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BROWNFIELDS AND THE 50 STATES: ARE STATE INCENTIVE PROGRAMS CAPABLE OF SOLVING AMERICA'S BROWNFIELDS PROBLEM?

HEARING

BEFORE THE

SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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CONTENTS

	Page
Hearing held on September 13, 2005	1
Statement of:	
Bartsch, Charles, senior policy analyst, Northeast-Midwest Institute; Kathleen McGinty, secretary, Pennsylvania Department of Environmental Protection; John Magill, director, Office of Urban Development, Ohio Department of Development; Douglas P. Scott, director, Illinois Environmental Protection Agency; and Andrew Hogarth, chief, Remediation and Redevelopment Division, Michigan Department of Environmental Quality	7
Bartsch, Charles	7
Hogarth, Andrew	60
Magill, John	22
McGinty, Kathleen	16
Scott, Douglas P.	40
Colangelo, Robert, executive director, National Brownfield Association; Jonathan Philips, senior director, Cherokee Investment Partners, LLC; Charles Houder, director of acquisitions, Preferred Real Estate Investments, Inc.; Kevin Matthews, AIG Environmental, director of Association and Environmental Relations; and David Cartmell, president, Kentucky League of Cities	85
Cartmell, David	122
Colangelo, Robert	85
Houder, Charles	125
Matthews, Kevin	115
Philips, Jonathan	95
Letters, statements, etc., submitted for the record by:	
Bartsch, Charles, senior policy analyst, Northeast-Midwest Institute, prepared statement of	10
Cartmell, David, president, Kentucky League of Cities, prepared statement of	123
Chester, Steven E., director, Michigan Department of Environmental Quality, prepared statement of	62
Colangelo, Robert, executive director, National Brownfield Association, prepared statement of	88
Houder, Charles, director of acquisitions, Preferred Real Estate Investments, Inc., prepared statement of	128
Magill, John, director, Office of Urban Development, Ohio Department of Development, prepared statement of	24
Matthews, Kevin, AIG Environmental, director of Association and Environmental Relations, prepared statement of	117
McGinty, Kathleen, secretary, Pennsylvania Department of Environmental Protection, prepared statement of	18
Philips, Jonathan, senior director, Cherokee Investment Partners, LLC, prepared statement of	98
Scott, Douglas P., director, Illinois Environmental Protection Agency, prepared statement of	42
Turner, Hon. Michael R., a Representative in Congress from the State of Ohio:	
Prepared statement of	4
Prepared statement of the American Society of Civil Engineers	172

BROWNFIELDS AND THE 50 STATES: ARE STATE INCENTIVE PROGRAMS CAPABLE OF SOLVING AMERICA'S BROWNFIELDS PROBLEM?

TUESDAY, SEPTEMBER 13, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERALISM AND THE CENSUS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2203, Rayburn House Office Building, Hon. Michael R. Turner (chairman of the subcommittee) presiding.

Present: Representatives Turner, Foxx and Kanjorski.

Staff present: John Cuaderes, staff director; Shannon Weinberg, counsel; Juliana French, clerk; Adam Bordes, minority professional staff member; and Cecelia Morton, minority office manager.

Mr. TURNER. We called to order the meeting of the Subcommittee on Federalism and the Census. Our hearing is entitled, "Brownfields and the 50 States: Are State Incentive Programs Capable of Solving America's Brownfields Problem?"

A quorum being present, welcome to the Subcommittee on Federalism and the Census' oversight hearing. This hearing is the third in a series investigating the issue of brownfields redevelopment and ways to incentivize more aggressive and widespread redevelopment efforts.

In our two previous hearings, the subcommittee heard testimony describing the magnitude of the problems surrounding brownfields redevelopment. Additionally, we learned more about the Federal Government's response to the issue and the strengths and weaknesses of those efforts.

There are an estimated 450,000 to 1 million brownfields across our Nation, contributing to community blight, thus lowering property values and decreasing tax revenues. These sites lay abandoned and unused due to Federal environmental laws and regulations that encourage abandonment of contaminated property by creating disincentives for cleanup and redevelopment.

