisms** to address unanticipated cleanups or orphaned sites where liability has been eliminated.

9. Ability of EPA to **selectively audit** state liability certifications performed pursuant to a SMOA to ensure state compliance with the requirements of the SMOA.

- The federal government should provide funding and technical assistance to help states in developing and implementing effective state programs that meet the criteria listed above.

- In delegating brownfields authority for non-NPL caliber sites to the states, EPA should provide that it will not plan or anticipate further action at any sites unless, at a particular site, there is: (1) an imminent and substantial threat to public health or the environment; and (2) either the state response is not adequate or the state requests U.S. EPA assistance.

SECTION 2: BUILDING A NATIONAL BROWNFIELDS PARTNERSHIP:

THE NEXT PHASE OF THE FEDERAL BROWNFIELDS AGENDA FROM A LOCAL GOVERNMENT PERSPECTIVE

Local communities call upon the federal government, states, businesses and other key stakeholders to move beyond brownfields pilots to brownfields partnerships.

William Trumbull, Assistant Commissioner, Department of Environment, City of Chicago, IL

Local governments clearly recognize the national brownfields agenda as a very promising endeavor that can simultaneously foster environmental, economic and community goals. An opportunity now exists to strengthen and expand the national brownfields endeavor in a new phase of activities based on the Administration's initiative for a "Brownfields National Partnership." NALGEP strongly supports the new administration Partnership, which will bring new federal agencies, assistance, and incentives to the national effort to redevelop brownfields. NALGEP below proposes that a specific component of the National Partnership be the establishment of a "Brownfields Partner Program" that would offer a package of funding, incentives and recognition designed to build on the successful efforts in EPA pilot and other leading local communities.

NALGEP also finds the continuing need for federal brownfields leadership from the highest levels of the Administration, including the White House, the EPA, the Department of Housing and Urban Development and the Department of Commerce, among others. Successful brownfields partnerships also should support the environmental justice objectives of increasing the environmental health and economic opportunity of minority and low income communities.

Finding 1 -- The Administration Should Establish a "Brownfields Partners Program" That Would Offer a Package of Funding, Incentives and Recognition to Build on the Success and Meet the Needs of Communities with Established Pilot and Other Brownfields Programs.

- The long-term success of the EPA Brownfields program depends largely on the establishment and long-term sustainability of partnerships among federal, state and local brownfields redevelopment stakeholders. The current leaders of these partnerships include the nearly 100 EPA pilot communities, and other communities whose efforts prior to or outside of the pilot programs have contributed to the economic and environmental benefits gained through brownfields redevelopment.
- Communities with established brownfields programs need federal assistance tailored toward on-going brownfields activities, which may be different from the assistance offered through the Action Agenda to start-up pilot programs. Toward that end, the

NALGEP Brownfields Project finds the need for the establishment of a "Brownfields Partners Program" aimed at assisting established community brownfields programs.

- The purpose of the Brownfields Partners Program would be to: (a) create a package of federal funding, tools and incentives for pilot communities and other select non-pilot communities; (b) enhance national understanding of the needs of those communities based on the findings of pilot programs; and (c) establish a national network of pilot communities to carry the mission of the pilots beyond the term of the pilot program.

- The Brownfields Partners Program would offer a menu of incentives and assistance to pilot cities and communities whose brownfields programs could be strengthened and enhanced through the following types of federal assistance:

  1. **Additional funding, and priority eligibility for federal brownfields funding** including tax incentives, federal grants and loans from EPA, HUD and other federal agencies.

  2. Devotion of **EPA or other federal personnel** (through IPAs) to Partner Communities. These federal brownfields personnel should have the training and ability to gather information and leverage resources from the entire range of federal agencies involved in the national brownfields program. The establishment of a **single point of federal contact for each Partner Community** would facilitate federal interagency coordination on brownfields activities.

  3. Application of existing EPA **environmental regulatory flexibility** tools to Brownfields Partner Communities. The use of regulatory flexibility for either local development organizations, or businesses interested in locating in brownfields areas, would promote cost-saving, "beyond compliance" activities in brownfields areas and help foster brownfields development over greenfields development. Such regulatory incentives should both promote beneficial re-use of brownfields areas and enhance the competitive advantage of those businesses which adopt "beyond compliance" environmental practices associated with urban brownfields activities.

4. **Regulatory flexibility** that would be available to brownfields stakeholders in Partner Communities could include:

(a) the application of "permit improvement team" tools (*i.e.*, permit streamlining and consolidation, reduction of administrative permitting burden, etc.) in brownfields redevelopment areas;

(b) the application of watershed trading, wetlands banking and other incentives to those businesses that develop in brownfields areas in a manner that reduces the environmental impact of such development below the level that would be achieved absent the flexibility incentives;

(c) the award of Clean Air Act SO_2 allowance credits, or some form of NO_x allowance credits, to those localities or private businesses that reduce stationary source and mobile source air pollution through urban design, land use, transportation, pollution prevention, energy efficiency, infill development and other brownfields activities. Such incentives are particularly needed by localities in ozone non-attainment areas, and especially now as the EPA attempts to lower the national ambient standard for ozone pollution.

(d) priority eligibility for the use of Project XL for Communities or Community-Based Environmental Protection tools in Partner Communities; and

(e) the issuance of authority to Brownfields Partner Communities to assume EPA environmental liens at particular brownfields sites. Such transfer of environmental liens to local authority would both remove an impediment to development and provide the local governments with tools for the voluntary acquisition of abandoned sites for assessment and remediation activities.

Local governments need a full toolbox of federal incentives to make brownfields cleanup and redevelopment happen -- funding, liability clarification, technical assistance, regulatory flexibility and information. Give local governments the tools, and we will put them to work in creating brownfields success stories.

Beverly Negri, Brownfields Liaison, Economic Development Department, City of Dallas, Texas

5. Grants of authority to Partner Communities to administer **Supplemental Environmental Projects** ("SEPs") required by EPA to be performed by organizations within the community pursuant to the settlement of civil or criminal environmental liability. Such authority would enable Partner Communities to ensure that SEPs are consistent with local environmental priorities, to promote remediation activities in targeted brownfields areas, and to obtain additional resources (provided by the organization required to perform the SEP) for local brownfields activities. For example, in early 1997 the EPA and the U.S. Department of Justice announced the nation's first brownfields SEP. In this case, Sherwin Williams will devote nearly $1 million to a City of Chicago brownfields project as part of a major settlement with the federal government of environmental violations.

> *Supplemental Environmental Projects can now be used to turn environmental penalties into brownfields renewal activities. The brownfields SEP established in Chicago in early 1997 is exactly the kind of coordination needed to convert federal enforcement actions into a resource for successful city programs that will directly improve the environmental and economic health of our communities.*
>
> William Trumbull, Assistant Commissioner, Department of Environment, City of Chicago, Illinois

6. Devotion of **federal voluntary "green" pollution prevention and energy efficient program** resources to those communities that wish to apply such federal tools to the current and prospective facilities in brownfields sites as further incentive for business recruitment. For example, resources and technical assistance in pollution prevention, environmental technology use or multi-media environmental protection, under such programs like Climate Wise or the Department of Energy's Motor Challenge, could be offered by community environmental or development offices as an incentive for community brownfields and development efforts.

7. Priority eligibility for federal programs and **funding** for communities which adopt **land use regulations requiring reuse of brownfields** as a part of their growth management plan, or land use regulations providing incentives for brownfields redevelopment over greenfields development.

- The Brownfields Partners Program would also be designed to provide national recognition and visibility to community programs and projects that produce brownfields success stories.

Finding 2 – The Federal Government Should Establish Positive Incentives for Brownfields Renewal, and Identify and Correct Policies that Favor Development in Greenfields over Brownfields.

> *Brownfields redevelopment is more than an economic driver for cities -- it is a way to protect the environment and preserve natural resources outside our urban areas. Broward County, Florida has initiated brownfields projects under its "Eastward Ho!" program in order to pull development away from the delicate Florida Everglades in the western part of the state to the I-95 transportation corridor in the east. Eastward Ho! demonstrates the dual environmental and economic benefits of brownfields revitalization.*
>
> Gary Stephens, Deputy Director, Department of Natural Resources Protection, Broward County, Florida

- The continued inactivity at urban brownfields sites, coupled with development in non-urban "greenfields" areas, creates environmental and economic distress for both cities and the regions surrounding urban areas. Brownfields renewal can clearly provide urban benefits including the cleanup of environmentally contaminated sites, and the creation of economic vitality, jobs and a stronger sense of community. At the same time, brownfields activities that reduce ex-urban sprawl can also provide regional and ex-urban benefits, such as reduced mobile source air pollution, reduced non-point and point source water pollution, decreased pressure on infrastructure, protection of valued natural areas, increased regional cooperation and the reduction of urban problems (*e.g.*, crime) that can affect areas outside of distressed cities and towns.

- Even with the federal Brownfields Agenda and state and local programs to encourage reuse of brownfields, there are a variety of factors that encourage development in greenfields over brownfields. These incentives for greenfields development include: transportation infrastructure and incentives in non-urban areas, including federal transportation funding and policies that favor highways over mass transit; lower quality of life and quality of schools in urban areas; disincentives for urban development from the regulatory requirements associated with pollutant "nonattainment areas" under the Clean Air Act; and lack of regional-urban coordination.

- The federal government should identify federal policies that favor greenfields over brownfields and identify opportunities to correct these disincentives, particularly now as 20 federal agencies prepare to cooperate in the launch of a Brownfields National Partnership program. In addition, the federal government should identify opportunities to educate local and state officials and other stakeholders about the economic and environmental advantages of smart growth policies and programs that encourage the cleanup and redevelopment of brownfields.

- Federal incentives to shift development from greenfields to brownfields that should be strongly considered for further action by the Administration include:

  - Expansion of ISTEA authority to include transportation spending for brownfields revitalization, and increased overall funding for mass transportation systems, including through ISTEA;

  - The National Environmental Policy Act should reflect the environmental and cultural benefits of brownfields redevelopment over development in greenfields by requiring that environmental impact statements consider alternatives that would promote brownfields development over greenfields development.

  - Use of "regulatory flexibility" tools through Project XLC or other regulatory reinvention programs designed to provide benefits to those communities and corporations that undertake "beyond compliance" activities to sustainably reuse urban brownfields properties. (See Partnership Finding #1 above).

  - Inter-agency coordination in the use of federal funding for urban brownfields activities, in order to streamline and conform the burdensome procedural requirements associated with different funding sources and better allow the implementation of community-based environmental protection. In other words, local governments with comprehensive urban development programs should be better able to aggregate various funding sources for the implementation of their community environmental priorities, without the undue burden that can result from divergent procedural requirements and standards associated with different funding sources.

  - Business tax incentives for brownfields cleanup and redevelopment activities.

Finding 3 – EPA Should Identify, in Cooperation with Local Governments, Means for Better Interagency Coordination on Brownfields Issues.

- Local governments strongly agree that the expansion of the brownfields program to federal agencies beyond EPA will greatly benefit local efforts. However, the Administration's intention to launch a comprehensive brownfields strategy by up to 20 federal agencies should seek to minimize overlap, ensure coordination, and reduce the potential for prescriptive, bureaucratic requirements to become associated with federal brownfields activities.

- Several communities commented that lack of coordination among federal agencies has caused difficulties in local brownfields efforts, including difficulties in coordinating environmental requirements attached to HUD funding with EPA brownfields requirements. Such interagency disparity can result in contrary incentives, or confusion at the local level regarding the proper standards to meet. Other communities have cited

extremely difficult problems resulting from a disparity between EPA brownfields program efforts to establish a Memorandum of Agreement with a state and the reluctance of the Department of Justice to relinquish any degree of authority over liability clarification in that same state.

- Several communities have expressed that they have been unaware of federal funding and technical assistance opportunities for brownfields programs available from agencies other than EPA.

- The need for coordination among federal agencies in the next phase of the brownfields program should specifically consider the needs of local community brownfields coordinators. EPA should convene a study or discussion of the **specific coordination needs of local governments** on the brownfields issue.

> *EPA should be congratulated for taking an interagency approach in the brownfields effort. This approach helps to efficiently coordinate and leverage public and private resources.*
>
> Joseph James, Director of Economic Development, City of Richmond, Virginia

- The federal government should **educate and train EPA Regional Brownfields Coordinators**, and other federal agency brownfields officials, regarding the inter-relation of the variety of federal brownfields programs and policies.

- EPA Regional Brownfields Coordinators should be encouraged to convene training meetings or other appropriate discussions with local community brownfields officials on the subject of the coordination of various brownfields programs and incentives.

Finding 4 -- EPA Should Expand Its Brownfields Pilot Grant Program, Award Grants to Different Types of Communities, and Ensure That New Grants Build on the Knowledge and Success of Established Pilots.

- NALGEP endorses and supports the Administration's intention to fund additional brownfields pilot grants. In addition, EPA should consider the award of a limited number of pilot grants to communities for innovative, atypical brownfields activities (*e.g.*, the use of regulatory flexibility incentives to promote brownfields renewal; the promotion of innovative environmental technologies in brownfields renewal).

- A portion of EPA pilot grants should be specifically targeted to smaller-sized communities which may lack the resources or knowledge to promote beneficial reuse of abandoned industrial sites without EPA and other federal support.

- EPA should also provide grant funding to non-pilot local communities with particular brownfields needs. This can include site characterization and assessment funding in communities, or funds targeted at special activities in leading communities without pilot status.

SECTION 3: IMPROVING COMMUNICATION AMONG LOCAL, STATE, AND FEDERAL BROWNFIELDS OFFICIALS

The EPA Brownfields Economic Redevelopment Initiative and the Administration's forthcoming Brownfields National Partnership Agenda represent new ways of doing business where the federal government works in partnership with local and state governments and private stakeholders to simultaneously pursue innovative solutions to environmental and economic problems. This evolving partnership not only brings together the various levels of government, but also different branches of government that seldom work together (*e.g.*, environment, economic development, planning, public health, etc.). As a result, improved communication and coordination among different government players are required to ensure the efficient use of resources and effective collaborative approaches for addressing the many issues associated with brownfields cleanup and redevelopment.

This section includes findings aimed toward improving communication among local, state, and federal brownfields officials in the following areas:

- EPA Communication with Local Governments
- Brownfields Information Needs of Local Governments
- Vehicles for Effective Communication
- Intergovernmental Communication
- Communication and Outreach to the Private Sector
- Actions to Improve Communication

Finding 1 – EPA Communication with Local Governments Has Generally Been Very Positive and Valuable, Particularly the Communication Between EPA Regional Brownfields Communities and Local Pilot Communities.

- Overall, communication between EPA regional brownfields coordinators and local brownfields pilot coordinators has been excellent.

1. Local officials consistently give EPA regional personnel high marks for their accessibility, their knowledge and assistance and, most importantly, their willingness to work together in a positive partnership to get the new brownfields programs off the ground.

2. Personal contact via telephone and personal meetings has been regular and very productive. In fact, EPA regional contacts should make it a priority to make personal visits to local pilot coordinators on a regular basis.

3. Several of the EPA regional coordinators have initiated regular conference calls among the various pilot coordinators in the region. Most pilot coordinators view these calls as a very positive and efficient way to obtain timely updates and to share information and experiences with their colleagues.

> *The EPA Regional Brownfields Coordinators have been very valuable to local governments and a linchpin of success in the Brownfields Action Agenda. The Agency should view the use of Regional Coordinators as a model for federal-local cooperation in environmental protection.*
>
> Jacqueline Ritchie, Brownfields Coordinator, Environmental Services Cabinet, Boston, MA

- EPA should enhance its communication and outreach to local officials in non-pilot cities.

    1. Several non-pilot cities interviewed reported that they have received very little information on EPA's Brownfields initiatives, including information on opportunities to apply for the pilot grants. One city, which has since received a grant, reported that it initially learned about the brownfields pilot grants at an Empowerment Zone conference several hundred miles away from its locale.

    2. Non-pilot cities also reported that they have very little contact with EPA in general, except when the Agency is engaging in enforcement activities in their city.

- Several interviewees expressed concern that the federal brownfields initiative is not reaching small and medium-sized communities, which have a number of brownfields problems and opportunities. EPA should develop a strategy to reach local officials in small- and medium-sized communities.

Finding 2 -- Local Governments Need a Variety of Brownfields Information, Particularly in the Area of Finance.

- The priority need expressed by nearly all of the local officials interviewed is more information on financing mechanisms for brownfields cleanup and redevelopment.

    1. Needs include information on federal grants and loans from EPA and other federal agencies (*e.g.*, HUD, Commerce, Transportation); innovative state and local finance programs; and private mechanisms, public / private partnerships, and other funding mechanisms.

2. Several local officials requested that this information be presented in easy to understand, "how to" form, with details on how to obtain or leverage the financing. In addition, they suggested that a list of financing sources and experts be provided.

- Several local officials want more local brownfields "success stories" with detailed information on how successes were achieved, what worked and what did not, keys to success, sources and types of financing, and lessons learned.

- Many local officials want additional information on other federal agencies involved in brownfields activities including information on funding, technical assistance, other resources, and individual contacts in their area.

- Several local officials suggested that EPA could provide more information on various policy developments and their implications (*e.g.*, Interim Guidance to Regions on SMOAs, Summary of the new Lender Liability Law, EPA's Guidance on Comfort letters, the Administration's new proposed Brownfields National Partnership Agenda) in a timely fashion.

- EPA should play an active role in providing information on how other environmental programs (*e.g.*, Air and Water Quality, Underground Storage Tanks, Environmental Justice, Project XL, etc.) can be integrated with and help provide additional technical and / or financial resources to local brownfields programs.

- Several local officials want more information on innovative environmental technologies that can assess and clean up sites better, faster, and cheaper. Most currently rely on private consultants for technical information; however, they suggested that EPA's Technology Innovation Office could do more outreach to local officials, the private consulting community and the states since all play a critical role in technology selection.

Finding 3 – EPA Should Utilize Several Vehicles for Effective Communication, with None More Important than Regular Personal Contact.

- Virtually all of the local officials interviewed reported that regular personal contact with EPA regional coordinators, via phone calls and in-person meetings, was the most important and most effective means of communication.

- Most local officials felt that the regional conference calls with other pilots have been very positive in ensuring a timely flow of information and sharing of expertise and experiences among the pilots.

- Many local officials requested a "how to" manual providing step-by-step instructions for brownfields redevelopment including information on financing, technologies, technical assistance, and community outreach. This need will be particularly acute as additional federal

agencies begin to coordinate with EPA on a comprehensive national brownfields program. Local officials were pleased to learn that ICMA is producing such a manual.

- Most local officials reported that the brownfields conferences have been very beneficial. (The Pittsburgh conference received particularly high marks both for the numbers and diversity of the participants and for the detailed substantive information provided in the workshops). Several expressed concern that there were too many conferences and that it was difficult to pick and choose. There were two specific suggestions for future conferences targeted to meet the needs of local officials:

  1. Survey local officials in advance to determine their current needs and interests and design the conference to have specific discussions and presentations focused on those needs.

  2. Provide specific time for pilot coordinators to meet with each other to share information, expertise and experiences and to explore opportunities to coordinate activities.

Finding 4 – Quality Intergovernmental Communication is Essential; More "Three-Way" Communication Involving Local, State and Federal Officials Would be Very Beneficial.

- Most local officials indicated that they had very good independent communication with EPA and with their State brownfields coordinators.

- Several, however, indicated that there was very little "three-way" communication in which local, state, and federal officials all worked together to address specific brownfields issues; and they suggested that this three-way communication would be valuable.

  1. A few local officials reported that they had monthly conference calls with EPA and their state coordinators and that these regular calls were extremely valuable.

  2. EPA should play a leadership role in convening this three-way communication among local, state and federal brownfields officials.

- Several local officials reported that state economic development officials were largely absent from the discussion and implementation of brownfields programs and that these officials are in a position to leverage significant additional resources for brownfields redevelopment. EPA should work with HUD and the Department of Commerce to conduct outreach and help engage state economic development officials in the brownfields effort.

- Brownfields programs and projects provide opportunities to stimulate positive interaction and working relationships among public officials and agencies at the local, state, and national level that generally do not work closely together: environmental, public health, planning, and economic development agencies.

1. EPA should play a leadership role in helping to bring all of these interests and agencies and their resources to the table to tackle the brownfields issues. For instance, EPA can make recommendations to pilot coordinators regarding stakeholders that should be substantially involved in the establishment of local brownfields programs. Likewise, EPA can provide information on successful stakeholder coordination efforts in particular cities. In addition, EPA could organize or fund conferences / workshops that bring together different local and state officials for discussion on multi-stakeholder coordination on brownfields issues.

> *Participation by a wide range of stakeholders will help build consensus and cooperation in the long-term brownfields redevelopment efforts of local communities.*
>
> Lisa Maack, Deputy Director, Mayor's Office of Environmental Affairs, City of New Orleans, Louisiana

Finding 5 – Communication and Outreach to the Private Sector Should be Enhanced.

- Most interviewees reported that while EPA has done an adequate job of outreach to the private sector, many lenders, developers, and insurance companies remain skeptical that EPA has truly changed its posture concerning brownfields redevelopment and the associated liabilities.

- EPA should implement an aggressive outreach program to reach private sector "end users" through trade associations, trade publications, conferences, speeches, op-ed pieces, publication of success stories, and other communication mechanisms. EPA must demonstrate, through actions and examples, that its Brownfields Agenda represents a genuine shift in policy and practice.

- The private sector is often more receptive to messages delivered by their peers. EPA should work with private sector stakeholders who have positive brownfields experiences to effectively communicate the changing federal policies and approach to brownfields redevelopment.

Finding 6 – To Improve Communication, EPA Should Facilitate the Creation of "Brownfields Work Groups," Composed of Local Officials, to Advance Solutions in Key Brownfields Areas.

- EPA should facilitate the establishment of ongoing local government work groups to transfer the learning from experienced pilots to the newer pilots and to advance solutions on the following critical brownfields issues:

  1. establishing effective ***financing mechanisms*** for brownfields cleanup and redevelopment;
  2. exploring the strengths and weaknesses of various ***organizational models*** for implementing local brownfields pilot projects (e.g., where to locate the pilot within local government, how to staff the project; how to involve stakeholders, etc.);
  3. determining the ***elements of effective state voluntary cleanup programs*** that facilitate cleanup and redevelopment and protect community health and the environment;
  4. establishing ***minimum standards for state programs*** that receive delegation of brownfields authority from EPA;
  5. identifying and correcting ***federal incentives*** that encourage greenfields over brownfields development;
  6. promoting the use and transfer of ***innovative technologies*** that can assess and clean up brownfields in a more efficient and cost-effective fashion;
  7. ensuring ***federal interagency coordination*** in brownfields policies and programs that meets the needs of local government brownfields leaders;
  8. developing and promoting new ***outreach methods*** to educate various stakeholders about the importance of brownfields cleanup and redevelopment, and about the tools available to participate in this effort.

- Work group participants should include pilot coordinators and other experienced local brownfields officials across the country.

- These work groups should meet regularly (via phone and in person) to discuss, advance, and resolve issues related to their specific topics.

- The work groups would ensure collaboration among pilot communities in the periods between brownfields conferences and thereby promote continuous learning and progress.

- The work groups would communicate and interact regularly with EPA, other federal officials, state officials and the private sector on these key brownfields issues.

> *The success and learning of pilot and other leading communities can be the building blocks for widespread local government success in brownfields renewal. The creation of Brownfields Work Groups, composed of local government leaders, could advance solutions in the key areas in which local officials are grappling, including finance, developing effective organizational models, and interagency coordination.*
>
> David Levy, Brownfields Project Coordinator,
> City of Baltimore, Maryland

- EPA should strengthen ties and promote discussion among national and regional pilots in each region by establishing a regional Brownfields Roundtable chaired by the EPA Regional Brownfields Coordinator.

  1. Many brownfields issues and problems cross state lines and/or affect populations from more than one state in a region, creating the need for regional solutions.

  2. Adjacent states within regions often collaborate on regulatory issues, economic development and environmental goals. As a result, a framework for regional brownfields coordination would not be difficult to initiate.

  3. The EPA national and regional pilot communities within a region can help carry out the logistics and organizational details of the Roundtable, complimenting the efforts of the pilots and promoting the involvement of local governments in creating brownfields solutions.

  4. The Regional Brownfields Roundtables could promote outreach, through the pilot participants, to entities such as state and local economic development agencies as well as the private sector.

SECTION 4: LEGISLATIVE OPPORTUNITIES TO STIMULATE BROWNFIELDS CLEANUP AND REDEVELOPMENT

There is strong agreement that EPA's ability to further clarify and reduce environmental liability for brownfields activity is limited, and that legislative solutions are needed to advance the brownfields agenda. Moreover, there are several additional areas that would be advanced through the passage of federal brownfields legislation. Numerous brownfields bills were introduced during the last Congress and it is likely that there will be Congressional action on brownfields during the coming Congress. The following is a list of legislative provisions that would promote increased cleanup and redevelopment of brownfields across the country.

- To facilitate brownfields cleanup and redevelopment, federal liability policies should clearly delineate between: (1) Superfund NPL-caliber sites; and (2) less contaminated brownfields sites.

> *Federal legislation can foster increased cleanup and redevelopment of brownfields. Congress should explore innovative solutions in the areas of liability clarification, clear delegation of state authority, new incentives for communities, and additional federal funding.*
>
> Richard Mendes, Deputy City Manager, City of Cincinnati, Ohio

- Congress should give EPA the ability to delegate the authority to limit liability and issue no action assurances for the less contaminated brownfields sites to States with cleanup programs that meet minimum requirements to protect public health and the environment. Minimum requirements should include:

1. **Standards to ensure adequate site assessments early in the process.** Good site assessments will help prevent unanticipated problems from surfacing, and facilitate efforts to direct particular sites into a "brownfields track."
2. Adequate state **technical expertise, staff and enforcement authority** to ensure effective implementation of cleanup activities.
3. An **adequate method to distinguish between NPL-caliber sites and those less-contaminated sites** that can be placed on a brownfields track.
4. Use of **risk-based cleanup standards**, that can be tied to **reasonably anticipated land use**, established through an adequate public approval process.
5. **Institutional controls** such as deed restrictions, zoning requirements or other mechanisms that are enforceable over time to ensure that future land uses tied to certain cleanup standards are maintained.

6. Commitment to **establish community information and involvement processes**, and assurance that state and local brownfields activities will consider community values and priorities.

7. Commitment to build the capacity, through training and technical assistance, of **local government health and environmental agencies** to effectively participate in the brownfields development process and ensure protection of public health and environment.

8. **Adequate mechanisms** to address unanticipated cleanups or orphaned sites where liability has been eliminated.

9. Ability of EPA to **selectively audit** state liability certifications to ensure that the state program is fulfilling its responsibilities to protect public health and the environment.

> *Along with increased authority and flexibility for brownfields redevelopment, local governments need increased funding. Grants, loans, tax incentives and public/private financing partnerships for brownfields assessments and cleanup are critical to job creation and the future health of our communities.*
>
> Lorrie Louder, Director of Industrial Development, Saint Paul Port Authority, Saint Paul, Minnesota

- In delegating brownfields authority for non-NPL caliber sites to the states, EPA should provide that it will not plan or anticipate further action at any sites unless, at a particular site, there is: (1) an imminent and substantial threat to public health or the environment; and (2) either the state response is not adequate or the state requests U.S. EPA assistance.

- Provide additional federal funding for: (a) building upon the existing successful local pilot programs; (b) establishing more new local brownfields pilot programs; (c) enabling cities and states to establish Revolving Loan Funds for brownfields site assessments and cleanups; and (d) encouraging other federal agencies to participate in the effort to clean up and redevelop brownfields, through funding local governments and local redevelopment agencies.

- Provide tax credits and/or deductions for expenses related to the assessment and cleanup of brownfields sites as well as other tax incentives for brownfields redevelopment.

- Establish a "National Brownfields Partners Program" including providing funding for other federal agencies with a community and economic development mission (*e.g.*, HUD and the Department of Commerce) to play a leadership role in the effort to cleanup and redevelop brownfields. (See Partnership Section 2 for more details).

- Codify into law existing administrative policies that clarify liability (*e.g.*, contaminated aquifer guidance, municipal acquisition liability guidance, etc.).

- Require the federal government to identify and propose corrections for federal policies and programs which provide incentives to develop in greenfields rather than brownfields.

- Amend the National Environmental Policy Act to reflect the environmental and cultural benefits of brownfields redevelopment over development in greenfields by requiring that Environmental Impact Statements consider alternatives that would promote brownfields development over greenfields development.

- Expand ISTEA authority to include transportation spending for brownfields revitalization, and increased overall funding for mass transportation systems, including through ISTEA.

Appendix 1 NALGEP Brownfields Project Interviewees

First Name	Last Name	Title	Organization	City	State
Charles	Bartsch	Senior Policy Analyst	Northeast-Midwest Institute	Washington	DC
Amy	Clipp	Deputy Director	Mayor's Office of Environmental Affairs	New Orleans	LA
Wayne	Cropp	Environmental Attorney	Grant, Konvalinka & Harrison	Chattanooga	TN
Grant	Cushing	Managing Director	Brownfields Restoration Group, LLC	Canandaigua	NY
Robert	DeMarco	Administrator-Environmental Restoration & Dev.	Maryland Department of the Environment	Baltimore	MD
Will	Fisher	Assistant Project Manager	International City/County Management Assoc.	Washington	DC
Mark	Gregor	Manager, Division of Environmental Quality	City of Rochester	Rochester	NY
John	Hills	Environmental Services Manager	City of Anaheim	Anaheim	CA
Joseph	James	Director	Department of Economic Development	Richmond	VA
Eric	Klipsch	Senior Environmental Specialist	Real Estate Department, St. Louis Development Corp.	St. Louis	MO
David	Levy	Brownfields Project Coordinator	City of Baltimore - Department of Planning	Baltimore	MD
Judith	Lorbeir	Environmental Coordinator	City of Tacoma	Tacoma	WA
Lorrie	Louder	Director of Industrial Development	St. Paul Port Authority	St. Paul	MN
Douglas	MacCourt	Environmental Manager	Portland Office of Transportation	Portland	OR
Richard	Mendes	Deputy City Manager	City of Cincinnati	Cincinnati	OH
Beverly	Negri	Brownfields Liaison	City of Dallas-Economic Development Department	Dallas	TX
Joe	Otte	Site Response Section	Minnesota Pollution Control Agency	St. Paul	MN
David	Padgett	Environmental Affairs Manager	Colorado Springs Utilities	Colorado Springs	CO
Bonnie	Phillips	Environmental Safety Specialist	Department of Environmental Management	Cincinnati	OH
Jacqueline	Ritchie	Brownfields Coordinator	Boston Environmental Services Cabinet	Boston	MA
Mary Beth	Schmucker	Brownfields Coordinator	City of Indianapolis	Indianapolis	IN
Martin	Soffer	Environmental Review Officer	Philadelphia City Planning Commission	Philadelphia	PA
Tom	Stauch	Environmental Protection Supervisor	City of Denver - Environmental Protection Division	Denver	CO
Gary	Stephens	Deputy Director	Broward County - Dept. of Natural Resources Protection	Fort Lauderdale	FL
Rob	Taylor	Director, Urban Planning & Development	RiverValley Partners, Inc.	Chattanooga	TN
William	Trumbull	Assistant Commissioner	City of Chicago - Department of Environment	Chicago	IL
Patricia	Wilbur	Brownfields Pilot Coordinator	Northwest Indiana Brownfields Project	E. Chicago	IN
Eric	Wilson	Director, Environmental Affairs	Fulton County Health Department	Atlanta	GA

APPENDIX 2

NALGEP BROWNFIELDS INTERVIEW QUESTIONS

These questions are designed to gather information on the experience of local communities in the cleanup and redevelopment of Brownfields. The questions are divided into two sections that support the project objectives to: (1) develop recommendations for improving EPA's Brownfields program with a particular focus on those policies that clarify liability and cleanup issues in order to stimulate Brownfields redevelopment; and (2) develop recommendations for improving communications among EPA, state officials and local government Brownfields coordinators across the country.

I. VALUE OF U.S. EPA LIABILITY GUIDANCE POLICIES

The EPA has launched the Brownfields Action Agenda, a comprehensive approach to spur environmental cleanup and economic redevelopment to prevent, assess, safely clean up and sustainably reuse Brownfields. One component of the EPA Agenda is the effort to clarify liability and cleanup issues. Policy tools that have been developed by EPA include:

- Prospective Purchaser Guidance
- Lender and Municipal Acquisition Liability Guidance
- Guidance on Future Land Use
- Owners of Property Containing Contaminated Aquifers Guidance
- Underground Storage Tank Lender Liability Rule
- EPA Deferral to State Policy in Taking the Lead on Cleanup
- Soil Screening Guidance

The following questions are aimed at determining which of the above policies are most valuable; how the policies could be improved; and what other policies the federal government could implement to facilitate Brownfields redevelopment.

A. General Questions About Liability Policies

1) Which of the EPA liability policies have you utilized in any significant way? Describe any experiences your locality has had utilizing these policies.

2) Which of the EPA policies are most valuable in your efforts? Which of the EPA Brownfields liability tools has, in your view, been most effective in overcoming the fear of developers, businesses, and lenders?

3) Which policies are least valuable in your efforts?

4) Are there any other liability guidance policies that EPA should consider developing to provide confidence to those involved in cleanup and redevelopment of Brownfields? Please describe.

5) Many EPA liability policies (*e.g.*, the prospective purchaser guidance) are designed to deal with severely contaminated property (Superfund NPL-caliber sites) rather than properties with less significant levels of contamination.

a. Have EPA liability policies been applied to any of the following types of sites in your area? Evaluate the effectiveness of these policies.

- ☐ CERCLA NPL site
- ☐ CERCLA non-NPL site
- ☐ RCRA TSDF site
- ☐ RCRA generator site
- ☐ Other (please describe)

b. Have EPA liability policies been applied to non-CERCLA and non-RCRA brownfields sites in your area? If yes, which policies? Are these EPA tools valuable for such non-CERCLA/RCRA sites?

c. Are State liability protections, or purely private mechanisms (such as private indemnification agreements) sufficient to foster redevelopment at non-CERCLA/RCRA Brownfields sites without EPA involvement? Is so, why?

d. Are there instances where state liability provisions or policies have limited the effectiveness of federal policies? If yes, briefly describe.

6) To what extent are environmental liabilities the key factors in Brownfields redevelopment, as compared to other factors (*e.g.*, financing, tax policy, transportation policy, barriers to basic economic development, etc.)?

a. If environmental liability is less important in the redevelopment of sites, do you think that EPA should re-orient its Brownfields program accordingly?

b. What are some additional actions the federal government could take to facilitate the removal of barriers -- other than potential environmental liability -- to Brownfields redevelopment?

7) Have EPA's liability policies on CERCLA been sufficiently integrated with EPA policies on RCRA? If no, please explain.

B. **Inter-governmental Coordination**

8) With respect to the use of liability tools, have you found the need for EPA policies in the context of your state's brownfields cleanup program? If so, rate the effectiveness of these policies.

9) Many states have established Memoranda of Agreements (MOAs) with EPA through the state voluntary action program which authorize the state to provide liability assurances at brownfields sites.

a. Does your state have a voluntary action program. If so, does it have a MOA with EPA? If so, is it helpful in clarifying liability policies and facilitating Brownfields cleanup?

b. If not, would a MOA be valuable in your state? Is there anything EPA or the states could do to expedite the establishment of an MOA in your state?

c. Some state organizations have been pressing EPA to give the states broader authority to release parties from liability at non-Superfund sites. Would this help facilitate Brownfields cleanup in your area?

10) In your region, how do Brownfields compete with greenfields?

a. Do there seem to be greater incentives for greenfields development than Brownfields development? If so, what have been the primary obstacles to changing these incentives?

b. Have you encountered difficulties in coordinating with area decision-makers on this issue?

c. Do you have any suggestions for better area coordination in urban Brownfields development?

11) Several bills have been proposed by EPA and introduced into the U.S. Congress that are designed to facilitate brownfields development through such tools as liability protections and loan and financing mechanisms. From your perspective, are there any particular brownfields needs that should be addressed by federal legislation?

C. **Future Land Use**

12) Have you engaged in significant discussion with relevant stakeholders about the anticipated future land use of Brownfields sites?

a. Has this discussion facilitated or hindered the remediation and redevelopment process?

b. Is EPA's guidance on future land use helpful in reaching necessary stakeholder agreement on future land use? On cleanup levels?

D. **EPA Prospective Purchaser Agreements**

13) Have any of your local Brownfields sites been of federal interest? If no, skip this section.

14) Have those involved in your Brownfields sites negotiated prospective purchaser agreements with the U.S. EPA at sites of federal interest?

15) How have these agreements benefited the community by:

- ☐ fostering cleanup and redevelopment?
- ☐ creating new jobs?
- ☐ facilitating the establishment of new infrastructure?
- ☐ attracting new or expanded business?
- ☐ expanding the tax base?
- ☐ other?

16) To what extent has EPA been willing to afford flexibility in the structure of any specific prospective purchaser agreements signed in your area? Should EPA afford more flexibility to draft agreements that diverge from the Agency's Model Prospective Purchaser Agreements?

E. **State Prospective Purchaser Agreements**

17) Does your state brownfields program provide for prospective purchaser agreements between the state and site purchasers?

a. How have state agreements benefited your community?

- ☐ fostering cleanup and redevelopment?
- ☐ creating new jobs?
- ☐ facilitating the establishment of new infrastructure?
- ☐ attracting new or expanded business?
- ☐ expanding the tax base?
- ☐ other?

b. How do the state agreements work in the context of federal policies?

II. IMPROVING COMMUNICATIONS AMONG FEDERAL, STATE AND LOCAL ENVIRONMENTAL OFFICIALS

1) Is there a Brownfields contact/coordinator at the state or local level in your area?

2) What are the current mechanisms you use for communicating with:

- EPA Regional Brownfields Coordinators?
- EPA Headquarters?
- Other Brownfields Pilot Coordinators?
- State Brownfields Coordinators?

3) What kinds of information would most be useful to you in coordinating your Brownfields Program:

- Information on federal policies?
- Information on state policies?
- Technical assistance?
- Environmental technology assistance?
- Legal assistance?
- Financial assistance?
- Other local Brownfields programs?
- Brownfields success stories?
- Other?

4) What are the best vehicles for EPA to provide information to local brownfields coordinators? Are there other ways EPA can provide information?

- Regular meetings?
- Conferences?
- Conference calls?
- Newsletters?
- Other written information?
- Internet? CD-ROM?
- Other?

5) What other aspects of your Brownfields program would benefit from improved communication with EPA? with the State? with other Brownfields coordinators?

6) Would better information on financing mechanisms for brownfields redevelopment be a significant benefit in your area brownfields program? What types of financing information do you desire? How can EPA play a role in providing such financing information?

7) Would better information on the use of environmental technologies in the assessment and cleanup of brownfields sites be a significant benefit to your area brownfields program? What type of technology information do you desire? How can EPA play a role in providing such technology information?

8) What are the most valuable aspects of your communications with EPA?

9) What are the least valuable aspects of your communications with EPA?

10) Give your top three recommendations for improving communication with EPA regions.

11) Give your top three recommendations for improving communication with EPA Headquarters.

12) Has there been sufficient communication among federal, regional, state and local environmental agencies on Brownfields issues? What recommendations do you have for improving communication and coordination among the different levels of government?

13) Is the private sector sufficiently included in EPA's brownfields program? How can EPA better dialogue with local businesses and the private development sector to explain the federal program, publicize federal enforcement priorities and promote Brownfields redevelopment be improved?

14) Do you think it would be valuable to have an ongoing network of local officials who would communicate with each other and with federal and state officials on Brownfields issues?

15) Do you recommend other people to talk to about Brownfields liability policy and improving communication among local, state, and federal environmental officials?

"The success of the brownfields initiative hinges on developing successful partnerships starting at the local level. That is why NALGEP's report is so important. ***Building a Brownfields Partnership from the Ground Up*** *shows how we can work together to create long-term environmental and economic solutions for our communities."*

-- Timothy Fields, Jr.,
U.S. Environmental Protection Agency
Principal Deputy Assistant Administrator,
Office of Solid Waste and Emergency Response

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PREPARED STATEMENT OF LORRIE LOUDER, DIRECTOR OF INDUSTRIAL DEVELOPMENT FOR THE SAINT PAUL PORT AUTHORITY, MINNESOTA, ON BEHALF OF: THE NATIONAL ASSOCIATION OF LOCAL GOVERNMENT ENVIRONMENTAL PROFESSIONALS "NALGEP"

NALGEP BROWNFIELDS ADVISORY COMMITTEE

NALGEP would like to give special thanks and appreciation to our Brownfields Advisory Committee. Comprised of 14 of the Nation's top local government brownfields leaders, the Advisory Committee members have provided critical leadership in the development and implementation of this project and report. They devoted substantial time and energy to developing the overall project game plan, the interview questions, and the project findings. They offered invaluable guidance, reviewed and commented on several drafts of the report and participated in numerous conference calls to discuss the various aspects of the project findings.

The members of the NALGEP Brownfields Advisory Committee are: Mark Gregor, Manager, Division of Environmental Quality, city of Rochester, NY; Joseph James, Director of Economic Development, city of Richmond, VA; David Levy, Brownfields Project Coordinator, city of Baltimore, MD; Judith Lorbeir, Environmental Coordinator, city of Tacoma, WA; Lorrie Louder, Director of Industrial Development, Saint Paul Port Authority, Saint Paul, MN; Lisa Maack, Deputy Director, Mayor's Office of Environmental Affairs, city of New Orleans, LA; Richard Mendes, Deputy City Manager, city of Cincinnati, OH; Douglas C. MacCourt, Environmental Manager, Office of Transportation, Portland, OR, and Director, Portland Brownfields Initiative; Beverly Negri, Brownfields Liaison, Economic Development Department, Dallas, TX; Jacqueline Ritchie, Brownfields Coordinator, Environmental Services Cabinet, Boston, MA; Mary Beth Schmucker, Brownfields Coordinator, city of Indianapolis, IN; Martin Soffer, Environmental Review Officer, Planning Commission, city of Philadelphia, PA; Gary Stephens, Deputy Director, Department of Natural Resources Protection, Broward County, FL; and William Trumbull, Assistant Commissioner, Department of Environment, city of Chicago, IL.