Current Federal law triggers liability for remediation of contaminated properties once landowners have knowledge of the contamination. However, if redevelopment begins, and contamination is discovered, the owner may be liable for remediation costs. If an owner abandons the property without disturbing the contamination, remediation costs may be avoided. The net effect of these laws and loopholes is the encouragement of abandonment of brownfields.

If we are to achieve our goal of restoring these properties to productive use and redevelopment into centers of economic revitality, we must craft a Federal response to a federally created problem. We must fashion that response to complement existing redevelopment programs.

With this knowledge, we move forward today to focus on State efforts to address the problem. The subcommittee will hear from representatives from Ohio, Illinois, Michigan and Pennsylvania. These particular States offer a number of incentive programs to encourage brownfield redevelopment. The incentives range from direct grants to low-interest loans, and various tax incentives, such as credits, abatements and forgiveness. I look forward to hearing details on these programs and their effect on brownfield redevelopment.

Last year I, along with Chairman Tom Davis, requested that GAO study the status of brownfield redevelopment across the Nation. GAO's report shows that stakeholders are generally positive about the current Federal efforts to address brownfields, but that additional incentives such as a tax credit are needed to spur further brownfield redevelopment and really make a difference in communities across the country. In response to that study, I plan to introduce legislation similar to H.R. 4480 from last Congress, the Brownfields Revitalization Act of 2004.

As noted earlier, many States offer tax credits or other tax incentives, but they vary from State to State. A Federal tax credit would apply to brownfield redevelopment across the board, without narrow tailoring. H.R. 4480 proposed a Federal tax credit of up to 50 percent for qualified remediation expenses of brownfields in certain poverty-rated areas. Specifically, credits would be available to redevelopment projects where the local government entity included a census tract with poverty in excess of 20 percent, although the project need not be located within that tract. Further, the legislation will require that sites must be enrolled in a State voluntary cleanup program to be eligible for liability protection afforded under the Brownfields Revitalization and Environmental Restoration Act of 2001.

We have two panels of witnesses before us today to discuss all of these issues. We look forward to learning more about their various State incentive programs addressing brownfield development efforts. We will also hear our panelists' opinions on improving or complementing their State efforts at the Federal level.

First we will hear from Charlie Bartsch, a senior policy analyst at the Northeast-Midwest Institute; Kathleen McGinty, secretary of the Pennsylvania Department of Environmental Protection; John Magill, director of the Office of Urban Development at the Ohio Department of Development; Douglas Scott, director of the Illinois Environmental Protection Agency; and Andrew Hogarth, chief of the Remediation and Redevelopment Division at the Michigan Department of Environmental Quality.

Our second panel of witnesses consists of representatives from the private sector. We will hear from Robert Colangelo, executive director of the National Brownfields Association; Jonathan Philips, senior director of Cherokee Investment Partners, LLC; Charles Houder, director of acquisitions for Preferred Real Estate Invest-

ments, Inc.; and finally, Kevin Matthews, director of association & governmental relations at AIG Environmental.

I look forward to the expert testimony of our distinguished panel of leaders today, and I thank you for your time.

[The prepared statement of Hon. Michael R. Turner follows:]

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SUBCOMMITTEE ON FEDERALISM AND THE CENSUS
Congressman Michael R. Turner, Chairman

OVERSIGHT HEARING
STATEMENT BY MICHAEL R. TURNER, CHAIRMAN

Hearing topic: "*Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfields Problem?*"

Tuesday, September 13, 2005
10:00 a.m.
Room 2203, Rayburn House Office Building

OPENING STATEMENT

Welcome to the Subcommittee on Federalism and the Census' oversight hearing entitled "*Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfields Problem?*" This hearing is the third in a series investigating the issue of brownfields redevelopment and ways to incentivize more aggressive (widespread??) redevelopment efforts.