* * * * *

Chairman Smith, Senator Lautenberg and members of the Subcommittee, the National Association of Local Government Environmental Professionals, or "NALGEP," appreciates the opportunity to present this testimony on the views of local government officials from across the Nation on the need for additional Federal legislative and regulatory incentives for the cleanup, redevelopment and productive reuse of brownfields sites in local communities. NALGEP represents local government officials responsible for ensuring environmental compliance, and developing and implementing environmental policies and programs. NALGEP's membership consists of more than 50 local government entities located throughout the United States, and includes environmental managers, solid waste coordinators, public works directors and attorneys, all working on behalf of cities, towns, counties and municipal associations.

In 1995, NALGEP initiated a brownfields project to determine local government views on national brownfields initiatives such as the EPA Brownfields Action Agenda. The NALGEP Brownfields Project has culminated in a report, entitled *Building a Brownfields Partnership from the Ground Up: Local Government Views on the Value and Promise of National Brownfields Initiatives,* which was issued on February 13, 1997 to the EPA and other agencies, congressional staff and the public. As a result of this project, NALGEP is well qualified to provide the Subcommittee with a representative view of how local governments, and their environmental and development professionals, believe the Nation must move ahead to create long-term success in the revitalization of urban brownfields properties.

NALGEP's testimony will focus on the findings of its *Building a Brownfields Partnership from the Ground Up* Report, particularly with respect to liability, resource and other legislative opportunities to promote brownfields renewal. The NALGEP Brownfields Report was developed under the leadership of a 14-member Brownfields Advisory Committee composed of local government brownfields officials from Environmental Protection Agency ("EPA") brownfields pilot cities and other communities with established brownfields programs. NALGEP worked with the Committee to develop a comprehensive brownfields interview, which was conducted with numerous brownfields leaders across the Nation. Based on these interviews and a series of collaborative discussions with the Advisory Committee, NALGEP developed report findings on:

- Clarifying and Limiting Liability to Promote Brownfields Cleanup and Redevelopment
- Building a National Brownfields Partnership: The Next Phase of the Federal Agenda from a Local Government Perspective

• Improving Communication Among Local, State, and Federal Brownfields Officials

• Legislative Opportunities to Stimulate Brownfields Cleanup and Redevelopment

The NALGEP Brownfields Report itself best conveys the views of NALGEP and its Brownfields Advisory Committee on the opportunities for the Federal Government to promote brownfields renewal. NALGEP therefore attaches the Report to this testimony, and summarizes key points below.

The cleanup and revitalization of "brownfields" represents one of the most exciting, and most challenging, environmental and economic initiatives in the Nation. Brownfields are abandoned, idled, or under-used industrial and commercial properties where expansion or redevelopment is hindered by real or perceived contamination. The brownfields challenge faces virtually every community; experts estimate that there may be as many as 500,000 brownfields sites throughout the country.

The brownfields issue illustrates the connection among environmental, economic and community goals that can be simultaneously fostered through a combination of national leadership, Federal and State incentives, and the innovation of local and private sector leaders. Cleaning up and redeveloping brownfields provides many environmental, economic and community benefits including the following:

• expediting the cleanup of thousands of contaminated sites;

• renewing local urban economies by stimulating redevelopment, creating jobs and enhancing the vitality of communities; and

• limiting sprawl and its associated environmental problems such as air pollution, traffic and development of rapidly disappearing open spaces.

The Williams Hill Project provides an excellent example of how a brownfields initiative is helping to revitalize Saint Paul, Minnesota's local economy and environment. Williams Hill, which is a Federal Enterprise Community Area, is a 30-acre site, formally owned by a highway construction company, which contains an asphalt plant and 370,000 cubic yards of construction debris piled in 200–300 foot mounds. The site has significant air quality problems associated with this debris as well as some subsurface pollution problems. Prior to the involvement of the Saint Paul Port Authority, the facility employed 16 workers and provided a $80,000 per year tax base.

The Saint Paul Port Authority, which recently acquired the site, plans to remediate the pollution problems and redevelop the site into a light manufacturing industrial park. Saint Paul expects the new development to provide 25 developable acres and create 325 new, high-paying jobs and $650,000 annually in taxes. This is an example of the success stories that we can create through brownfields revitalization.

This year presents an exciting opportunity to build upon the initial successes of EPA's Brownfields Action Agenda and establish a long-term, sustainable Federal/local brownfields partnership. The timing is especially good given that: (1) many communities are emerging from the pilot stage of the EPA Brownfields program; (2) several Federal agencies are preparing to expand the Administration's commitment to brownfields redevelopment by launching the BROWNFIELDS NATIONAL PARTNERSHIP AGENDA; and (3) Congress is considering opportunities for legislative solutions to address local government brownfields needs.

Local government leaders are a key link in the success of brownfields partnerships, for it is the environmental, health, development and political leaders in our cities, counties and towns who can best build a brownfields partnership "from the ground up." The NALGEP Brownfields Report represents the views of these officials from communities actively involved in brownfields revitalization. Overall, NALGEP's key findings related to legislative opportunities in the brownfields area are that (a) EPA should delegate the authority to limit liability and issue no further action decisions for less contaminated brownfields sites to States with cleanup programs that meet minimum requirements to protect public health and environment; (b) local communities need increased funding to ensure long-term brownfields success, including grants, loans, tax incentives and public/private financing partnerships for brownfields assessment, cleanup and redevelopment; and (c) the Federal Government should identify and propose corrections for Federal laws and policies which provide incentives to develop in "greenfields" rather than brownfields.

I. CLARIFICATION OF SUPERFUND LIABILITY AT BROWNFIELDS SITES

On the issue of Federal Superfund liability associated with brownfields sites, NALGEP has found that the Environmental Protection Agency's overall leadership and its package of liability clarification policies have helped establish a climate conducive to brownfields renewal, and have contributed to the cleanup of specific sites throughout the Nation. It is clear that these EPA policies, and brownfields development in general, are most effective in States with effective voluntary or independent

cleanup programs that have led to the negotiation with EPA of "State Memoranda of Agreement" deferring liability clarification authority to those States. Therefore, NALGEP finds that Congress should enable the EPA to delegate authority to limit liability and issue no further action decisions for brownfields sites to States with cleanup programs that meet minimum requirements to protect public health and the environment.

A strong delegation of EPA liability clarification authority to approved States is critical to the effective redevelopment of local brownfields sites. Such delegation will increase local flexibility and provide confidence to developers, lenders, prospective purchasers and other parties that brownfields sites can be revitalized without the specter of Superfund liability or the involvement of Federal enforcement personnel. Parties developing brownfields want to know that the State can provide the last word on liability, and that there will be only one "policeman," barring exceptional circumstances.

At the same time, local officials are also concerned about delegating too much cleanup authority too fast to States. States vary widely in the technical expertise, resources, staffing, statutory authority and commitment necessary to ensure that brownfields cleanups are adequately protective of public health and the environment. If brownfields sites are improperly assessed, remediated or put into reuse, it is most likely that the local government will bear the largest brunt resulting from any public health emergency or contamination of the environment. NALGEP believes that the U.S. EPA has a key role to play in ensuring that liability authority over brownfields sites should only be delegated to States that demonstrate an ability and commitment to ensure protection of public health and the environment in the brownfields redevelopment process.

To foster expanded redevelopment of brownfields sites while ensuring the protection of public health and the environment, NALGEP finds that there should be three components to the EPA brownfields delegation program. First, the law should clearly distinguish between Superfund NPL-caliber sites and less contaminated sites that can be put on a "brownfields track." The delegation of liability authority to States should focus on these non-NPL caliber sites. Putting non-NPL caliber sites on a brownfields track will allow the application of EPA and State policy tools specifically designed to foster expedited, cost-effective brownfields redevelopment. Several of these brownfields track tools are suggested by NALGEP in Report Section 1, Finding 4.

Second, NALGEP finds that EPA delegation of liability authority over brownfields sites should be granted only to State cleanup programs that meet minimum criteria to ensure protection of public health and the environment. EPA should also have the ability to withdraw a State's delegation if these criteria are not being met. In its report, NALGEP suggests the following types of criteria for State delegation:

1. Standards to ensure adequate site assessments early in the process. Good site assessments will help prevent unanticipated problems from surfacing, and facilitate efforts to direct particular sites into a "brownfields track."
2. Adequate State technical expertise, staff and enforcement authority to ensure effective implementation of cleanup activities.
3. An adequate method to distinguish between NPL-caliber sites and those less-contaminated sites that can be placed on a brownfields track.
4. Use of risk-based cleanup standards, that can be tied to reasonably anticipated land use, established through an adequate public approval process.
5. Institutional controls such as deed restrictions, zoning requirements or other mechanisms that are enforceable over time to ensure that future land uses tied to certain cleanup standards are maintained.
6. Commitment to establish community information and involvement processes, and assurance that State and local brownfields activities will consider community values and priorities.
7. Commitment to build the capacity, through training and technical assistance, of local government health and environmental agencies to effectively participate in the brownfields development process and ensure protection of public health and environment.
8. Adequate mechanisms to address unanticipated cleanups or orphaned sites where liability has been eliminated.
9. Ability of EPA to selectively audit State liability certifications to ensure that the State program is fulfilling its responsibilities to protect public health and the environment.

In addition, NALGEP has developed a finding with regard to EPA's ability to reopen its involvement at a particular brownfields site in a delegated State. An EPA reopener for particular sites is necessary to ensure that EPA can become involved at any sites at which the State is unable or unwilling to adequately respond to a

substantial and imminent threat to public health or the environment. At the same time, the reopener must be sufficiently limited to permit the State to take the lead role at brownfields sites, and to give confidence to developers, prospective purchasers, lenders and local governments that EPA will not improperly hinder or interfere in State liability decisions. Therefore, in delegating brownfields authority for non-NPL caliber sites to the States, NALGEP proposes that EPA should provide that it will not plan or anticipate further action at any sites unless, at a particular site, there is: (1) an imminent and substantial threat to public health or the environment; and (2) either the State response is not adequate or the State requests U.S. EPA assistance.

II. ENSURING ADEQUATE RESOURCES FOR BROWNFIELDS REVITALIZATION

With regard to local government resource needs for brownfields revitalization, NALGEP finds that to ensure long-term success on brownfields, local governments need additional Federal funding for site assessment programs, remediation programs and economic redevelopment. The costs of site assessment and remediation can create a significant barrier to the redevelopment of brownfields sites, if the local government is not supported by the leverage of Federal and private resources. In particular, the costs of site assessment can pose an initial barrier that drives development away from brownfields sites. With this initial barrier removed, localities are much better able to put sites into a development track. In addition, the allocation of public resources for site assessment can provide a signal to the development community that the public sector is serious about resolving liability issues at a site and putting it back into productive reuse.

Moreover, it cannot be doubted that the use of public funds for the assessment and cleanup of brownfields sites is a smart investment. Public funding can be leveraged into substantial private sector resources. Investments in brownfields yield the economic fruit of increased jobs, expanded tax bases for cities, and urban revitalization. And the investment of public resources in brownfields areas will help defer the environmental and economic costs that can result from unwise, sprawling development outside of our urban centers.

Federal funding for brownfields revitalization and reinvestment should be provided from a variety of sources to meet the variety of local government needs on this issue, including:

- Federal grants, such as the EPA Brownfields Pilot grant program, economic redevelopment grants by the Department of Commerce, Economic Development Administration, and funding for transportation protects in brownfields through the Intermodal Surface Transportation Efficiency Act. NALGEP endorses the Administration's intention to fund additional brownfields pilot grants.
- Federal Technical Assistance from EPA for site remediation, pollution prevention activities and the use of innovative environmental technologies;
- Loans and loan guarantees, including through Department of Housing and Urban Development Section 108 funds, and through Federal funds to capitalize city and State Revolving Loan Funds for brownfields site assessments and cleanup; and
- Tax credits and deductions for expenses related to the assessment and cleanup of brownfields sites.

III. CORRECTING INCENTIVES THAT PROMOTE GREENFIELDS DEVELOPMENT OVER BROWNFIELDS REDEVELOPMENT

With regard to the need to create Federal incentives to promote brownfields redevelopment over development in "greenfield" areas, NALGEP finds that the continued inactivity at urban brownfields sites, coupled with development in non-urban "greenfields" areas, creates environmental and economic distress for both cities and the regions surrounding urban areas. Brownfields renewal can clearly provide urban benefits including the cleanup of environmentally contaminated sites, and the creation of economic vitality, jobs and a stronger sense of community. At the same time, brownfields activities that reduce ex-urban sprawl can also provide regional and ex-urban benefits, such as reduced mobile source air pollution, reduced nonpoint and point source water pollution, decreased pressure on infrastructure, protection of valued natural areas, increased regional cooperation and the reduction of urban problems (e.g., crime) that can affect areas outside of distressed cities and towns.

Even with the Federal Brownfields Agenda and State and local programs to encourage reuse of brownfields, there are a variety of factors that encourage development in greenfields over brownfields. These incentives for greenfields development include: transportation infrastructure and incentives in non-urban areas, including Federal transportation funding and policies that favor highways over mass transit;

lower quality of life and quality of schools in urban areas; disincentives for urban development from the regulatory requirements associated with pollutant "nonattainment areas" under the Clean Air Act; and lack of regional-urban coordination.

Therefore, the Federal Government should identify Federal policies that favor greenfields over brownfields and identify opportunities to correct these disincentives, including:

• Expansion of ISTEA authority to include transportation spending for brownfields revitalization, and increased overall funding for mass transportation systems, including through ISTEA;

• The National Environmental Policy Act should reflect the environmental and cultural benefits of brownfields redevelopment over development in greenfields by requiring that environmental impact statements consider alternatives that would promote brownfields development over greenfields development.

• Inter-agency coordination in the use of Federal funding for urban brownfields activities, in order to streamline and conform the burdensome procedural requirements associated with different funding sources and better allow the implementation of community-based environmental protection. In other words, local governments with comprehensive urban development programs should be better able to aggregate various funding sources for the implementation of their community environmental priorities, without the undue burden that can result from divergent procedural requirements and standards associated with different funding sources.

IV. CONCLUSION

In conclusion, local governments are excited to work with the Federal Government to promote the revitalization of brownfields, through a combination of State delegations of liability authority, increased Federal investment in community revitalization, and innovative legislative and regulatory incentives designed to build a brownfields partnership from the ground up. NALGEP thanks the Subcommittee for this opportunity to testify, and looks forward to working with you as the process moves forward.

RESPONSES OF LORRIE LOUDER TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Your testimony seems to indicate that we should take a two track cleanup approach to separate those sites that are of NPL caliber from brownfield sites. As you know, sometimes this distinction can get rather difficult. If the State has the ability to conduct NPL caliber cleanups in a voluntary cleanup program, shouldn't we allow this if it gets the site cleaned up better?

Response. The National Association of Local Government Environmental Professionals believes that States with approved cleanup programs that meet minimum criteria to protect public health and the environment should be delegated the authority to clarify and limit liability at non-NPL caliber brownfield sites forthwith. Such non-NPL caliber sites encompass the substantial majority of contaminated sites affected with the burden of environmental contamination and potential liability. NALGEP's two-track approach to State delegation is designed to facilitate the delegation to States of authority over those sites that clearly should be within the States' exclusive responsibility. Delegation to States of authority for such non-NPL caliber brownfields sites should not be slowed or hindered by the more difficult issues associated with NPL-caliber sites.

However, NALGEP's approach would not preclude the delegation by the U.S. Environmental Protection Agency ("EPA") to approved States of liability clarification and cleanup authority over those sites that, while not on the CERCLA National Priorities List, are considered "NPL-caliber." Many States have the ability to facilitate the expedited and effective cleanup of contaminated properties.

As explained in the NALGEP Brownfields Report, delegation by EPA of brownfields authority over any types of sites should only be granted to States with cleanup programs that meet minimum criteria to protect public health and the environment. See NALGEP Report, Liability Section 1, Finding 5, bullets 3–5, pp. 11–13. Such delegation criteria would certainly apply to delegation for NPL-caliber sites.

NALGEP agrees that drawing the distinction between "NPL-caliber" and "non-NPL caliber" sites can get rather difficult. For this reason, NALGEP has found at p. 10 of its Report that the keys to allowing such distinction are ensuring that State cleanup programs have both a strong site assessment requirement and an adequate method to make the distinction between the two types of brownfields sites.

Again, NALGEP believes that it is important to establish forthwith a means by which States can obtain clear authority at non-NPL-caliber sites. so that cleanups can begin and so that certainty and finality can be achieved at such sites. If individual States can also demonstrate to EPA the ability and commitment to take the clear lead role for other, more contaminated, NPL-caliber sites, the NALGEP approach would not preclude such delegation of authority.

Question 2. Ms. Louder, many of these brownfield sites are old industrial locations which will continue to be zoned for industrial purposes after cleanup. That being the case, would you agree that cleanups of brownfields that are tied to risk-based standards based on reasonably anticipated future use would help solve the Brownfields problem?

Response. Undoubtedly. NALGEP strongly supports the use of risk-based cleanup standards based on reasonably anticipated future use. In fact, NALGEP has found that EPA delegation of brownfields authority to States should be granted to those States whose cleanup programs (among other things) use risk-based cleanup standards based on future use. These State risk-based standards should be established through an adequate public approval process. In addition, approved States should require the use of institutional controls, such as deed restrictions, zoning requirements or other mechanisms that are enforceable over time to ensure that future land uses tied to certain cleanup standards are maintained. *See* NALGEP Report at p. 13.

Question 3. Although you suggest a two track approach to separating brownfields cleanups from Superfund cleanups, isn't it the case that the fear of potential Superfund liability is what keeps parties from moving forward to clean up these sites? How do we fix this? If providing finality is one of the answers, should present owners be able to receive liability finality from States?

Response. NALGEP agrees that the fear of potential Superfund liability is a significant barrier to the cleanup and redevelopment of brownfield sites. The specter of Superfund liability is associated with both heavily contaminated, NPL-caliber type sites, and with those sites with lesser or even no contamination that should be put on a brownfields track. NALGEP has found that the one way to remove the fear of Superfund liability from brownfields sites is to promote the delegation from EPA to approved States of the authority to clarify and reduce liability at non-NPL caliber brownfields sites. If a State has the "final word" on liability at non-NPL-caliber sites, stakeholders involved in the revitalization of brownfields can have greater confidence and certainty that environmental liability will not attach to them for cleanup or redevelopment activities.

At NPL sites and NPL-caliber sites burdened with a greater level of contamination, liability issues may be more difficult to resolve and therefore State and Federal mechanisms to ensure the protection of public health and the environment, and the recovery of costs from responsible parties, may be necessary.

The Senator is correct that finality is a key element of resolving Superfund liability fears and promoting cleanup and productive re-use of brownfields sites. Therefore, NALGEP supports the ability of approved States to provide liability clarification and finality to present owners of non-NPL caliber sites who meet the requirements of the State voluntary or independent cleanup program.

RESPONSES OF LORRIE LOUDER TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. Your testimony advocates a "Brownfields track" that seems to exclude NPL-caliber sites—sites that could possibly score above the National Priorities List threshold of 28.5? I have 200 such sites in Rhode Island alone, you must have many more in the NALGEP cities. EPA will never put 200 more Rhode Island sites, many of them with redevelopment potential, on the NPL. What should the fate of these sties be—who should do what at such sites?

Response. NALGEP believes that States with approved cleanup programs should be delegated the authority to clarify and limit liability at non-NPL-caliber brownfield sites, which encompass the substantial majority of contaminated sites affected with the burden of environmental contamination and liability.

However, the Senator is correct that there exist many sites—like the 200 in Rhode Island alone—which are kept in redevelopment uncertainty because of their status as NPL-caliber sites. NALGEP sought to recognize the importance of these sites when it found in its report that "the remediation and redevelopment of Superfund sites remains a vital environmental and economic need in communities." NALGEP Brownfields Report at 9, Finding 4, Bullet 1.

The NALGEP approach to delegation to States of non-NPL-caliber authority would not preclude the delegation by EPA of authority over NPL-caliber sites to approved States with cleanup programs that meet minimum criteria to protect public health and the environment. Many States have the ability to facilitate the expedited and effective cleanup of heavily contaminated properties. Other States do not. If individual States can demonstrate to EPA the ability and commitment to take the clear lead role for more contaminated, NPL-caliber sites, the NALGEP approach would not preclude such delegation of authority. However, it may be necessary to create additional protections for the delegation of authority over these more-contaminated sites, such as stronger criteria for delegation, or a broader "reopener" provision for EPA involvement in particular sites that pose a threat to public health or the environment.

It should also be noted that, under current law and policy, States are also precluded from taking action to clean up and redevelop sites that are considered NPL-caliber. Although these more heavily contaminated, NPL-caliber sites may not be free from potential Superfund liability or EPA involvement, it is because the liability and cleanup issues are more difficult and substantial, and because further protections may be necessary to protect public health and the environment, and ensure the recovery of costs from responsible parties. Although it may be more time-consuming or procedurally burdensome for States to take an active role in the revitalization of NPL-caliber sites, nothing prevents a State from doing so.

Question 2. On page 8 of your testimony, you describe the condition under which EPA should be allowed to reenter a State cleanup. Your proposal is:

EPA should provide that it will not plan or anticipate any further action at any site unless, at a particular site, there is (1) an imminent and substantial endangerment to public health and the environment; and (2) either the State response is inadequate or the State requests EPA assistance.

Do you consider this standard to be more deferential than that EPA now offers to States in its interim voluntary cleanup guidance?

Yes, NALGEP considers its "reopener" proposal for the reentry of EPA at particular brownfield sites to be more deferential than the EPA standard in its interim voluntary cleanup guidance. The need for certainty and finality of liability determinations provided by States at brownfields sites requires a very strong delegation of authority to approved States. with reopener only in exceptional circumstances.

The NALGEP reopener proposal would require both of two specific circumstances before EPA re-involvement at a particular site would be warranted. First, there must be a substantial and imminent threat to public health or the environment. However, even when such threat exists, an approved State may well have the ability to adequately respond to such threat. Therefore, the reopener also requires that EPA not become re-involved at a site unless the Agency determines that the State response to an imminent and substantial threat is not adequate. Likewise, if the State desires and requests assistance from the EPA in responding to an imminent and substantial threat at a particular site, nothing in the brownfields delegation mechanism to that State should prevent such EPA assistance from being given.

CONCLUSION

On behalf of NALGEP and the St. Paul Port Authority, I wish to convey my great appreciation to Senator Smith and Senator Chafee for the opportunity to provide input on this topic of great importance to local communities.

PREPARED STATEMENT OF PETER F. GUERRERO, DIRECTOR, ENVIRONMENTAL PROTECTION ISSUES, RESOURCES, COMMUNITY, AND ECONOMIC DEVELOPMENT DIVISION, GENERAL ACCOUNTING OFFICE

Mr. Chairman and Members of the Committee: I am pleased to be here today to discuss the Committee's efforts to support the cleanup and redevelopment of hazardous waste properties across the country. Over the past several decades, manufacturing has been declining in many of the Nation's cities. When businesses closed, they often left abandoned and idled properties, commonly known as "brownfields." These properties are sometimes contaminated with chemical wastes from manufacturing processes. Partly to avoid the costs of assessing and cleaning up these properties according to Federal and State environmental laws, some new businesses have chosen to locate in uncontaminated areas outside cities known as "greenfields." These decisions have led to the loss of tax revenue and employment in central city neighborhoods.

The Congress has been interested in finding ways to help localities cleanup and redevelop brownfields. This Committee asked us to provide it with information on the (1) legal barriers that the Comprehensive Environmental Response, Compensation and Liability Act, commonly known as Superfund, presents for redeveloping brownfields and (2) types of Federal financial support that States and localities would like to help them address such properties. This testimony summarizes the major findings from our June 1996 report on brownfield redevelopment and information from an ongoing review for this Committee of States' voluntary cleanup programs.[1] These programs substitute incentives for enforcement actions to encourage, rather than compel, private parties to clean up contaminated properties. States are beginning to use these programs to address brownfields because they are faster and less costly than enforcement programs. This testimony also comments on how liability and funding provisions in two legislative proposals pending before this Committee respond to the legal barriers and funding needs we identified in our work.[2]

In summary, we found the following:

• Superfund's liability provisions make brownfields difficult to redevelop, in part because owners are unwilling to identity contaminated properties and prospective developers and property purchasers are reluctant to invest in a redevelopment project that could leave them liable for cleanup costs. While brownfields are usually not contaminated seriously enough to be listed as Superfund sites, these parties still fear that they may be sued under Superfund and State laws for cleanup costs if they become involved with a contaminated property. In addition, most of the voluntary cleanup program managers in the 15 States we surveyed judged that volunteers' concerns about being held liable for a property under Federal Superfund law, once a cleanup is complete, discouraged some of them from initiating a cleanup. Both bills include provisions that would help to address these concerns, including provisions to limit liability for some prospective purchasers.

• To help promote the redevelopment of brownfields, States and localities would like Federal financial support to cover some of the costs of assessing these properties for contamination, cleaning them up, and developing their voluntary cleanup programs. Over the past few years, the Environmental Protection Agency (EPA) and the Congress have provided some funds which States and localities have used for activities such as developing an inventory of brownfield properties. Funding provisions in the bills would continue and expand this support and respond to the States' and localities' needs. For example, Senate bills S. 8 and S. 18 would authorize EPA to provide grants to support the characterization and assessment of brownfields. We determined that the amounts of the grants proposed in the bills for these activities would be sufficient to cover the costs for most brownfield properties. Additional provisions in the bills for grants to fund some cleanup costs and provisions in S. 8 to fund the development of State voluntary cleanup programs should also promote brownfield cleanup and redevelopment.

BACKGROUND

Under Superfund, EPA can compel the parties responsible for hazardous waste contamination to clean up a contaminated property, or pay for its cleanup, in order to protect public health and the environment. Also, any party that contributed to the contamination, even if this action was legal at the time, may be liable and may be held responsible for the entire cost of the cleanup. The Federal Government targets its enforcement and cleanup resources to properties on the National Priorities List (NPL), a list of highly contaminated sites. However, parties may be subject to Superfund's liability and enforcement provisions even if a property is not on the NPL. Most States have adopted similar liability laws and enforcement programs. States find that these stringent liability provisions have provided leverage to convince responsible parties to clean up the more highly contaminated sites in the States' inventories. As we reported last year in a separate study of the potential cleanup workload in eight States, the program managers in these States pointed out that the threat of having a site placed on the NPL and identified as one of the most

[1] *Superfund: Barriers to Brownfield Redevelopment* (GAO/RCED–96–125, June 17, 1996).

[2] S. 8, the Superfund Cleanup Acceleration Act of 1997, includes provisions that would (1) limit Superfund liability for prospective purchasers; (2) clarify the circumstances under which landowners who did not contribute contamination at a site (innocent landowners) may avoid liability; (3) limit liability for property owners whose property is contiguous to a contaminated site; and (4) limit liability at any site subject to a State cleanup plan.

S. 18, the Brownfield Remediation and Environmental Cleanup Act, also includes provisions that would limit liability for prospective purchasers and would clarity liability for innocent landowners. Both bills would establish grant programs and provide assistance for brownfield redevelopment.

contaminated sites in the country created a moor incentive for responsible parties to clean up their sites.[3]

Brownfields, however, are typically urban properties that are less contaminated than NPL sites. EPA defines brownfields as abandoned or underused facilities, usually in industrial or commercial areas, where redevelopment is hampered by real or perceived environmental contamination. While we identified no official nationwide count of brownfields, the States estimated in a study conducted for EPA that they may have about 85,000 potentially contaminated properties, including brownfields, that need investigation and may need cleanup.[4] The Federal Superfund program and similar programs in the States do not have the capacity to address these properties. These programs have limited resources, which EPA and the States target to small numbers of highly contaminated properties. As a result, States and localities are looking for alternative ways to address brownfields, including voluntary programs.

SUPERFUND'S LIABILITY PROVISIONS RAISE A LEGAL BARRIER TO REDEVELOPING BROWNFIELDS

Most brownfields are not likely to be added to the NPL because they are not severely contaminated. However, investors are still wary of the cleanup liability provisions of both Federal and State legislation because these can apply to all sites, including brownfields. As a result, developers who purchase properties may become liable for any contamination later found there. Former property owners may also be liable for cleanup costs if the contamination occurred while they owned the properties. Thus, even the suspicion of current or prior contamination may make developers hesitant to purchase brownfield properties and owners reluctant to place their properties on the real estate market.

The voluntary program managers in the 15 States we surveyed also identified Superfund liability as a barrier to attracting volunteers to accomplish cleanups, including those at brownfields. All but one of these managers reported that their programs were addressing brownfields so that they could be returned to productive use through redevelopment and expansion. Twelve of the managers reported that the limits on State liability that their voluntary programs provide are a good incentive to attract volunteers. However, State officials judged that some potential volunteers would still find Superfund liability a deterrent to participation. Moreover, managers cited limiting Federal liability as one of the more important ways the Federal Government could assist voluntary cleanups.

The Congress has considered actions to help address some of these issues. For example, because lenders had feared being named as responsible parties if they foreclosed on contaminated properties, the Congress passed legislation limiting lenders' liability at such sites.[5] S. 8 and S. 18 also include various provisions to help address Superfund liability issues at brownfields, including limiting the liability of prospective purchasers of these properties and clarifying circumstances under which current landowners would not be liable for past contamination.

FEDERAL FUNDING CAN HELP SUPPORT BROWNFIELD REDEVELOPMENT

During our reviews of brownfields and voluntary programs, we found that States and localities would like Federal funding support to help them characterize, assess, and cleanup brownfields, and establish and support voluntary programs. Most of the States in our ongoing review of voluntary prngrams—even those States that levied fees on volunteers that were high enough to cover their program costs-identified Federal funding as a key way for the Congress to promote their programs. Some States said they would use the funds to help municipalities cover the costs of assessing properties where no parties had been identified as responsible for the contamination or where the cleanup costs would otherwise be too high to attract voluntary cleanups. One State sought to use the support to establish a revolving loan fund to support brownfield cleanups, similar to provisions in both the bills. Others said they would use the funds to, for example, publicize the programs or develop information systems to better manage and evaluate the programs.

To date, both Federal agencies and the Congress have provided some funds in support of brownfield cleanups and voluntary programs, and the pending two bills would continue and expand on this support. In 1995, EPA issued a "brownfields ac-

[3] *Impact on States of Capping Superfund Sites* (GAO/RCED–96–106R, March 18, 1996).

[4] *An Analysis of State Superfund Programs,* Environmental Law Institute under contract with EPA (1996).

[5] The Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996, contained in the Omnibus Consolidated Appropriations Act, 1997 (P.L. 104–208).

tion agenda" which, among other things, currently provides grants of up to $200,000 each to 76 State and local governments to fund a wide variety of brownfield demonstration projects. These include developing inventories of brownfields and establishing policies to govern brownfield redevelopment. The Department of Housing and Urban Development has also provided funding to communities to redevelop brownfields once they have been cleaned up. The Congress, in the House Conference report accompanying EPA's fiscal year 1997 appropriations act, indicated that more than $36.7 million of the current Superfund appropriation would go to support EPA's brownfield activities and voluntary programs.

The two pending bills would provide substantial amounts of additional funding that States and localities could directly use to characterize, assess and cleanup sites. Specifically, the bills give EPA the authority to provide Superfund grants of up to $200,000 per property, to characterize and assess brownfields.[6] Before these properties can be redeveloped, an assessment must be performed to determine the nature and extent of the contamination present. Because the assessment requires research into a property's history and a technical analysis of its conditions, a substantial expenditure may be involved. For some brownfields, this expenditure may be significant enough to discourage developers. We estimated that for most brownfields, assessment costs could average $60,000 to $85,000 and for some properties with groundwater contamination could exceed $200,000. Therefore, the grant provisions in the bills to help fund property characterization and assessment should be sufficient for most brownfields.

In addition to these assessment funds, both bills would give EPA the authority to issue Superfund grants to pay for actual cleanup actions at brownfields. S. 8 would also provide funds to assist States in establishing and administering voluntary cleanup programs. Although we asked the States for information on their costs to clean up brownfield properties and to operate their voluntary programs, most States did not yet systematically collect such data. Therefore, we cannot offer a perspective on the sufficiency of the grants proposed for brownfield cleanup actions or State voluntary programs.

Mr. Chairman, this concludes my prepared remarks. At this point, I would be glad to respond to any questions you may have.

RESPONSES OF PETER GUERRERO, GENERAL ACCOUNTING OFFICE, TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Did your research indicate that the States, given sufficient funding, have cleanup programs capable of handling brownfields cleanups?

Response. We reviewed voluntary cleanup programs in 15 of 34 States that have these programs. These programs provide incentives for volunteers to clean up contaminated sites, such as reduced administrative requirements and controls on cleanups and some relief from liability under State law. Because of these incentives, voluntary programs can sometimes achieve faster and less costly cleanups than enforcement-based programs. While the voluntary programs we reviewed are not devoted exclusively to brownfield cleanups, program managers in 14 of these States said some voluntary cleanups accomplished under their programs are resulting in economic redevelopment of brownfield-type sites.

Question 2. Did your research indicate that the issue of limiting Federal liability should only be provided to prospective purchasers? In order to provide an incentive for current owners of these facilities to clean up these sites, doesn't it also make sense for similar provisions to be given to the current owners and operators?

Response. Managers of State voluntary programs told us that limiting Federal liability for certain parties, such as prospective purchasers, would facilitate additional voluntary cleanups. Most State voluntary programs do not distinguish between different types of volunteers, such as purchasers, owners, or parties responsible for the waste. All of the voluntary cleanup programs we reviewed allowed both property purchasers and owners to conduct voluntary cleanups. Twelve of the 15 States allowed any type of party to volunteer, and then certified that cleanup was complete, providing some assurance that the volunteer was no longer liable under State law. Three programs provided a less comprehensive liability release under State law for parties responsible for the waste, which could include property owners.

Question 3. I understand that 34 States have some type of voluntary cleanup program. Is funding a constraint on other States establishing voluntary cleanup pro-

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[6] The grants would be provided out of the Superfund trust fund which has been primarily financed from taxes on crude oil and certain chemicals.

grams? Does S. 8, through its State program funding provision, address any funding concern?

Response. Of the 15 existing voluntary programs we reviewed, only two were financially self-sufficient based on the fees they charged volunteers to participate. Nine programs had already used Superfund cooperative agreement funds to develop or implement their voluntary programs, and said that additional funds would be helpful for activities like publicizing their programs, or helping local governments pay for site assessments. Most States also used other State funds to supplement their voluntary programs.

We surveyed States that did not have voluntary programs yet, and they identified Federal financial assistance as an important component in initiating a voluntary program.

Queston 4. In your testimony you state that "the voluntary program managers in the 15 States we surveyed also identified Superfund liability as a barrier to attracting volunteers to accomplish cleanups, including those at brownfields." I presume this was not merely limited to prospective purchasers of this contaminated property, but also current owners who feared to clean up the sites for the same reason?

Response. As we indicated in response to question #2, voluntary programs have generally not differentiated between different types of parties who would like to conduct a voluntary cleanup, including property owners. Program managers indicated that it was desirable to clarify the issue of Federal liability.

Question 5. In your review of State voluntary cleanup programs and State brownfield programs, to what extent do you believe that these programs are not fully successful because they are not able to waive Federal liability when these sites are cleaned up to the satisfaction of the States? Put more simply, how big a deal is finality to the States and do you believe their claim has merit?

Response. Almost all of the voluntary program managers we interviewed said that Federal liability relief could increase participation in their programs to a higher level. Those voluntary programs that had negotiated Memoranda of Agreement (MOA) with EPA to reduce the likelihood that voluntary sites will be subject to Federal liability said that even this assurance had been important in attracting volunteers. For example, two of the programs that had these MOAs, Minnesota and Illinois, currently have 800 and 600 sites participating in their programs, respectively. On the other hand, programs without MOAs also had significant levels of participation. For example, the Pennsylvania program currently has 201 participants.

Few of these programs offer a "final" or "blanket" relief from State liability. Twelve of the State program managers did report that the State liability relief they grant volunteers is an important incentive for participation. However, most programs include a "reopener" when they certify a cleanup as complete that explains specific circumstances when the State could take additional action against the volunteer. Examples include discovery of fraud during the cleanup process, a failure of the cleanup remedy, failure to maintain the cleanup, or a change in land use from that originally approved.

Question 6. Some people have expressed concerns that States will engage in a "race to the bottom" if authority for cleanup is delegated to them. Have there been any signs that States have endangered their citizens in their running of their voluntary programs?

Response. We did not conduct a review of sites to identity any instances where voluntary cleanups failed to protect human health in our review of these programs. We do note, however, that most of the programs are relatively new and have not had completed cleanups in place for an extensive period of time. We also note that the voluntary cleanup programs in our survey took a variety of approaches to providing incentives for participation and managing cleanups. Some programs significantly reduced the level of controls they placed on cleanups, such as oversight, and long-term monitoring of sites without permanent remedies. While all voluntary programs set minimum cleanup standards to be protective of human health, they allowed volunteers more flexibility in how they achieved these standards. Several of the programs we reviewed recognized the differences among sites, and varied the level of controls they placed on volunteer's cleanup according to the risks and characteristics of the site.

States also have different resources that they devote to clean up programs and face different cleanup challenges. As we reported in 1996, some States still expect to discover a significant number of seriously contaminated sites, while others believe they have already addressed most sites. These differing resources and workloads could affect States' abilities to monitor cleanups or correct failed remedies, for example.

Question 7. How long does it take to list and cleanup Superfund sites and what are the trends?

Response. In testimony on February 13, 1997, before the Subcommittee on National Economic Growth, Natural Resources, and Regulatory Affairs, House Committee on Government Reform and Oversight, we reported that EPA took an average of 9.4 years from site discovery to evaluate and process the non-Federal sites it added to the National Priorities list (NPL) in 1996. While this is some improvement over 1995, it is longer than prior years. For sites listed from 1986 to 1990, it took an average of 5.8 years from discovery to listing.

We also said that it took 10.6 years from the listing of non-Federal sites on the NPL to complete the cleanup projects that were finished in 1996. This was also longer than prior years. From 1986 to 1989, cleanup projects were finished, on average, 3.9 years after sites were placed on the NPL.

RESPONSES OF PETER GUERRERO, GENERAL ACCOUNTING OFFICE, TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. What activities typically make up a brownfield site assessment, and what do site assessments typically cost?

Response. Brownfield site assessments are similar to assessments conducted for other potentially-contaminated sites and are typically accomplished in two phases. In Phase I, the goal is to determine whether any potential for contamination exists by reviewing the site's historical records, interviewing employees and neighbors about former activities at the site, and visually inspecting the site for evidence of hazardous waste. A Phase I assessment generally costs between $1000—$5000 for an average (10–20 acre) site and up to $10,000 for a larger or more complex site.

If the Phase I assessment identifies potential contamination, such as the discovery of an underground storage tank, or evidence that certain chemicals were used at the site, then a Phase II assessment is necessary. Phase II tests for actual contamination by sampling and analyzing the site's structures, soil and groundwater. Phase II assessments generally cost from 50,000 to $70,000 for an average site and up to $150,000 for a large site, or a site with groundwater contamination.

Question 2. Does S. 8 offer a solution to the Brownfields redevelopment barriers you identified in the Brownfields and voluntary cleanup studies you conducted for this and other Committees?

Response. S. 8 would help reduce Brownfields redevelopment barriers by addressing concerns about Superfund's liability provisions and by providing some Federal funds to assist States and localities in their Brownfield redevelopment efforts. Superfund's liability provisions make brownfields difficult to redevelop, in part because owners are unwilling to identity contaminated properties and prospective developers and property purchasers are reluctant to invest in a redevelopment project that could leave them liable for cleanup costs. S. 8 includes provisions that would help to address some of these concerns, including provisions to limit liability for some prospective purchasers.

In addition, States and localities would like Federal financial support to cover some of the costs of assessing brownfield properties for contamination, cleaning them up, and developing their voluntary cleanup programs. Over the past few years, the Environmental Protection Agency (EPA) and the Congress have provided some funds which States and localities have used for activities such as developing an inventory of brownfield properties. Funding provisions in S. 8 would continue and expand this support and respond to the States' and localities' needs.

Question 3. We understand that you found some States are accomplishing Brownfield redevelopment through their voluntary cleanup programs. How many of these programs currently exist?

Response. Nationwide, 34 States have implemented these programs. All of them have been created since 1988, and most within the past 5 years. Also, officials in some additional States expect their legislatures to pass voluntary cleanup statutes this year. We collected information on voluntary cleanup programs in 15 of these States in our work for these committee.

Question 4. What are the characteristics of these programs that lead volunteers to initiate cleanup of contaminated sites?

Response. Voluntary programs offer a number of incentives that are not available from a traditional State Superfund program. First, voluntary programs are cooperative—they allow volunteers to initiate their own investigation and cleanup instead of waiting for a State enforcement action. Second, these programs allow volunteers

to choose from cleanup standards the State developed for specific chemical contaminants—and these are often based on the future land use at the site, for example, industrial, commercial or residential. As a result, volunteers can choose a cleanup standard appropriate for their site. Third, voluntary programs streamline certain aspects of the cleanup process. For example, they might require less oversight, long-term monitoring of sites, and public participation than a cleanup conducted under State or Federal enforcement. Some voluntary programs also offer financial incentives, including tax abatements, low-cost loans, and grants for site assessments.

Finally, once a cleanup is complete, voluntary programs either certify that a cleanup meets program requirements, release the volunteer from further liability under State hazardous waste law, or do both. As a result, volunteers can be confident that their responsibilities to the State for cleanup at these sites is complete. Because of these characteristics of voluntary programs, participants can often cleanup their sites relatively quickly and at low cost. Moreover, they are able to predict the time and cost needed for cleanup, making these sites less risky from a redevelopment perspective.

Question 5. Have these programs been successful in cleaning up brownfields? What are some examples?

Response. Yes, these programs have been successful in cleaning up brownfields. In the States we reviewed, thousands of sites were cleaned under the State voluntary programs, including some brownfield sites. For example,

• Chicago's brownfield program cleaned up a closed wire manufacturing facility in cooperation with the Illinois voluntary cleanup program. The site contained underground tanks and vaults filled with solvents and fuel oil that had to be removed. The city then sold the property to an adjacent fuel pump manufacturing business, Blackstone Manufacturing. Blackstone built a secured parking lot on the facility, allowing the business to add an extra shift of workers and increase production.

• The Cellular One corporation cleaned up several adjacent lots in New Berlin, Wisconsin through the Wisconsin Land Recycling Program. The lots had been used for a variety of businesses, including those that repaired, maintained, and stored heavy vehicles. The ground was contaminated with waste oil sludge, underground and aboveground storage tanks, and miscellaneous debris. Now that the soil has been excavated and treated and the tanks and debris removed, Cellular One plans to build a warehouse and office building on the site.