In our two previous hearings, the Subcommittee heard testimony describing the magnitude of the problems surrounding brownfields redevelopment. Additionally, we learned more about the federal government's response to the issue and the strengths and weaknesses of those efforts.

There are an estimated 450,000 to 1 million brownfields across our nation, contributing to community blight, thus lowering property values and decreasing tax revenues. These sites lay abandoned and unused due to federal environmental laws and regulations that encourage abandonment of contaminated property by creating disincentives for cleanup and redevelopment.

Current federal law triggers liability for remediation of contaminated properties once landowners have knowledge of the contamination. However, if redevelopment begins and contamination is discovered, the owner may be liable for remediation costs. If an owner abandons the property without disturbing the contamination, remediation costs may be avoided. The net effect of these laws and loopholes is the encouragement of abandoning brownfields. If we are to achieve

our goal of restoring these properties to productive use and redeveloping them into centers of economic and community vitality, we must craft a federal response to a federally created problem. We must fashion that response to complement existing redevelopment programs.

With this knowledge, we move forward today to focus on state efforts to address the problem. The Subcommittee will hear from representatives of Ohio, Illinois, Michigan, and Pennsylvania. These particular states offer a number of incentive programs to encourage brownfields redevelopment. The incentives range from direct grants to low interest loans and various tax incentives such as credits, abatements, and forgiveness. I look forward to hearing details on these programs and their effect on brownfields redevelopment.

While states are to be commended for their efforts, there are also a number of issues surrounding state programs at large that I believe inhibit greater success. First, state programs are often narrowly targeted, leaving owners or developers of contaminated sites ineligible for the financial assistance that is often critical in a decision-making process of whether to redevelop a brownfield site or to develop on a greenspace site. While a number of states have adopted the federal definition of "brownfields" as created by Congress in 2002, thereby easing some of the restrictions on sites qualifying for financial assistance, targeting remains a barrier to the redevelopment of numerous contaminated sites. In addition, we have 50 states with 50 different programs. The consequence is a confusing patchwork of often complex laws and regulations. The result of these two limitations is akin to a child's puzzle – interested parties may only be eligible for assistance if the property fits like a toy through slot A and lies squarely in opening B.

Last year, I, along with Chairman Tom Davis, requested that GAO study the status of brownfields redevelopment across the nation. GAO's report shows that stakeholders are generally positive about the current federal efforts to address brownfields but that additional incentives, such as a tax credit, are needed to spur further brownfields redevelopment and really make a difference in communities across the country.

In response to that study, I plan to introduce legislation similar to H.R. 4480 from last Congress, the "Brownfields Revitalization Act of 2004." As noted earlier, many states offer tax credits or other tax incentives but they vary from state to state. A federal tax credit would apply to brownfields redevelopment across the board, without narrow tailoring. H.R. 4480 proposed a federal tax credit of up to 50 percent for qualified remediation expenses of brownfields in certain poverty-rated areas. Specifically, credits would be available to redevelopment projects where the local government entity includes a census tract with poverty in excess of 20 percent although the project need not be located within that tract. Further, the legislation will require that sites must be enrolled in a state voluntary cleanup program to be eligible for the liability protection afforded under the Brownfields Revitalization and Environmental Restoration Act of 2001.

We have two panels of witnesses before us today to discuss all of these issues. We look forward to learning more about their various state incentive programs addressing brownfield redevelopment efforts. We will also hear our panelists' opinions on improving or complementing their state efforts at the federal level. First, we will hear from Charlie Bartsch, a Senior Policy Analyst at the Northeast Midwest Institute; Kathleen McGinty, Secretary of the Pennsylvania Department of Environmental Protection; John Magill, Director of the Office of Urban Development at the Ohio Department of Development; Douglas Scott, Director of the Illinois Environmental Protection Agency; and Andrew Hogarth, Chief of the Remediation and Redevelopment Division at the Michigan Department of Environmental Quality.