• Occidental Chemical Corporation operated a facility in Clarksviile, Indiana from 1950 to 1992. The facility made laundry detergents, and produced sodium and potassium phosphate products and phosphoric acid. Cleanup at the site was conducted under the Indiana voluntary cleanup program and consisted of removal of over 25,000 cubic yards arsenic and phosphorus-contaminated soil. Occidental then sold the 26-acre property to a real estate developer alter receiving a covenant not to sue from Indiana. A retail developer bought the site and constructed a large retail shopping center

Question 6. What kind of liability relief or waivers have State voluntary programs offered to volunteers, and have these waivers been effective in increasing program participation?

Response. Our review of programs in 15 States showed that most States offer a liability release from State hazardous waste laws to their volunteers after cleanup, but they also reserve the right to reopen the release in certain circumstances. We found covenants-not-to-sue are used in 5 States. Covenants not-to-sue commit the State never to take enforcement action related to the voluntary cleanup except in unusual circumstances, like fraud. Other States gave certificates of completion or no further action letters upon completion of the cleanup, stating that the cleanup met State criteria. Some of these also included a liability release. Several States took a combination of approaches, based on the type of cleanup or volunteer. For example, some States give a release from liability for cleanup that are permanent and address all contamination and give a certification of the cleanup without a liability release for non-permanent or partial cleanups. Other States give a release for non-responsible parties but give only a certification with no release for responsible parties.

Most States included "reopeners" in their liability assurances that allowed the State to revoke the assurance in some circumstances. States might have reopeners for the submission of fraudulent information or for a change in land use that does not correspond with the cleanup standard.

State managers in all 17 State programs we reviewed said that the liability waivers they offer are important incentives for participation because they give volunteers some certainty that their responsibilities to the State are at an end once a cleanup is completed.

Question 7. You mentioned that States have estimated they have about 85,000 sites that need to be assessed and potentially cleaned up. Are these all brownfield sites? What is the estimate of the number of brownfields in the U.S.?

Response. The 85,000 estimate, which is based on a survey of State Superfund programs conducted for EPA by the Environmental Law Institute, could include other types of sites such as NPL-calibre sites or sites not located in central cities. No nationwide estimate of brownfields exists. In fact, owners of contaminated property now have little incentive to provide this information to State or Federal Government. As a result, few inventories of brownfields have been developed except at the local level.

Differing definitions of what a brownfield site is makes it difficult to estimate the number of brownfield sites. We found that definitions vary by size of site considered to be a brownfield (gas stations vs. large sites that have significant redevelopment potential), location (urban v. suburban), level of contamination (actual vs. perceived) etc.

Question 8. Do the remediation grants proposed in both bills provide enough funding to pay for cleanup at the average brownfield site?

Although we asked the 15 managers in our State voluntary program survey if they could provide us with data on the costs of voluntary cleanups, they could not provide this type of information. We did not identify any other source that could provide this data.

PREPARED STATEMENT OF WILLIAM J. RILEY, GENERAL MANAGER, ENVIRONMENTAL AFFAIRS, BETHLEHEM STEEL CORPORATION ON BEHALF OF THE AMERICAN IRON AND STEEL INSTITUTE

Bethlehem Steel Corporation, on behalf of the American Iron and Steel Institute, appreciates the opportunity to provide testimony in support of Brownfields/Voluntary Cleanup legislation, which deals with an important environmental and economic issue: the redevelopment of industrial sites. The committee leadership is to be commended for addressing Brownfields legislation, which has been addressed in a number of bills introduced in Congress, in particular S. 8 and S. 18. These bills address some of the issues associated with Brownfields, but we believe that legislation must address all of the key issues which created the impetus for legislation in the first instance.

The steel industry has been a leader in promoting reasonable Brownfields legislation at the Federal, State and local levels. At the Federal level, we have been working with both the Congress and the Administration. We led the efforts to include the Brownfields issue as a major element in EPA's Common Sense Initiative. We have been involved with a number of States, some of which have enacted Brownfields legislation, while others are currently developing Brownfields provisions. Today, we will address three principles that we consider to be fundamental for Brownfields legislation.

The need for comprehensive Federal Brownfields legislation that complements current and future State legislation has grown enormously. Over the past two decades many large corporations, like Bethlehem Steel, have significantly downsized to respond to a rapidly changing global marketplace. Thousands of Brownfield sites exist throughout the country, some of which continue to deteriorate in our urban centers. These wasted assets, and the unnecessary despoiling of farmland and other "Greenfield" sites, have spawned numerous State Brownfield laws just within the last several years. Indeed, the States have taken the lead on this issue through voluntary cleanup legislation and have collectively developed a model framework that has achieved widespread support. In particular, I would like to commend Governor Ridge of Pennsylvania, who has been a strong advocate in the Great Lakes region for Brownfields legislation. A wide variety of Brownfield sites can be cleaned-up and redeveloped effectively and efficiently under existing State programs if Federal legislation is enacted that promotes the "one master" concept: namely, that remediation under a State program will satisfy Federal requirements.

There are basically two categories of Brownfield sites: abandoned sites and underutilized sites. Usually abandoned sites are relatively small in size and have been left deteriorating for a number of years. As a result, the infrastructure associated with these sites has also been deteriorating. Such abandoned sites are often municipally owned and usually will require financial assistance for redevelopment. Brownfield sites with a viable owner are far larger in size and, with effective legislation, can undergo cleanup without the need for public funds. Often these sites are underutilized or surplus portions of large manufacturing sites which have ongoing adjacent operations. As a result, the infrastructure associated with these sites is

usually in much better condition than that for abandoned sites, making them more attractive to potential buyers. There are a growing number of these sites in the United States, especially as a result of the restructuring activities in industries such as steel that have been made and continue to be made in response to intense competitive environments.

Federal legislation must address these properties directly. In order to do so, there are three primary objectives that must be addressed in comprehensive Brownfields legislation. They are: Federal Finality, Certification of State Voluntary Programs, and Eligibility of Sites. Each of these issues are summarized as follows:

1. *Federal Finality*—State voluntary cleanup programs provide certain incentives to buyers and sellers of contaminated industrial properties, and thus facilitate faster cleanup and redevelopment of sites. However, to provide buyers and sellers sufficient incentive to make the necessary investment in these properties, these parties need assurances of "finality," i.e., assurances that they will face no further liability under Federal or State law for those sites, or portions of sites, that are investigated and cleaned up in accordance with a State voluntary cleanup program.

We support the provision in S. 8 that eliminates CERCLA liability once a site has been cleaned up under a State plan. We are concerned, however, that EPA could second-guess the cleanup through the RCRA statutes and therefore need RCRA liability relief as well.

Due to the importance of Federal finality, perhaps a "re-opener provision" would be appropriate, as contemplated in certain State voluntary programs, that allows U.S. EPA to retain authority under certain circumstances. Such a "re-opener provision" should provide an appropriate balance of the property owner's interest in finality, the State's interest in preserving the integrity of its programs, and the Federal interest in assuring that all significant rights are addressed.

2. *Certification of State Voluntary Cleanup Programs*—To qualify for Federal liability relief, a cleanup should be conducted pursuant to a certified State voluntary response program. We believe that the criteria set forth in section 102(b) of S. 8 would be appropriate criteria for the certification of State voluntary response programs. In addition, a State seeking qualification for its program could submit a certification to the U.S. EPA that the State has in place a voluntary response program and that the State has the legal authority, organization, financial and personnel resources, and expertise to implement that program.

3. *Eligibility of Sites*—In order to promote and accelerate the cleanup and redevelopment of a wide universe of underutilized industrial properties, "Brownfields" should be defined broadly. We should be encouraging the reuse of all commercial and industrial sites, not just a narrow category. In particular, we strongly believe that RCRA sites, where cleanup has not yet commenced and where cleanup would be accelerated by participating in a State voluntary cleanup program, should be eligible. There are approximately 6,100 RCRA corrective action sites. Less than 5 percent of these sites have completed cleanup. The legislative principles being suggested today would accelerate the cleanup for many of the remaining sites.

We would like to have the ability to clean up "portions" of a facility under a State voluntary cleanup program and sell them to potential buyers for economic redevelopment purposes. RCRA, which triggers corrective action facility-wide, often precludes our ability to redevelop these properties in a timely manner. Again, we are not proposing to skirt our corrective action obligations, but merely striving to accelerate cleanup for economic redevelopment purposes. In addition, we are not seeking financial assistance or grant money to clean up our facilities.

We applaud the Committee for addressing the problem of Brownfields. Remediating Brownfields is a win/win for all stakeholders because:

- cleanups would be accelerated;
- unused or underutilized properties would be reused;
- property appearances and urban blight would be ameliorated;
- environmental contamination would be remediated;
- jobs would be saved or created;
- tax revenues would be resumed;
- communities would be enhanced;
- valuable Greenfields sites—our forests and farmlands—would be preserved; and
- litigation would be reduced.

In conclusion, we believe that Federal Brownfields legislation should not be limited in scope, and should, as its primary goal, stimulate and empower State voluntary cleanup programs.

The "one master" concept, whereby the State program satisfies all cleanup requirements and results in comprehensive liability relief, is the way to proceed.

RESPONSES OF WILLIAM K. RILEY, BETHLEHEM STEEL CORPORATION, TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

Question 1. On page 4 of your testimony, you state that there may be some limited circumstances under which EPA should be allowed to reenter at a State cleanup. Earlier witnesses from NALGEP proposed the following standard:

EPA should provide that it will not plan or anticipate any further action at any site unless, at a particular site, there is (1) an imminent and substantial endangerment to public health and the environment; and (2) either the State response is inadequate or the State requests EPA assistance.

Is this an appropriate standard for EPA reentry at a State site?

Response. We recognize that a re-opener provision may be necessary to satisfy those who feel that EPA's intervention or assistance may be needed in critical situations. Such a re-opener should provide an appropriate balance between the property owner's interest in finality, the State's interest in preserving its autonomy and the integrity of its programs, and a carefully targeted Federal interest in assuring that truly imminent and significant risks are addressed to alleviate acute (rather than chronic) circumstances. In this context it should be recognized that, in part, as a result of decades of Federal program grant and technical support, most State programs do, in fact, possess the requisite environmental expertise equivalent to that developed or retained by EPA to address these matters. Hence the necessity for such Federal oversight or intervention will most likely be infrequent.

Question 2. Often we try to think of Brownfields sites in terms of risk—from low risk sites, to higher risk-NPL caliber sites, to sites actually on the NPL. Your testimony on page 2 gives us another interesting way to divide the potential Brownfields site universe—between relatively smaller "abandoned" sites and relatively larger idled sites with a viable owner that basically "mothballs" the facility. Bethlehem is a responsible company and presumably does not abandon its old sites, but can you explain why a rational, viable firm like Bethlehem might choose to mothball a facility and not sell it to someone for redevelopment?

Response. Many times we do not choose to "mothball" a site but such sites become unsalable because buyers are concerned about the perception of environmental liability. We do hold a limited number of other sites, or portions of sites, which contain areas of potential contamination that could create liability to Bethlehem if improperly managed by others. We know of other companies that routinely "moth ball" properties, presumably for the same reasons. These liability concerns are created in large part by EPA'S traditional use of unscientific, overly conservative "off-the-shelf" assumptions to define required cleanup levels that resulted in overly expensive and unnecessary remedies. It is generally agreed that the use of these same techniques/criteria are what has caused excessive delays, high transactional costs and a general slowdown in Superfund site cleanups. If site specific, real world, scientific risk-based analyses were adopted along with a streamlined administrative process, owners would move more rapidly to redevelop sites rather than "moth ball" them. Many of these sites could be reutilized if processed through a Brownfields program that provided for land-use-based cleanup standards, institutional controls, and liability relief.

Question 3. Your testimony raised RCRA sites as a Brownfields issue—sites where RCRA's corrective action cleanup provisions apply. What barriers does RCRA raise to redevelopment and do current legislative proposals, S. 8 or S. 18, fix those barriers?

Response. The RCRA Corrective Action Program, as currently constituted and administered by EPA, presents programmatic, timing and flexibility impediments and barriers to effective site redevelopment. It appears that the current legislative proposals do not contain sufficient provisions to remove those barriers. There are at least two specific RCRA issues that need to be addressed.

The first is a definitional matter that involves the eligibility of RCRA sites in State and Federal Brownfields/Voluntary cleanup programs. Where the Corrective Action process has already been initiated, especially at a large facility, it makes sense if portions of that facility which are surplus and available for redevelopment, were expeditiously evaluated and remediated as necessary under a voluntary cleanup program instead of waiting for the completion of a lengthy Corrective Action process. RCRA Corrective Action procedures require a very long time to complete, primarily because of programmatic requirements which often do not affect the actual remedy. Moreover, such programs often require the entire facility to be studied before the "site" can be released from the program. We believe that the preferred course of action is the endorsement of a faster remediation regime under a State voluntary cleanup program designed to reutilize the site and create jobs.

Second, RCRA Corrective Action Program barriers (e.g., permitting and waste management requirements) exist at Brownfield sites. Separate legislation such as that introduced last year by Senator Lott in S. 1274 should be considered to remove these impediments.

It is not clear from reading S. 8 if the definition of "Brownfield facility" is meant to apply only to the Brownfields revitalization title of the bill. If not, the definition would exclude RCRA sites from liability relief provided for in the enforcement provisions of section 129. S. 18 deals primarily with financial incentives, and does not address issues relating to the Landowner, such as liability relief in exchange for remediation. Therefore, the above RCRA issues are also not addressed.

RESPONSES OF WILLIAM K. RILEY, BETHLEHEM STEEL CORPORATION, TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Has Bethlehem Steel ever encountered any financing problems with sites that it would like to redevelop, but cannot obtain funding because a fear that Superfund liability may be involved? If not, are you aware of other corporations that have had this problem?

Response. The perception of environmental contamination and the associated CERCLA, RCRA and other liabilities attached thereto has been a factor in many sales transactions. Although the fear of uncertain liability is seldom the sole reason for a failed transaction, it has been, on several important occasions, a major contributor to a lost or significantly-delayed sale. Moreover, some of our properties have not attained a higher use, commanded a fair price, or attracted quality buyers because they were previously-used industrial sites.

Question 2. Both S. 8 and S. 18 provide liability relief for prospective purchasers and innocent landowners. That's where S. 18 stops in this area, while S. 8 provides relief for those who are covered by an approved State cleanup plan and are cleaning up the site. Isn't it true that in order to have a purchaser there has to be a seller and that relief for just a purchaser does not fix the problem? I mean, why would a seller sell if there was a threat of future liability for a site he no longer owns?

Response. The question is well stated and reflects an understanding of the MAJOR problem for sellers with the reutilization of Brownfields sites that are under private ownership. State Brownfields laws were created to provide cleanup standards for owners to follow. In exchange for owners coming forward voluntarily to clean up a site, the better State programs provide the owner relief from State environmental liability. Otherwise, few sites will come out of "mothballs." Clearly, Federal CERCLA and RCRA relief should be provided if the site is cleaned up as agreed upon!

Question 3. Your testimony indicates that the largest and most financially attractive sites for economic growth are sites where there is a viable owner. What are the major barriers that are preventing these sites from being redeveloped?

Response. The primary environmental related barriers to redevelopment of these sites are the liability scheme in the current laws, the lack of a streamlined process and procedures for site assessment, investigation and remediation and the RCRA Corrective Action process which is slow, overly prescriptive and expensive. We have already discussed two of the major issues which need to be addressed and provided for: (a) risk-based, land-use based cleanup standards, and (b) relief from environmental liability. Just as important from a FINALITY point of view is to be sure that other regulatory obligations are considered to be met as a result of completing the voluntary cleanup. Thus, a voluntary cleanup should satisfy the requirements, if any, under the RCRA Corrective Action program.

Question 4. Our staff has been told that there are some relatively large, virtually abandoned industrial sites out there that companies like yours would be perfectly willing to clean up, but without some assurances that they aren't going to get caught up in the Superfund liability net, they do not want to clean up because the potential liability might far outweigh any gain of developing these properties?

Response. That is correct. Especially with steel and other large manufacturing operations, there are often portions of such sites which are surplus or underutilized which are Brownfields sites sometimes forgotten about when it comes to Federal Brownfields legislative proposals. We know of one large manufacturer who will not sell any previously used property until the owner can be assured that liability relief is attainable. Once again, we emphasize that liability relief under RCRA in addition to the Superfund statute (CERCLA) is important.

Question 5. Is it reasonable to expect an industrial site which is zoned industrial and will stay industrial to have the same cleanup standards as a residential area?

Response. No. Generally speaking, sites which have been industrial for a long period of time could not reasonably be expected to achieve residential cleanup standards. We do not view that as a problem for reasonable future use considerations since such sites are zoned industrial and intended to be used as industrial sites. If subsequent purchasers choose to seek a higher use, they should bear the cost of subsequent cleanup to the higher standard and process the site through a voluntary cleanup program again.

Question 6. Can I take it from your testimony that we should allow the States to clean up the broadest range of facilities under State voluntary cleanup and Brownfield statutes? How do you answer the concern that is likely to be raised by some that this will result in "crummy cleanups?"

Response. Yes, eligibility under voluntary cleanup proposals should be as broad as possible. For example, in Pennsylvania, no sites are excluded. With respect to the "crummy cleanups" suggestion, we believe that such suggestions or assertions are simply not true. Our experience with voluntary cleanup programs has shown them to be quite stringent when it comes to site characterization and remediation. They have defined cleanup levels and streamlined procedures to get those cleanups. Frequently local State environmental agency personnel actively follow the progress of the site evaluation and remediation via frequent on-site visits. As a result, these programs are frequently more stringent than many Federal cleanup situations, but they are more targeted and faster. Voluntary cleanup programs regulate some contamination that might not otherwise be regulated under any other program.

PREPARED STATEMENT OF WILLIAM K. WRAY, SENIOR VICE PRESIDENT, CREDIT POLICY AND REPORTING, CITIZENS FINANCIAL GROUP, PROVIDENCE, RI

Mr. Chairman and members of the subcommittee: Thank you for the opportunity to address this important subject. My name is Bill Wray, and I am a Senior Vice President of Citizens Financial Group. Citizens is a $15 billion commercial bank holding company headquartered in Providence, RI. We have over 230 branches throughout Connecticut, Rhode Island, Massachusetts, and New Hampshire.

Please realize that I am not attempting to represent an "official" position on behalf of the banking industry or any of its trade associations. In my role as manager of Credit Administration for Citizens, I have seen first hand how environmental risk affects banking at the community level. This testimony is a reflection of my personal experience in that role.

From my review, both bills under review are similar in their approach to the brownfields issue; although S. 8 also addresses a variety of other needed reforms. Since my charter was to address the brownfields subject, however, I will confine my comments to that: Let me start by saying that we have a great deal of interest in seeing "brownfields" initiatives work.

As a secured creditor, we cannot succeed unless our borrowers succeed. This means they must be able to quantify and respond to environmental risk issues without incurring inordinate expense or disproportionate liability.

We, in turn, have direct exposure to environmental liability arising from our role as a secured creditor as well as an owner of facilities.

Finally, as members of the community, we live and work alongside our customers. We pass by abandoned industrial sites that have been locked out of consideration for productive re-use because of the chilling effects of unpredictable environmental liability. All of us want to see these sites brought back to useful life, with the economic and aesthetic benefits that will result.

We believe that these bills represent a substantive effort to address many of the issues at hand, and it is an effort we welcome. We know that this process can work—here is a real-life example:

About 18 months ago, Citizens made a presentation at a seminar which had been sponsored by the Rhode Island Department of Environmental Management. Our message was that brownfields projects were a good business opportunity. We encouraged potential borrowers in the audience to bring their deals to us for review. As a result of that presentation, the owners of a company called Display World, Inc., contacted us about financing the purchase of the 13-acre Carol Cable facility in Warren, RI, which had been idled for some time due to various contamination problems. We were part of a team involving the site owners, Display World, and State regulators. Today the facility is again in operation and over 100 jobs have returned to Warren as a result, with growth expected to continue.

So you can see that we believe in this process and we are encouraged to see the attention it is receiving from this committee. Let me address two specific provisions of S. 8:

First, I understand and appreciate the reasoning behind the "windfall lien" provisions in section 105; however, it is unclear what precedence the proposed lien in favor of the United States would have. If the intent is to have the lien be junior to all encumbrances of record at the time the lien arises, this should be explicitly provided in the bill. If the intent is otherwise, this creates a difficulty for lenders because of the uncertainty associated with the amount involved. As a practical matter it can be difficult to quantify the increment to market value attributable to a response action, so this provision as currently drafted could insert an unknown quantity of unknown precedence into the credit underwriting equation. I recommend, then, that the bill explicitly provide that the windfall lien is junior to prior encumbrances of record. In any event, I ask that the intent of this provision be made clear to avoid this being decided on a case-by-case basis by the courts.

My second comment relates to section 106, which provides a "safe harbor" for purchasers of real estate in certain circumstances. One of those circumstances applies when the purchaser has made "all appropriate inquiries" into the existence of environmental contamination prior to purchase. We support the bill's direction to the Administrator to provide clear standards for these inquiries. We would ask in addition that the Administrator recognize that banking regulators have also issued guidelines on appropriate inquiries for environmental contamination, and that we are examined as to our compliance with these guidelines. Our hope is that these two sets of directives could be reviewed and synchronized so that lenders do not receive direction from the Federal Government which is in conflict or inconsistent on this issue.

If I may, let me close with a more general comment, again based on my frontline experience:

All parties to this subject—legislators, regulators, community groups, and private sector businesses—seem to agree that our goal is to foster responsible reaction to existing environmental problems, and to provide safeguards against future danger from contamination.

But the statutory and regulatory apparatus that has been created to foster the attainment of our common goal can be bewildering. It is especially difficult for "grass-roots" businesses—the small-scale entrepreneur, or the community bank—to afford the legal and technical analysis necessary to untangle the Gordian knot of environmental rules, and to understand the myriad of potential liabilities that may arise from them.

As a result, those grass-roots businesses must either take on these liabilities blindly (which we must all agree is an undesirable outcome); or, more commonly, forgo opportunities for desirable redevelopment. Thus, many smaller sites will remain undeveloped and unremediated, which otherwise could have been revitalized by the energies of private-sector initiative. Again, I think that we must all agree that this latter outcome is undesirable, even tragic. It is made no less tragic by the fact that none but the best intentions have underlain the legislative and regulatory initiatives in this area.

The bills we are discussing today are a laudable effort to further our common goal as I have outlined it above, but they are limited to a narrow section of the regulatory spectrum as it affects environmental matters. I would hope that this constructive approach will be continued and will be eventually broadened to cover a greater range of environmental legislation.

Please realize that we are not asking for our risks to be eliminated, or for our costs to be subsidized, or for protection against the consequences of negligence on our part. We ask only that our environmental risks be quantifiable, predictable, and reasonable.

This will allow us to evaluate environmental risk in context with other business risks, rather than having it loom as a "black hole" of liability that trumps all other issues when making a credit decision. This will help our borrowers to succeed, which is the only way that we as lenders can succeed.

Again, I applaud the tone and direction of these bills, and that of other recent legislation in this area, and I appreciate the opportunity to provide this testimony. Thank you for your attention.

RESPONSES OF WILLIAM K. WRAY TO ADDITIONAL QUESTIONS OF SENATOR SMITH

Question 1. How do the banking industry's guidelines for due diligence inquiries differ from those set forth in S. 8 & S. 18?

Response. I have attached a copy of the FDIC's "Guidelines for an Environmental Risk Program", dated 2/25/93. As far as I know, these are the most current version of these guidelines, although I will do further research in this area.

The guidelines are not specific in the area of due diligence other than to require it when appropriate. Our recommendation would be that the banking guidelines explicitly conform to or defer to any applicable laws that bear on this issue, so that a single standard (e.g. ASTM) can be established and followed by banks without fear of challenge. In addition, the guidelines have not been revised to reflect recent changes in secured creditor exemptions, as can be seen from the sections on "involvement in the borrower's operations" and "foreclosure".

Question 2. Do you know whether other industries have produced other types of guidelines?

Response. Within the banking industry, other regulators (e.g. OCC, OTS) may have established guidelines similar to those of the FDIC (I have not been able to research this yet but I will forward my findings).

I do not know whether this has been done in other regulated industries.

Question 3. Has the lender liability law worked for you?

Response. I am attaching an article from the Bankers's Roundtable about the recent changes which discusses the pros and cons of the new law.

Because of the exceptional reduction in troubled loans over the last several years, this has become much less of an issue for banks than it was during the peak years of loan workouts and foreclosures, so we have little practical experience with the provisions of the new law to date.

However, the changes do provide a needed clarity and certainty to the process, and make it easier for banks to understand their potential liabilities in cases where they have environmental contamination issues affecting their collateral.

FDIC Guidelines for an Environmental Risk Program

FDIC
Federal Deposit Insurance Corporation
Washington, DC 20429

Office of the Director
Division of Supervision

FIL-14-93
February 25, 1993

ENVIRONMENTAL LIABILITY

TO: CHIEF EXECUTIVE OFFICER

SUBJECT: Guidelines for an Environmental Risk Program

A lending institution should have in place appropriate safeguards and controls to limit exposure to potential environmental liability associated with real property held as collateral. The attached guidelines contain information and recommendations about implementing an environmental risk program that can be tailored to the needs of the lending institution. Examiners will review the institution's compliance with its own environmental risk program as part of the examination of lending and investment activities.

For further information, please contact your Division of Supervision regional office.

Stanley J. Poling
Director

Attachment

Distribution: FDIC-Supervised Banks (Commercial and Savings)

FDIC Guidelines for an Environmental Risk Program

(February 25, 1993)

BACKGROUND

The potential adverse effect of environmental contamination on the value of real property and the potential for liability under various environmental laws have become important factors in evaluating real estate transactions and making loans secured by real estate. Environmental contamination, and liability associated with environmental contamination, may have a significant adverse effect on the value of real estate collateral, which may in certain circumstances cause an insured institution to abandon its right to the collateral. It is also possible for an institution to be held directly liable for the environmental cleanup of real property collateral acquired by the institution. The cost of such a cleanup may exceed by many times the amount of the loan made to the borrower. A loan also may be affected adversely by potential environmental liability even where real property is not taken as collateral. For example, a borrower's capacity to make payments on a loan may be threatened by environmental liability to the borrower for the cost of a hazardous contamination cleanup on property unrelated to the loan with the institution.

The potential for environmental liability may arise from a variety of federal and state environmental laws and from common law tort liability. The most significant environmental law establishing liability for the cost of cleaning up hazardous contamination on real property is the Comprehensive Environmental Response, Compensation, and Liability Act (also known as "CERCLA" and "Superfund"). CERCLA establishes a broad legal framework that creates potential liability for the cleanup costs of hazardous contamination. Entities that may be potentially liable for these cleanup costs are the current and past owners of the contaminated property, the current and past operators of business on the property, entities that disposed of hazardous substances at the property and entities that transported hazardous substances for disposal to property selected by the transporter. CERCLA provides a secured creditor exemption from liability for banks and other lenders that do not participate in the management of the property. The United States Environmental Protection Agency has issued a rule interpreting the secured creditor exemption under CERCLA, 57 Fed. Reg. 18344 (April 29, 1992). [**Editor's Note:** The EPA rule was struck down by the U.S. Court of Appeals for the District of Columbia Circuit in February 1994. For further discussion, see EDDG Section 101.13(a).] In addition to the federal Superfund law, most states have enacted legislation that establishes similar liability under state law for hazardous contamination cleanup costs.

The other primary federal environmental law relating to hazardous contamination liability is the Resource Conservation and Recovery Act (also known as "RCRA"). RCRA establishes a comprehensive statutory and regulatory framework that governs the generation, transportation, storage, discharge and disposal of solid and hazardous contamination. RCRA also establishes regulations governing the prevention, detection and cleanup of releases from underground storage tanks containing certain hazardous substances or petroleum. Under authorization by Congress, many states establish and administer RCRA programs as part of each state's environmental laws.

Other federal environmental laws that establish environmental liability include, among others, the Clean Water Act, the Clean Air Act and the Toxic Substance Control Act. The states, including the local jurisdictions within each state, have also enacted many other environmental laws and regulations. In addition to federal and state environmental laws, potential environmental liability may result under common law tort suits based on hazardous contamination.

Institutions need to implement an environmental risk program in order to evaluate the potential adverse effect of environmental contamination on the value of real property and the potential environmental liability associated with the real property. The failure of an institution to evaluate potential environmental risks associated with real property may contribute to an institution's inability to collect on its loans and affect the institution's financial condition.

ENVIRONMENTAL RISK PROGRAM

As part of the institution's overall decision-making process, the environmental risk program should establish procedures for identifying and evaluating potential environmental concerns associated with lending practices and other actions relating to real property. The board of directors should review and approve the program and designate a senior officer knowledgeable in environmental matters responsible for program implementation. The environmental risk program should be tailored to the needs of the

lending institution. That is, institutions that have a heavier concentration of loans to higher risk industries or localities of known contamination may require a more elaborate and sophisticated environmental risk program than institutions that lend more to lower risk industries or localities. For example, loans collateralized by 1-to-4 family residences normally have less exposure to environmental liability than loans to finance industrial properties. The environmental risk program should provide for staff training, set environmental policy guidelines and procedures, require an environmental review or analysis during the application process, include loan documentation standards, and establish appropriate environmental risk assessment safeguards in loan workout situations and foreclosures.

Training. The environmental risk program should incorporate training sufficient to ensure that the environmental risk program is implemented and followed within the institution and the appropriate personnel have the knowledge and experience to determine and evaluate potential environmental concerns that might affect the institution. Whenever the complexity of the environmental issue is beyond the expertise of the institution's staff, the institution should consult legal counsel, environmental consultants and other qualified experts.

Policies. When appropriate, loan policies, manuals and written procedures should address environmental issues pertinent to the institution's specific lending activities. For example, the lending manual might identify the types of environmental risks associated with industries and real estate in the institution's trade area, provide guidelines for conducting an analysis of potential environmental liability and describe procedures for the resolution of potential environmental concerns. Procedures for the resolution of environmental concerns might also be developed for credit monitoring, loan workout situations and foreclosures.

Environmental Risk Analysis. Prior to making a loan, an initial environmental risk analysis needs to be conducted during the application process. An appropriate analysis may allow the institution to avoid loans that result in substantial losses or liability and provide the institution with information to minimize potential environmental liability on loans that are made. Much of the needed information may be gathered by the account officer when interviewing the loan applicant concerning his or her business activities. In addition, the loan application might be designed to request relevant environmental information, such as the present and past uses of the property and the occurrence of any contacts by federal, state or local governmental agencies about environmental matters. The loan officer or other representative of an institution might visit the site to evaluate whether there is obvious visual evidence of environmental concerns.

Structured Environmental Risk Assessment. Whenever the application, interview, or visitation indicates a possible environmental concern, a more detailed, structured investigation by a qualified individual might be appropriate. This assessment might include surveying past ownership and uses of the property, inspecting the site and contiguous parcels of property and reviewing company records for past use or disposal of hazardous materials. A review of public records might include contact with federal and state environmental protection agencies to determine whether the borrower has been cited for violations concerning environmental laws and a review of federal and state lists identifying real property with significant environmental contamination.

Loan Documentation. Loan documents should include language to safeguard the institution against potential environmental losses and liabilities. Such language might require that the borrower comply with environmental laws, disclose information about the environmental status of the real property collateral and grant the institution the right to acquire additional information about potential hazardous contamination by inspecting the collateral for environmental concerns. The loan documents might also provide that the institution has the right to call the loan, refuse to extend funds under a line of credit, or foreclose if the hazardous contamination is discovered in the real property collateral. The loan documents might also call for an indemnity of the institution by the borrower and guarantors for environmental liability associated with the real property collateral.

Monitoring. The environmental risk assessment should continue during the life of the loan by monitoring the borrower and the real property collateral for potential environmental concerns. The institution should be aware of changes in the business activities of the borrower that result in a significant increased risk of environmental liability associated with the real property collateral. If there is a potential for the environmental contamination to adversely affect the value of the collateral, the institution might exercise its rights under the loan to require the borrower to resolve the environmental condition and take those actions that are reasonably necessary to protect the value of the real property.

Involvement In the Borrower's Operations. Under the federal Superfund law, CERCLA, the institution may have an exemption from environmental liability as the holder of a security interest in the real proper

ty collateral. In monitoring a loan for potential environmental concerns, and resolving those environmental situations as necessary, the institution should evaluate whether its actions may constitute "participating in the management" of the business located on the real property collateral within the meaning of CERCLA. If the actions are considered to be participating in the management, the institution may lose its exemption from liability under CERCLA.

Foreclosure. A lender's exposure to environmental liability may increase significantly if it takes title to real property held as collateral. The institution should evaluate the potential environmental costs and the potential for environmental liability in conjunction with an assessment of the value of the collateral in reaching a decision to take title to the property by foreclosure or other means.

SUPERVISORY POLICY

Examiners will review an institution's environmental risk program as part of the examination of its lending and investment activities. When analyzing individual credits, examiners will review the institution's compliance with its own environmental risk program. Failure to establish or comply with an appropriate environmental program will be criticized and corrective action required.

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ANALYSIS AND PERSPECTIVE

Clarification of Secured Party and Fiduciary Liability Under U.S. Environmental Statutes

By Alfred M. Pollard *

The Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 culminates more than seven years of congressional work to clarify and provide certainty for secured parties and fiduciaries under federal environmental laws.

Though not as comprehensive as contemplated in some earlier legislative versions, the new law in particular goes a long way to simplify a lender's task in estimating environmental liability risk in credit decisions. For that reason alone, the new law is a success that should redound to the benefit of borrowers, lessees, and others seeking credit across the United States. The law also serves as a model for state and international consideration.[1]

I. Background

During the 1980s, court cases undermined the exemption provided secured parties under Superfund and other environmental laws. With uncertainty and open-ended liability, lenders and others faced difficulty with existing portfolios and going forward with new extensions of credit.

a. Federal Law — Focus on Superfund

As will be discussed later, more than 30 separate federal statutes govern environmental responsibilities and create liabilities ranging from penalties for procedural violations all the way to full obligations for remediation and criminal penalties. As well, a myriad of laws in every state impose potentially sweeping environmental liability for lenders and fiduciaries. For the most part, due to court decisions, the focus of lender concern was on the Superfund law.

The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "Superfund"),[2] provides a comprehensive federal scheme for cleanup of contaminated property and for allocating liability for the costs involved.

CERCLA creates retroactive strict and, where harm is indivisible, joint and several liability for the costs of responding to a release or threatened release of hazardous substances and for harm to natural resources caused by such a release.[3] No showing of fault is required. One person may be made to pay for an entire cleanup even if other parties were involved who are also responsible, though CERCLA provides for a right to seek contribution from others.

Liability under Superfund. Liability under Superfund is based on three elements—a release has occurred or is threatened; response costs were incurred (that is, costs to investigate, remove, or otherwise remediate hazardous substances); and, the person involved falls into one or more of four categories of responsible parties outlined by the law (specifically, a current owner or operator of a facility, a former owner or operator of a facility at the time of disposal of a hazardous substance, a person who arranges for transport, treatment or disposal of hazardous substances, or the transporter of hazardous substances). [42 U.S.C. 9607(a)(1)-(4)].

Defenses Under Superfund. The Superfund law specifies very limited defenses to liability. First, a showing may be made that one was not in fact within one of the four classes of liable entities. Next, under 42 U.S.C. 9607(b)(3), a person is relieved from liability if a discharge were caused solely by an act of God, an act of war, or "an act or omission of a third party" who cannot be an "employee or agent of the defendant" or someone whose act or omission occurs in connection with a contractual arrangement. Under the Superfund Amendments and Reauthorization Act of 1986 ("SARA"), a contractual relationship is defined to include "land contracts, deeds or other instruments transferring title or possession . . ."[4]

Defenses for Purchasers of Property/Innocent Landowners. For those who seek to buy and own property, the Congress provided a defense from liability. Where a land contract is involved and a party intends to take title to the property, an owner is en-

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[1] As noted in footnote 31 *infra*, laws in several states have anticipated and, in several instances, taken an even stronger position than federal efforts to provide certainty for secured parties and fiduciaries.

[2] 42 U.S.C. 9601 *et seq.*

[3] 42 U.S.C. 9607(a).

[4] 42 U.S.C. 9601 (35) (A).

titled to assert an "innocent landowner" defense in certain narrowly drawn circumstances. To prevail, a defendant must establish two elements—(1) that the property was acquired after the hazardous substance was placed there and at "the time the defendant acquired the facility the defendant did not know and had no reason to know that any hazardous substance which is the subject of the release . . . was disposed of on, in, or at the facility;" and (2) that at the time of acquisition the defendant undertook "appropriate inquiry into the previous ownership and use of the property consistent with good commercial or customary practice in an effort to minimize liability." [5]

Exemption for Secured Parties under Superfund. Financial institutions and others face CERCLA liability as holders of security interests for loans or leases and as fiduciaries for trusts and estates. Because of both the potential "ownership" interest of secured parties, guarantors, and others or, alternatively, the possibility of being classified as "operating" the debtor's business, these parties could be viewed as having liability under Superfund as "owners" and, in dealings with a borrower in possession or in foreclosure actions, as "operators." Congress took this into account in 1980, rejecting such an interpretation.

Specifically, CERCLA provides an exemption from liability under the "owner or operator" definitions for those who lend, guarantee, or otherwise are involved with extensions of credit in which property serves as security. Also involved are title and mortgage insurers, subsequent lien holders, secondary market parties, and others who may have a potential right against the underlying property. The secured party exemption is contained in the CERCLA definition of "owner or operator" that specifically excludes one who "without participating in the management of facility . . . holds indicia of ownership primarily to protect his security interest in the vessel or facility." [6]

[Though often discussed in the same context, the innocent landowner "defense" described above is *not* the same as the secured party "exemption" and is not the central focus for secured parties].

b. Key Court Interpretations

Courts in the mid 1980s began to look at secured party involvement with property both before and after foreclosure as well as in leasing situations. The courts focused on the activities of secured parties in relation to the property and its management.

Loan Management and Foreclosure. Several court cases, including *U.S. v. Mirabile,*[7] *U.S. v. Maryland Bank & Trust Co.,*[8] *U.S. v. Fleet Factors,*[9] *and, Guidice v. BFG Electroplating and Manufacturing Co.,*[10] explored the extent to which loan foreclosure and loan management activities short of foreclosure can make lenders subject to Superfund liability despite this exemption.

1. Foreclosure. Courts have addressed the applicability of the security interest exclusion when a bank holds title to the secured property upon foreclosure. In *Mirabile,* the court found that a lender who held title for a brief period after foreclosure without participating in the management of the property was not an "owner or operator." *Maryland Bank & Trust Co.* and *Guidice* decided that secured parties who foreclosed and held title to property may lose the security interest exemption in certain circumstances as when holding title for four years following foreclosure.

2. Loan Management Activities. The courts also have found that certain loan management activities short of foreclosure may be considered "participating in the management" of the facility, making the lender an "operator" not protected by the security interest exclusion. *Mirabile* and *Guidice* generally found that participation in day-to-day operational and management decisions could subject a lender to Superfund liability, but mere financial oversight, collection activity, and advice would not. The case of *In re Bergsoe Metal Corp.,* likewise held that lessors sued by third parties must have some "actual" involvement with the facility or property management to trigger liability.[11]

Capacity to Act. Perhaps the most disturbing case was that of *United States v. Fleet Factors Corp.,*[12] There the court indicated that liability could be found without actual day-to-day operational involvement. Specifically, the court noted that

> . . . a secured creditor may incur ["owner"] liability, without being an operator, by participating in the financial management of a facility to a degree indicating a *capacity to influence* the corporation's treatment of hazardous waste. It is *not* necessary for the secured creditor actually to involve itself in the day-to-day operations of the facility in order to be liable . . . Nor is it necessary for the secured creditor to *participate in management decisions* relating to hazardous waste. Rather, a secured creditor will be *liable if its involvement* with the management of a facility is sufficiently broad to support the *inference* that it *could affect*

[5] 42 U.S.C. 9601 (35) (B). To establish whether the owner undertook "all appropriate inquiry," CERCLA requires courts to "take into account any specialized knowledge or experience on the part of the defendant, the relationship of the purchase price to the value of the property if uncontaminated, commonly know or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection." CERCLA also provides that an owner who "by any act or omission, caused or contributed to the release" is not eligible for a defense.

[6] 42 U.S.C. 9601 (20)(A).

[7] 15 Envt'l L. Rep. 20994 (E.D.Pa. 1985).

[8] 632 F.Supp. 373 (D.Md. 1986).

[9] 901 F.2d 1550 (11th Cir. 1990), *cert. denied*, 498 U.S. 1046 (1991).

[10] 732 F.Supp. 556 (W.D.Pa. 1989).

[11] 910 F.2d 1668 (9th Cir. 1990).

[12] 901 F.2d 1550 (11th Cir. 1990), *reh. denied*, 911 F.2d 742, *cert. denied*, 498 U.S. 1046 (1991) [further proceedings at 819 F.Supp. 1079 (S.D.Ga. 1993) and 821 F.Supp. 707 (S.D.Ga. 1993)].

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> hazardous waste disposal c ions *if it so chose*. 901 F.2d at 1557-1558. [Emphasis added.]

This vague statement created great uncertainty for lenders and appeared to indicate that mere financial arrangements, critical to a secured party, not just direct involvement with hazardous waste decisionmaking, could move a secured party outside the exemption and trigger liability.

Ironically, *Fleet Factors* created perverse incentives for secured parties not to know what was going on with property and to remove contract clauses that afford the lender a right to inspect or otherwise demand compliance with environmental laws. In short, *Fleet Factors* encouraged a lender to become less involved in environmental issues and meant that credit would be unavailable for environmental cleanups, lending that would reduce Superfund costs.

[Additional cases, particularly following the 1992 EPA rule, are discussed, *infra* at section I.e.]

c. Fiduciaries

Fiduciaries are placed in a difficult position under Superfund. Trustees range from passive executors of wills, who simply receive property and administer it, to holders of property, who oversee operation of major business enterprises. Clearly, under most common law interpretations, the trust corpus is available in instances where liability arises. However, trustee liability—that is, personal liability beyond trust assets—is a different situation.

Trustees may have no specific knowledge of a property that is subject to a trust. When becoming an executor to an estate, a manager of pension fund assets (which may include title to a building or property), or a bond indenturer (who represents the bondholders and may need to foreclose), fiduciaries may be placed in a perilous position. This is particularly difficult where a fiduciary's independent duty to beneficiaries may mandate a foreclosure against the best judgment of the trustee in the face of Superfund liability. Other trustees exercise management control over facilities, with operational control in the hands of business managers.

In the 1993 case of *City of Phoenix v. Garbage Services Co.*,[13] Valley National Bank was found liable as an "owner" of property under a trust agreement. Acting under trust terms, the bank acquired a landfill and leased it to Garbage Services Co. to administer. While not found responsible as an "operator," according to the court, the bank's mere holding of record title to a landfill created ownership liability. [By contrast, the Environmental Protection Agency's 1992 lender rule (discussed below) noted that "innocent" trustees, not covered by Superfund, had little to fear from the agency; yet it is just this type of private party suit that created problems for fiduciaries.]

[13] 816 F.Supp. 564 (D.Ariz. 1993).

In the second *of Phoenix* case,[14] the court elaborated on those situations where a trustee may be personally liable. The court found personal liability existed if the trustee controlled the property at the time of a contamination.

> Where a trustee had power to control the use of trust property, and knowingly allowed the property to be used for the disposal of hazardous wastes, the trustee is personally liable for response costs under CERCLA section 107(a)(2) regardless of the trust's ability to indemnify him. 827 F.Supp. at 607.

The court distinguished a trust that "owned" property, but could not control disposal activities, or did not own the property at the time of contamination; in such cases under CERCLA, only trust assets are available to a plaintiff. Other cases have added to the uncertainty and risks facing fiduciaries; even if liability is not established, fiduciaries are subject to expensive litigation, and this has had an adverse effect on those seeking a fiduciary in terms of costs and availability of trustee services.[15]

d. Impact of Uncertainty on Business and Government

Collectively, the trends in the courts created problems for financial institutions both as creditors and fiduciaries. Lending was adversely affected by the uncertainty of secured parties, title insurers, lessors, secondary parties and successors, and others who are part of the process directly or indirectly of extending credit based on security in property.

The impact of uncertain and potentially unlimited secured party liability discouraged extensions of credit in geographic areas around hazardous waste contamination sites, to certain businesses where disposal issues could be a problem such as dry cleaners, petroleum marketers, farms and the like, and for even minor private cleanup of hazardous waste sites or for cleanup that would stop environmental harm before it rose to the level of a Superfund site. Secured party liability under Superfund, therefore, affected more than financial firms. Small businesses, home builders, farmers, and others are

[14] 827 F.Supp. 600 (D.Ariz. 1993).

[15] In 1994, a district court in California refused a summary judgment motion in a fiduciary case, where the only reported allegation was that environmental harm occurred while a bank had been a fiduciary, not that the bank had directed any hazardous waste decisions. In *Castlerock Estates Inc. v. Estate of Markham*, 871 F. Supp. 360 (N.D.Ca. 1994), a bank that purchased another bank was sued by a company that had acquired property that the original bank had held in a trust arrangement. The environmental damage, in this case the result of "cattle dipping," had occurred some time in the early 1960s (and possibly into the early 1970s), nearly a decade before Superfund was enacted. The original bank had been discharged as conservator of the estate in 1979. The court refused to order summary judgment even though the action was brought when a bank was acting as a conservator of an estate, the pollution ended over a decade before Superfund was enacted, the bank's conservatorship was ended prior to Superfund, and the bank was subsequently purchased by another bank. The court determined that when the environmental damage occurred remained an open question, as did whether the original bank was an owner or operator or had controlled any operations at the facility. The court did not focus on the key issue of whether the bank had undertaken any action at all in regards to hazardous waste decisions that dated as far back as 1959.

confronted with unusual new rules, higher costs, and uncertainty.[16]

Additionally, government entities, including those vested with resolving failed depository institutions, acknowledged problems. Federal entities taking property involuntarily as receiver or voluntarily as conservator faced liability, along with the Small Business Administration and every government body that extends credit or guarantees credit secured by property.[17] Agencies that take property through civil or criminal forfeiture may face suits, if the property is contaminated.

e. EPA Efforts and Recent Cases

1. EPA Administrative Efforts

The Environmental Protection Agency promulgated a rule in 1992 that provided significant improvement in understanding the Superfund secured party exemption.[18]

Secured parties, under EPA's interpretation, were liable if they took direct action to control decisions about hazardous substances or took over operational control of the debtor's business prior to foreclosure and would be liable after foreclosure if the secured party failed to move expeditiously to dispose of the property.

The rule provided a "brighter line" than court cases, and enhanced lender, lessor, guarantor, and other secured party certainty. It provided guidance on liability where a party holding a security interest steps across a threshold. Incentives were provided for holders of security interests to do more than merely sit on distressed property.

However, the EPA rule was successfully challenged in court on the grounds that it represented an improper exercise of regulatory authority; the agency did not have statutory bases for adopting the rule as EPA lacks the ability to conclusively decide liability issues, and the rule would have affected private-party suits against secured parties. *Kelley v. Environmental Protection Agency*.[19] Nevertheless, the EPA and Justice Department stated in late 1995 that they would rely on the rule's standards as internal guidance for enforcement policies.[20]

EPA acted in 1995 to provide additional secured party guidance and certainty by promulgating a companion rule to the Superfund lender rule for the Resource Conservation and Recovery Act ("RCRA" or "Solid Waste Disposal Act").[21] Following the *Kelley* decision, EPA felt it could only act in areas where a security interest exemption expressly was provided. Thus, the new EPA rule dealt only with the petroleum underground storage tank (USTs) section of RCRA, 42 U.S.C. 6991b(h)(9). Tracking closely to the Superfund lender liability rule, it did not address areas beyond underground storage tanks, did not deal with fiduciaries, and required lenders to undertake tank drainage activities within 60 days of foreclosing and identifying the presence of tanks.

2. Recent Court Decisions

Following the 1992 EPA rule, several courts ruled in suits against secured parties in both pre- and post-foreclosure situations as well as lease arrangements. Most ruled in favor of secured parties based on independent interpretation of the CERCLA statute as well as citing the EPA rule favorably.

In *Ashland Oil Inc. v. Sonford Products Corp.*,[22] the court cited the EPA rule and the language of CERCLA in finding no liability based on a lender's periodic reviews of a borrower's status or for simple holding of personal property or leased real property after foreclosure. In *Northeast Doran Inc. v. Key Bank of Maine*,[23] a Superfund claim was dismissed where a bank learned of contamination upon foreclosure, but did not disclose this to the buyer. Under CERCLA, the court found the bank to be an exempt "holder," not an "owner" of property. In *Kelly v. Tiscornia*,[24] the court ruled that holding a first mortgage and assisting a borrower in attempting to avoid bankruptcy did not violate the lender's exemption. The court reviewed many acts that would not move a secured party to a position of participation in management of a facility. The court cited the EPA rule favorably. In *Grantors to the Silresim Site Trust v. State Street Bank & Trust Co.*,[25] the court found no liability where lenders failed to seek Small Business Administration foreclosure on loans. This failure did not constitute "participating in management"; the court here acted without reliance on the EPA rule. In *Waterville Industries Inc. v. Finance Authority of Maine*,[26] the court ruled that CERCLA's secured party exemption applies to lease financing arrangements. Here a taking of title to property, pursuant to a deed in lieu of foreclosure, qualified as a security interest for the secured party exemp-

[16] In support of this, a survey by The Bankers Roundtable, *Environmental Liability of Secured Parties and Fiduciaries* (May 1995), reported on the experiences of some 85 of the largest banks in the United States. Regarding lending, 71% of respondents indicated a greater use of inspections, 83% indicated certain business types received greater scrutiny for environmental risk, 40% designated geographic areas for additional scrutiny, 91% altered foreclosure procedures, and 94% increased loan covenants relating to borrower environmental compliance. Some 95% of the banks indicated that they had been forced to expend funds on environmental remediations to facilitate use or disposal of a property, and 100% indicated they have environmental policies in place to guide lending. As to fiduciaries, 96% of respondents had altered fiduciary policies to account for environmental risks, 63% would not take certain types of property in trust, and 83% require grantor/trustor property inspections.

[17] CERCLA does provide protection for involuntary transfers which applies to government agencies. 42 U.S.C. 9601(35)(A)(ii), however, debate over the nature of government actions in conservatorship or forfeiture situations, which might not fit within the concept of "involuntary" transfers, gave government agencies concern.

[18] 57 FR 18344 (April 29, 1992); 40 C.F.R. 300.

[19] 15 F.3d 1100 (D.C. Cir. 1994), *cert. denied*, 115 S.Ct. 900 (1995).

[20] 60 FR 63517 (December 11, 1995).

[21] 60 FR 46692 (September 7, 1995); 40 C.F.R. 280.200 *et seq.*

[22] 810 F.Supp. 1057 (D.Minn. 1993).

[23] 15 F.3d 1 (1st Cir. 1994).

[24] 810 F.Supp. 901 (W.D.Mich. 1993).

[25] No. 88-1324-K (D.Mass. November 24, 1992).

[26] 984 F.2d 549 (1st Cir. 1993).

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tion. Likewise, guarantors of ...edit were considered to fall within the exemption. The case cited CERCLA, not the EPA rule.

Finally, in *U.S. v. McLamb*,[27] a court ruled that a secured party upon foreclosure did in fact become the owner of property, but still could avail itself of the exemption, as it acted primarily to protect its security interest. The court found that the bank in the case had not undertaken any action inconsistent with a secured party's interests and did not attempt to adversely impact the foreclosure sale, did not use or manage the property during the more than six-month period it held title, and attempted to sell the property promptly following the foreclosure. Failure to disclose contamination on the property to the purchaser was not a disqualifying event, because no such affirmative obligation exists under Superfund; see *Northeast Doran* ruling above.

II. The New Law

After years of uncertainty following the *Maryland* and *Fleet* cases, calls from secured parties, fiduciaries and borrowers for action, EPA efforts to provide certainty, and more than a dozen state laws that followed or went further than the EPA rule in clarifying secured party and fiduciary language, Congress finally acted in 1996 to take steps to resolve this problem.

The Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 is contained in Title II of the Omnibus Consolidated Appropriations Act, PL 104-208, at Subtitle E, Sections 2501-2505 (Title II is the Economic Growth and Regulatory Paperwork Reduction Act of 1996), and was signed into law on Sept. 30, 1996. The provisions of the law were effective on enactment and apply to any claim that has not reached final adjudication.[28]

The law amends CERCLA (Superfund) and RCRA (Solid Waste Disposal Act). For RCRA, the Act deals only with the underground storage tank section, where an "owner or operator" definition exists with a secured party exemption; 42 U.S.C. 6991b(h)(9)(A)-(B). A conforming amendment applies the CERCLA provisions regar...g secured parties and fiduciaries to this one RCRA section; 42 U.S.C. 6991b(h)(9)(C).

Generally, the Act tracks the EPA Superfund and RCRA rules on secured party liability and, for fiduciaries, follows the language format of CERCLA, though utilizing a different substantive approach.

a. Secured Party Provisions

Section 2502(b) of the new law provides secured parties with crucial guidance on what is or is not "participation in management" at new CERCLA paragraphs 101(20)(E)-(G).

The definitions of "participating in management" and "foreclosure" affecting liability are drawn virtually verbatim from the 1992 EPA rule. As defined in the rule and in the new law, pre-foreclosure "participation in management" means exercise of decision-making control over environmental compliance or essentially displacing the borrower in managing the facility; CERCLA 101(20)(F). It does not include, for example, having environmental contract terms, conducting inspections, requiring response actions, providing advice, or exercising remedies.

Post-foreclosure activities that do not impose liability on the lender include disposing of property, maintaining business operations, or protecting the property or preparing it for sale, if the foregoing actions are part of moving to divest the vessel or facility at the earliest commercially practicable time on commercially reasonable terms; CERCLA 101(20)(E)(ii).

Throughout the pre- and post-foreclosure process, undertaking a cleanup consistent with Superfund regulations or at the direction of a government representative constitutes a safe harbor; CERCLA 101(20)(E)(ii)(II) and (F)(iv)(V) & (IX).

Significant defined terms include "extension of credit" (specifically including finance leases), "foreclosure," "lender" [which includes depositories, any person (or successor/assignee) making a bona fide extension of credit or taking a security interest from a nonaffiliated person, secondary market parties, those who insure or guarantee against default, title insurers] and "security interest"; CERCLA 101(20)(G)

b. Fiduciary Provisions

For the first time, fiduciaries are covered expressly under Superfund at new CERCLA paragraph 107(n) and in the petroleum underground storage tank section of RCRA by an amendment to 42 U.S.C. 9003(h)(9)(B).

Trust assets are available to satisfy environmental liability; CERCLA 107(n)(8)(A). Fiduciary personal liability exists only where fiduciary negligence causes or contributes to a release or threatened release of a hazardous substance and the fiduciary does not fall into a safe harbor; CERCLA 107(n)(3). No private right of action is created; CERCLA 107(n)(6)(B).

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[27] 5 F.3d 69 (4th Cir. 1993).

[28] Floor statements, which are part of the legislative history considered by courts, are as follows: Sen. Alfonse D'Amato (R-NY) clarifies (1) the terms "lender," "extension of credit," and indentured trustee; (2) the fiduciary "common law" negligence standard; (3) a limit on liability of secured party that has disposed of property; and, (4) liability of "non-employee agents" of fiduciaries at *Congressional Record* (9/30/96), p. S11920. A colloquy of Sen. Bob Smith (R-NH) and Sen. D'Amato clarified that the new law does not overturn the *Kelly* holding as described in section I.d. of this article; EPA only has limited rulemaking authority in the definition of "fiduciary" and in revising EPA rule coverage of federal agencies at *Congressional Record* (9/30/96), p. S11896. In contrast to this, the colloquy of Sens. Frank Lautenberg (D-NJ) and Max Baucus (D-Mont) expressed their interpretation of EPA rulemaking capacity at *Congressional Record* (10/3/96), p. S12292. A colloquy of Sen. John Chafee (R-RI) and Sen. D'Amato noted that the value of remediation by a trustee to a trust property is available as part of trust assets available for recovery in a private party CERCLA lawsuit at *Congressional Record* (9/30/96), p. S11896. Rep. John LaFalce's (D-NY) floor statement recorded the history of problems facing lenders and fiduciaries at *Congressional Record* (9/28/96), p. H12104.

Safe harbors exist for fiduciaries, among which are undertaking a cleanup, directing others to undertake response actions, adding environmental compliance terms to a trust agreement, terminating a fiduciary relationship, providing advice, administering a vessel or facility that was contaminated prior to the fiduciary relationship or not taking such actions; CERCLA 107(n)(4).

The definition of "fiduciary" is broad and includes all types of trustees, including indentured trustees; CERCLA 107(n)(5). Trusts excluded from protection are (1) where the trustee is both fiduciary and beneficiary and receives benefits exceeding those otherwise allowed under applicable law, CERCLA 107(n)(7)(B); (2) sham trusts, CERCLA 107(n)(5)(A)(ii)(II); (3) where the trustee contributed to harm before assuming the role of trustee, CERCLA 107(n)(2); or (4) certain specified business trusts, CERCLA 107(n)(5)(A)(ii)(I).

One is not a trustee if undertaking the trust to avoid existing liability or where the trust is to carry out a "for profit" venture. In the latter case, the trustee would have to look to other protections, such as the innocent landowner defense or the secured party exemption.

The new law and language does not affect the existing RCRA UST rule, though the rule may be amended consistent with the new law and would be subject to judicial review of any changes; 42 U.S.C. 6991b(h)(9)(C).

c. Government Provisions

Extensive language addressing government agencies, including targeted relief from liability for prospective purchasers of property, was dropped.

Rather, Section 2504 of the Act restores that portion of the 1992 EPA rule covering government agency receipt of property through receiver or conservator authority, abandonment, escheat, civil or criminal forfeiture, foreclosure or in administering a loan, loan guarantee, or loan insurance program. The portion of the EPA rule was contained at 40 C.F.R. 300.1105, which references the lender section of the rule in 40 C.F.R. 300.1100.[29]

d. EPA Rulemaking

Only very limited authority exists for EPA rulemaking—(1) in defining new types of fiduciaries, CERCLA 107(n)(5)(A)(i)(XI); (2) in revising the RCRA UST rule to deal with fiduciaries, 42 U.S.C. 6991b(h)(9)(B)-(C); (3) in revising the EPA lender rule for government agencies (see above); and (4) in applying CERCLA rules to RCRA, 42 U.S.C. 6991b(h)(9)(B).

EPA may revise rules or issue interpretive language under current authority, but may not act to define or affect a party's CERCLA liability; the language of the law governs liability. In this regard, the aspect of the *Kelley* case dealing with EPA authority to promulgate rules affecting liability in the absence of delegated authority remains in place.

[29] The EPA rule is not revived for lenders under the new law, however; EPA may have to use both the old rule and the new statutory language in order to fully determine the treatment of government entities.

III. What the New Law Does and Doesn't Do

The Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 accomplishes several goals of secured parties, fiduciaries, and government agencies along with innumerable borrower groups who have seen either less credit available or credit available at a higher price in many cases with unnecessary additional inspections.

a. Accomplished

First, there is now greater clarity. The new law provides a much brighter line: (1) by specifying lender and fiduciary conduct that falls within the protection of the exemptions; (2) by overturning the *Fleet Factors* decision and drawing from decisions such as that of *In re Bergsoe* that highlighted the need to focus on actual conduct rather than on a lender's unexercised capacity to influence a borrower; (3) by clarifying safe harbors, including inducements for remedial actions; and (4) by rejecting any notion of mandating as opposed to encouraging secured party inspections of property. Overall, lenders, in particular, will have a much shorter checklist to go through to determine whether a project is viable. Environmental concerns should go now to the creditworthiness of the borrower and financial underwriting standards, not the risk of direct lender liability.

Second, there should be encouragement for lending for environmental cleanup, including Brownfields initiatives, though the restriction of the Act's scope to CERCLA and RCRA still leaves lenders and fiduciaries concerned about unnecessary liabilities under other federal environmental laws.[30] Lenders will have to adhere to the new bright lines for action. It must be remembered that, as in the case in ordinary lender liability (where borrowers sue lenders for actions or statements on which they relied and "led them to bankruptcy"), lenders will need to insure that in dealing with property with potential or known environmental damage, they have policies in place to keep personnel dealing with borrowers in line with the directions contained in the new law.

[30] "Brownfields" refers to properties with known or suspected environmental damage, that usually have not risen to the level of a EPA Superfund site and that are not in use. "Brownfields initiatives" refers to efforts by the Environmental Protection Agency and state governments to encourage private-sector action to clean up such sites to return the properties to productive use. The initiatives include federal and state funds for site analysis and plans for cleanup, government guidance, government clarification of lender liability and prospective purchaser liability, private-sector redevelopment activities, and private-sector finance. EPA began its Brownfields Action Agenda in earnest in 1995; a recent summary may be found at EPA, *Brownfields Economic Redevelopment Initiative*, Publication EPA/500/F-95/060 (April 1996) (with references), and *Brownfields National Pilots*, Publication EPA 500-F-96-002 (June 1996) (summary of EPA projects).

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Third, fiduciaries should gain re confidence in undertaking trust obligations, including accepting property into a trust and operating facilities where environmental harm has occurred. Pension administrators and indentured trustees, like lenders, must be certain of their returns. However, they can now reduce their calculations of "personal" liability if they adhere to the guidance of the new law. Estate trustees may act with greater confidence to remedy environmental problems that encumber trust property, restoring the property to the full benefit of trustees, without fear of personal liability.

Finally, government agencies can act on their obligations without fear of liability. This should reduce costs and streamline disposal of property held by forfeiture, guarantee status, receiver or conservator authority, or through loan default.

b. Remaining issues

First, credit decisions, as noted above, still will require appropriate calculation of environmental risk from a borrower's business activity or collateral. Inspections will remain very much a part of a credit decision where environmental damage is a possibility. Further, lenders may still consider their own liability should they, by their conduct, move beyond the exemption. Facing strict, joint, and several liability may remain too much of a fear for banks that do not have the resources to monitor environmental compliance or that feel they cannot risk a loan officer acting in a way that opens them to full liability. Secured parties and fiduciaries have a stake in the overall liability scheme of environmental laws. Efforts to "cap" lender liability or to limit lender liability to their contribution to or share of damage to a property were unsuccessful in Congress. These topics need to be revisited.[31]

Second, government agencies and state authorities have endorsed clarification of liability for prospective purchasers of property to facilitate sales of damaged property. Lenders, under the obligation to move expeditiously to dispose of property, would welcome purchasers who could understand the level of remediation required and undertake such efforts without fear of liability beyond their obligation. This subject needs to be pursued actively.

Third, the new law does not address all of the RCRA law or the other 30 or so federal laws governing environmental liability. While many federal laws do not have reme .ion programs, they do impose liability for regulatory violations and other costs. Cases already exist against lenders under RCRA and the Clean Water Act.

Additionally, state laws, not the subject of this article, play as important a role as federal laws and, absent state and local action, lenders may face continued uncertainty. This has been particularly true in the Brownfields area, where state certifications on liability may or may not be recognized under federal law. Further, a lender looking to support an environmental cleanup may be confronted not just with Superfund or RCRA, but with a whole range of identified or potential environmental problems.[32] The House Banking Committee in 1996 favored application of Superfund's "owner or operator" secured party and fiduciary exemption to all federal environmental laws. The idea is that a lender is a lender and a fiduciary a fiduciary, regardless of the federal law or the property involved.

Fourth, the language of the new law governs "owner and operator" liability and does not address transporter and generator liability. Perhaps, a good example is lead. If lead is in the ground at a site and a lender forecloses and follows the new law, then there would be no liability if the lead had caused environmental damage. On the other hand, if a lender takes over a building and removes lead paint and sends it for disposal, the lender could be liable as a generator or transporter. Thus, pre- and post-foreclosure decisions relating to environmental actions in which a lender is involved must still be carefully undertaken, where they go beyond the boundaries of the property or collateral.

Fifth, no absolute certainty may be provided to secured parties and fiduciaries. No law will prevent all litigation, and the attainment of any "bright line" simply means that gray areas will reemerge and parties inevitably will cross that new "line." Ultimately, this final task may see further improvement, but not a complete resolution.

IV. Conclusion

While not addressing all concerns, the Asset Conservation, Lender Liability, and Deposit Insurance Protection Act of 1996 represents the culmination of the efforts of a great number of congressional, executive branch, industry, environmental, and borrower groups to attain a greater clarity in the law.

That has been accomplished, and benefits should flow to secured parties and fiduciaries as well as those who employ their services. In the end, the environment itself should see benefits from increased participation by lenders and fiduciaries in cleanup initiatives.

[31] For example, the House Banking Committee in its markup of bill number HR 1858 provided that lenders and fiduciaries would have the availability of the secured party exemption under all federal environmental statutes. Further, where a lender or trustee stepped outside the exemption, liability would be limited to the amount contributed to the environmental harm. The Senate Banking Committee, in its bill S 650, adopted a "cap" on lender liability—the value of the extension of credit and expenses of the lender—an approach employed in California's 1996 lender and fiduciary legislation. Michigan and Pennsylvania are among states that have moved to a "contribution" or "allocation" formula for lender liability under environmental law, while California has acted to provide a secured party and fiduciary exemption for *all* state and local environmental laws as well as a limit on liability when parties fall outside the exemption in newly enacted Senate Bill 1285 (9/19/96).

[32] For example, see *Bancamerica Commercial Corp. v. Trinity Industries Inc.*, 900 F.Supp. 1427 (D.Kan. 1995) (property damage included state and federal environmental law violations for lead, asbestos, underground storage tanks, barrels of hazardous liquids, groundwater contamination, oil and gasoline and airborne pollution).

PREPARED STATEMENT OF J. PETER SCHERER, VICE CHAIRMAN, ENVIRONMENTAL POLICY ADVISORY COMMITTEE, NATIONAL REALTY COMMITTEE

INTRODUCTION

Thank you Chairman Smith. My name is Peter Scherer and I am a Senior Vice President with The Taubman Company. The Taubman Company is a national real estate company specializing in the development and management of regional shopping centers. I am speaking today on behalf of the National Realty Committee. NRC represents the Nation's leading real estate owners, builders, managers, lenders and advisors. As such, the organization has focused extensively on the national policy issues associated with the redevelopment of our Nation's brownfields properties.

Several weeks ago I was here in Washington and had the pleasure of meeting with Jeff Merrifield of the Chairman's staff and Scott Slesinger from Senator Lautenberg's office. I left that meeting encouraged and energized, and I am delighted to have the opportunity to share with you today some thoughts on what the real estate industry believes it will take to get our country's nonproductive, modestly contaminated and, therefore, hopelessly idle, real estate back into the Nation's economic mainstream.

Two very positive legislative proposals, S. 8 and S. 18, include provisions which reflect a sophisticated understanding of how current law can best be modified to encourage brownfields cleanup and re-development. NRC is on record as supporting both these bills.

We are also on record as supporting the efforts made by EPA to foster brownfields development, and while these efforts are encouraging, much more can and should be done to achieve the economic and environmental objectives of S. 8 and S. 18. As the sponsors of these bills are aware and as EPA Administrator Browner has stated, changes to the Superfund law are required to achieve significant long-term impact in this area. Let me specifically mention some initiatives taken by EPA that the real estate industry applauds. But, at the risk of striking a more sober note, let me also explain why these well intentioned initiatives will ultimately fall short of their intended objectives.

During the past few years, the Administration has become more creative in its efforts to locate potential buyers for properties stigmatized by the specter of CERCLA liability. The Administration seems to have been motivated, in part at least, by the need to market its own growing inventory of brownfields, including those situated on former military installations. Certainly, in the course of pursuing that objective the government has gotten a taste of its own medicine. And, like the private sector, it seems to have learned that absent some new approaches to finding willing buyers for these kinds of sites, the properties will remain idle and, therefore, unproductive for the foreseeable future.

First of all, EPA has removed thousands of sites from the so-called CERCLIS list and has issued guidance encouraging regulators to consider realistic future land uses in determining the extent of cleanup activities. If it's known that a particular property will become a parking structure, then why force cleanup to the level required for a day-care facility? This is a common sense approach which the business community finds workable.

Second, EPA has issued guidance identifying the circumstances under which it will enter into prospective purchaser agreements. These agreements are intended to assure potential investors in contaminated sites that the properties in which they are investing will not become targets of a future enforcement action. Developers are willing to take risks, but there are simply too many other opportunities available for any successful developer to bet his balance sheet on a project with unlimited environmental downside. Not to mention the difficulty in obtaining financing!

Third, on the issue of migrating groundwater contamination, where land otherwise suitable for development is situated above an aquifer contaminated by external sources, EPA has issued guidance seeking to reassure owners or purchasers that they will not be targeted for cleanup actions. Again, an example of action on the Agency's part which reflects the fact that new money will not go into a project where the only certainty is uncertainty.

In each of these situations, EPA has set a course which my industry believes is absolutely in sync with the national policy objective of returning our country's brownfields to productive use. So why isn't this enough? Let me tell you—specifically—in 50 words or less. At the end of each guidance document is a disclaimer which reads as follows:

> This policy does not constitute rulemaking by the Agency and is not intended and cannot be relied on to create a right or benefit, substantive or procedural,

enforceable at law or in equity, by any person. Furthermore the Agency may take action at variance with this Policy.

As well intentioned as these policies may be, they fall short of providing the kind of certainty necessary to attract private-sector capital.

I come here today not asking for the creation of economic or financial incentives to encourage brownfields development. Rather, in this case, our industry is looking only for the removal of existing disincentives. We are looking for you to level out the playing field and, in doing so, create the kind of certainty that permits prudent investment and intelligent risk assumption. So what is it that we think is needed?

The recently adopted lender protections and the proposed protection for the new purchasers are certainly positive steps, but many brownfields will remain undeveloped unless Congress provides protection from Federal and State enforcement actions for property owners who successfully participate in voluntary cleanup programs.

While recently enacted legislation protects financial institutions from undue liability under Superfund, lenders still have concerns about the value of the underlying collateral and the creditworthiness of their borrowers. If a property that undergoes a voluntary cleanup may be the subject of further Federal and State enforcement action, a lender may consider the property inadequate for the loan. Moreover, if the borrower may be compelled to pay for the further cleanup after having completed a voluntary cleanup, even if the borrower is prepared to assume the risk, a lender may consider the borrower uncreditworthy and deny the loan. Thus, without some degree of predictability and certainty—and without the promise of finality after a successful voluntary cleanup—many well situated and otherwise prime brownfields will remain idle for want of willing and able developers and lenders.

A number of these concerns would be addressed in a meaningful way by a provision contained in both S. 8 and S. 18. This provision creates a new and eminently workable exemption for those who acquire property in need of some environmental remediation. The so-called "prospective purchaser" provision would look beyond the existing "innocent landowner" defense to address the troublesome (and not uncommon) scenario in which contamination is discovered during the course of pre-acquisition due diligence.

To utilize this kind of defense, purchasers would be required to undertake prescribed levels of environmental due diligence, including a site assessment in accordance with a standardized protocol. They would also need to take circumscribed steps to limit exposure to known contamination; and cooperate with those responsible for the cleanup. In return for meeting CERCLA's due diligence requirements, prospective purchasers could move forward and acquire property without fear of incurring the associated CERCLA liability.

Here's what happens in the real world: environmental due diligence becomes a feeding frenzy for everyone involved, particularly lawyers and consultants. And given the laws today, it's difficult to blame them. When do you stop peeling the onion? When will that consultant or lawyer provide, in writing, that all information is known or that there is no risk associated with proceeding? More samples, more tests, more lab results are recommended. More time, more money, more risk and uncertainty until ultimately the project dies. You hardly ever have all the information.

Successful business decisions are made when all necessary information is known. My point is that the various amendments to CERCLA I have referred today would (to a significant degree) replace the uncertainty that kills many deals with the type of stability, predictability and certainty needed for brownfields initiatives to succeed. Notably, EPA has endorsed this reform and there is no doubt its enactment would make a difference in the real world.

At the end of the day, our industry is asking for nothing more than the kind of certainty and predictability that other Federal agencies are authorized to provide. We ask you to empower EPA to provide the equivalent of the "no further action" letters which can be obtained from the Securities and Exchange Commission, or the private letter rulings that the Internal Revenue Service regularly provides to parties concerned with the consequences of contemplated activities. Certainty inspires confidence, and with it, action.

These legislative proposals—S. 8 and S. 18—form a good base upon which to work in this session of Congress to develop bipartisan reform of CERCLA. In addition, EPA's continued focus on administrative reforms should be encouraged. Agency reforms combined with legislative reform hold the promise of reducing the stigma associated with these properties by limiting the specter of Federal liability.

The National Realty Committee remains committed to the enactment of policies that encourage reinvestment. Working with the other local and national stakehold-

ers represented here today, our members will continue to help identify, analyze and advocate policies that will achieve the goals I believe we all share.

Thank you.

RESPONSES OF J. PETER SCHERER, NATIONAL REALTY COMMITTEE, TO ADDITIONAL QUESTIONS FROM SENATOR SMITH

Question 1. Do you believe that risk-based cleanups tied to reasonable anticipated future use would improve the brownfields situation?

Response. Yes. Over the last few years, the States have successfully pioneered the use of risk assessments. In addition, they have relied on realistic land use projections in the course of developing effective strategies for addressing brownfield properties. This approach allows for intelligent, environmentally protective and cost-effective remediation, and promotes the return of brownfield properties to beneficial use. In NRC's view, Congress should support this approach.

By using risk assessments as a basis for cleanup decisions, States and private parties are able to determine what problems a brownfield may actually raise for public health and the environment and to focus cleanup measures on those specific issues. This is much more effective and efficient than the practice employed in earlier years of designing a broad range one-size-fits-all, cleanup program to address all hypothetical problems that might occur at a site. Also, private parties and States are able to use risk assessments to more accurately communicate to the public (i) whether or not a given site presents a threat and (ii) if and when a threat has been adequately addressed.

Cleanups should also be tied to anticipated land use. It is clear that a site that is returned to light industrial use need not be cleaned up to the same standards as a site that is used as a day care center. Moreover, the future use itself may sometimes provide a remedy. One remedy that is commonly used to clean up soil contamination is to construct an impervious cap to prevent the infiltration of rainwater into contaminated soil. If the new use of the property includes the construction of a building slab, a parking lot, a roadway, or some other impervious surface, that surface may also function as a cap. In this way, the development itself sometimes accomplishes a significant element of the cleanup.

Question 2. Some of our witnesses might suggest that the States do not have the sophistication to clean up more than just the simplest brownfield sites. Do you agree with this characterization? Can States be trusted to do the right thing?

Response. In our members' experience, States are fully capable of administering voluntary cleanup programs as well as many other environmental programs, and to oversee the cleanup of a range of contaminated sites. For example, members of National Realty Committee from the State of New Jersey have found that State to be among the innovators (as opposed to the followers) in addressing hazardous material releases. I am advised that New Jersey adopted its own Spill Act some time before the Federal Government adopted CERCLA. Other States, including my home State of Michigan, have lead the way in developing effective voluntary cleanup programs to return brownfields to productive use.

States also appear to have demonstrated their competence in this area in the course of overseeing the cleanup of Federal facilities within their borders. Although Defense Department and Energy Department facilities represent some of the most complex environmental problems in the country, States do not appear to have shied away from taking a responsible role in directing their cleanup. Indeed, States have not hesitated to offer vigilant and constructive criticism of the Federal Government when the cleanup measures proposed by the Federal authorities for their own properties have been inadequate. And States have even been willing to pursue legal action against the Federal Government over the cleanup of Federal facilities when they believed that the health and welfare of their citizens was not being protected. Surely, if States can aggressively supervise the cleanup of highly contaminated Federal facilities, they can oversee the cleanup of less contaminated brownfield properties.

Question 3. Some of our witnesses have alluded to the fact that if we really want to fix brownfields, we need to conduct comprehensive Superfund reform, not merely tinker around the edges. Do you agree with this principle?

Response. We do not believe that Congress would be "tinker[ing] around the edges" of Superfund reform if it were to provide protection for prospective and innocent purchasers, protection for property owners who perform voluntary cleanups, and protection for the innocent owners of property that is contaminated by migrating pollutants from contiguous sites. Any one of these reforms would provide a sig-

nificant enhancement to the process of redeveloping brownfields. All of them together would maximize the capability of States, local governments, and private parties to clean up and redevelop brownfields.

As described in greater detail in my response to questions nos. 4 and 5 below, we view the issue of brownfield reform as a continuum—each separate reform measure is important, no one measure predominates. Even without reform, some brownfields are being developed because individual investors are willing to take risks. With each of these reforms, more brownfields will be developed. If prospective purchaser protection is adopted, more businesses would be willing to invest in brownfield redevelopment because they would know that they would not become liable for contamination that predated their purchase. This reform by itself would substantially increase the number of brownfield sites redeveloped. But, as discussed in more detail in response to questions nos. 4 and 5 below, if Congress did not also adopt protection for the current owners of brownfield sites who engaged in voluntary cleanups, many potentially useful brownfield sites would remain undeveloped.

Finally, protection of contiguous property owners is also an important brownfields reform. The owners of property that is affected by migrating contamination need to know that they will not be held liable under CERCLA, and they need to be able to communicate the same assurance to lenders, purchasers, and tenants. Also, the Superfund law should not act to place a stigma on their properties. Otherwise, the number of undevelopable brownfields will grow as contamination moves off the original site.

Question 4. You mentioned in your testimony that "without some degree of predictability and certainty—and without the promise of finality after a successful voluntary cleanup—many well situated and otherwise prime brownfields will remain idle for want of willing and able developers and lenders." You didn't mean to limit this to prospective purchasers did you? In order to free these properties for redevelopment, isn't it also appropriate to provide this finality to current owners and operators?

Response. As indicated in my response to question no. 3 above, we view brownfield reform measures as a continuum. Each of these measures is separately important in increasing the redevelopment of brownfields. Prospective purchaser protection is highly significant, and most directly affects the National Realty Committee membership. With this reform by itself, we would expect to see a substantial increase in the number of brownfield sites developed.

However, prospective purchaser protection is not the only reform measure that would enhance the redevelopment of brownfields. Clearly, it is important to provide liability protection for the current owners who either clean up property themselves under a State voluntary cleanup program or who sell to prospective purchasers that put the property in such a program. As described in my response to question no. 5 below, right now there are significant economic incentives for these current owners not to sell these properties or develop the properties themselves. Providing protection to current owners who either voluntarily clean up their sites under State programs or who sell to purchasers who do so would lead to the redevelopment of even more brownfield sites than just providing prospective purchaser protection. Similarly, more brownfield properties would be developed if Congress also protected the owners of contiguous properties from CERCLA liability and removed the stigma associated with their properties by including them as part of a designated CERCLA site.

Question 5. If we don't provide finality to the owners and operators of large redevelopable sites, won't the most prime real estate parcels be simply fenced off and kept off the market? In order to fix this, don't we have to make some major changes in the Superfund liability system?

Response. Providing protection to prospective purchasers would clearly result in more brownfields being redeveloped, even if no other reform is adopted. But to more fully promote brownfields development, providing "finality" to owners and operators is clearly crucial.

Currently, the owners of many brownfield sites have several economic incentives not to bring their properties back into productive use. As long as their properties have not been designated for investigation and cleanup by EPA or the States, many of these property owners consider themselves better off simply putting a fence around their property and waiting. As long as the owner leaves a property inactive, it is not required to test or otherwise investigate the contamination level at the property. Waiting defers any environmental cleanup costs, and allows time for the level of contamination to be reduced through natural processes such as dilution, attenuation, and evaporation. Also, because the property is not productive, property taxes may be reduced.

Also, there are numerous economic disincentives to developing brownfield properties. An effort to develop the property will often accelerate environmental remediation costs. To obtain permits from governmental authorities and financing from banks, property owners often have to test their properties and report contamination. Once that happens, they may become subject to obligations to perform further investigations and undertake cleanups. In many instances, the development of a property is indefinitely delayed as a property goes through the elaborate process of governmental investigation and remediation. Thus, the environmental costs become due early, but the economic benefit of development is deferred.

State voluntary cleanup programs were created to provide a mechanism to bring brownfield programs back into productive use. They serve the governmental interest in seeing that contaminated property is cleaned up and the property owner's interest in providing certainty as to the cost of cleanup and the amount of time cleanup will take. Once a property owner is able to quantify the cost and time for cleanup, the owner can make an informed decision about whether to go ahead with the project. However, if an owner who completes a cleanup under a voluntary cleanup program is not protected from further Federal or State enforcement action, the cost and time to complete the project cannot be accurately estimated. Without the ability to reliably estimate the cost and time factors many property owners will continue to choose to wait.

The recently adopted lender protections and the proposed protection for new purchasers are helpful in removing disincentives, but many brownfields will remain undeveloped unless Congress provides protection from Federal and State enforcement actions for property owners who successfully participate in voluntary cleanup programs.

As indicated in my testimony, NRC welcomed recent legislation limiting lenders' exposure to liability under Superfund. Nonetheless, lenders involved in brownfields transactions will still have concerns about the value of the collateral and the creditworthiness of their borrowers. If a property that undergoes a voluntary cleanup may be the subject of further Federal and State enforcement action, a lender may consider the property inadequate collateral for the loan. Moreover, if the borrower may be compelled to pay for further cleanup after having completed a voluntary cleanup, a lender may consider the borrower uncreditworthy and deny the loan. Thus, without the promise of finality after a successful voluntary cleanup, lenders may be reluctant to lend to borrowers who wish to develop brownfield sites.

Prospective purchaser relief would only affect a potential buyer of a brownfield, and not the current owner who is, of course, the potential seller. If the current owner is not also protected by finality at the end of a voluntary cleanup, that owner will often have an economic incentive not to sell. An unprotected owner who sells property to a prospective purchaser might become the principal target of a governmental enforcement action. Therefore, selling the property to a new developer might only accelerate the current owner's environmental obligations. If the owner (or prospective seller) cannot achieve a measure of certainty that once a voluntary cleanup is completed it would not be subject to additional environmental liabilities, that owner will often choose not to sell. As the number of willing sellers decreases so will the number of prospective purchasers, and, therefore, the number of successful brownfields projects.

Question 6. Are you aware of sites that your company, or other members of the National Realty would have been willing to redevelop, but did not do so out of a fear that you would be caught in the Superfund liability net? Will the provision of some characterization grants be sufficient to address this problem.

Response. Numerous transactions involving contaminated or potentially contaminated properties have been avoided by our company and members of NRC because of the risk of CERCLA liability.

Characterization grants are, of course, helpful insofar as they add to existing information about the likely extent of contamination (and, therefore likely cleanup costs) at prime development sites. This information will often prove helpful to those communities trying to attract outside investment in the redevelopment of these sites. As I indicated in my testimony, business decisions can only be made responsibly when all relevant information is available. If potential sellers are able to provide prospective purchasers with sophisticated (albeit preliminary) due diligence information this may prompt otherwise anxious buyers to look more seriously at the property in question. Needless to say, preliminary characterization efforts (however funded) are not, by themselves, sufficient to overcome buyer or lender anxiety about cleanup liability where the due diligence turns up evidence of significant contamination.

RESPONSE OF THE NATIONAL REALTY COMMITTEE TO AN ADDITIONAL QUESTION FROM SENATOR CHAFEE

Question. Page 4 of your testimony seems to imply even if we codify prospective purchaser protections and contiguous property owner protection; and even though we recently passed lender liability protection last year; that more must be done on liability to make many of these transactions work. Can you expand on this point.

Response. I am pleased to elaborate. As I described in my responses to Senator Smith's questions, protection of current owners who either cleanup properties under State voluntary cleanup programs or who sell properties to purchasers who do so is important in promoting brownfields redevelopment. Current owners should be encouraged in redeveloping their sites. Also, current owners should be reassured that if they sell their sites to new purchasers, they will not be increasing or accelerating their own liability.

As described in my response to Senator Smith's question no. 5, the current system creates disincentives for current owners either to develop their properties themselves or to sell to buyers who will do so. These disincentives need to be removed and replaced by incentives to develop brownfields. Such incentives can be provided by protecting a site owner who cleans up a site in accordance with a State voluntary cleanup program from further Federal and State liability, and by providing similar protection to a seller who sells the property to a buyer who performs the voluntary cleanup.

Once again, we view these reforms as a continuum. Prospective purchaser protection, in and of itself, will jump start the redevelopment of brownfields. But providing finality to current owners, as well as to prospective purchasers, would be even more effective in promoting brownfields redevelopment. Protecting contiguous property owners is also vital to restoring brownfields. Each of these reforms is significant in its own right; together, they provide the best framework for encouraging the redevelopment of brownfields.

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