Our second panel of witnesses consists of representatives from the private sector. We will hear from Robert Colangelo, Executive Director of the National Brownfield Association; Jonathan Philips, Senior Director of Cherokee Investment Partners, LLC; Charles Houder, Director of Acquisitions for Preferred Real Estate Investments, Inc.; and finally, Kevin Matthews, Director of Association & Governmental Relations at AIG Environmental.

I look forward to the expert testimony our distinguished panel of leaders will provide today. Thank you all for your time today and welcome.

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Subcommittee on Federalism and the Census
"Brownfields and the Fifty States:
Are State Incentive Programs Capable of Solving America's Brownfields Problem?"
September 13, 2005

Mr. TURNER. I will now yield to Mr. Kanjorski for his opening comments.

Mr. KANJORSKI. Thank you, Chairman Turner. I appreciate the opportunity at the start of this hearing to offer my views about the brownfields program.

In 2002, Congress took a significant step to remedy the persistent funding problems associated with the cleanup of mine-scarred lands with the passage of the Small Business Liability and Brownfields Revitalization Act. Through the course of our debates over this legislation, we expanded the Environmental Protection Agency's definition of the term "brownfields" to include mine-scarred lands, thus making them eligible for Federal assistance through an EPA brownfield grant program. As a result, many local municipalities and nonprofit entities in my district have received brownfield grants to remediate the environmental contamination, including mine-scarred lands.

One organization, the Earth Conservancy, was one of the first recipients of a brownfield grant to cleanup the mine-scarred land. However, I remain concerned that many local entities are not aware of the funding that this program provides, particularly with respect to cleanup of mine-scarred lands. In fiscal year 2004, the EPA received 670 brownfield grant applications; of that number only 24 proposals were for remediation of mine-scarred lands.

Also, in reviewing the testimony from the Government Accountability Office, I learned that the Brownfield Revolving Loan Program has been severely underutilized. To alleviate this situation, it is my hope that we can look at ways to expand and strengthen EPA's outreach efforts. As a result, I look forward to hearing the testimony from our witnesses.

I would like to thank Pennsylvania Department of Environmental Protection Secretary Kathleen McGinty for being here to testify today. I have had numerous experiences with Ms. McGinty during her prior service in the Clinton administration and find her to be a creative and rather ingenious individual, so we look forward to her testimony.

It is my hope that the committee will work to address these issues and look for solutions to make this program more effective.

In closing, Mr. Chairman, thank you again for the opportunity to express my initial thoughts on these matters. I yield the balance of my time.

Mr. TURNER. It is the policy of this committee that all witnesses are sworn in before they testify. Would our first panel please rise and raise your right hands.

[Witnesses sworn.]

Mr. TURNER. Please let the record show that all the witnesses——

Mr. KANJORSKI. Have sworn at us.

Mr. TURNER [continuing]. Have responded in the affirmative. And we will now start with our witnesses.

Each witness has kindly prepared written testimony which will be included in the record of this hearing. Each witness has also prepared an oral statement summarizing their written testimony.

Witnesses will notice that there is a timer with a light on it at the witness table. The green light indicates that you should begin

your remarks, and the red light indicates that your time has expired. In order to be sensitive to everyone's time schedule, we ask that witnesses cooperate with us in adhering to a 5-minute time allowance for their oral presentation, which will be followed by a question/answer period by the Members.

We will begin first with Mr. Bartsch. Would you please begin your testimony, and also, would you help me with your last name, please.

Mr. BARTSCH. It is Bartsch.

STATEMENTS OF CHARLES BARTSCH, SENIOR POLICY ANALYST, NORTHEAST-MIDWEST INSTITUTE; KATHLEEN McGINTY, SECRETARY, PENNSYLVANIA DEPARTMENT OF ENVIRONMENTAL PROTECTION; JOHN MAGILL, DIRECTOR, OFFICE OF URBAN DEVELOPMENT, OHIO DEPARTMENT OF DEVELOPMENT; DOUGLAS P. SCOTT, DIRECTOR, ILLINOIS ENVIRONMENTAL PROTECTION AGENCY; AND ANDREW HOGARTH, CHIEF, REMEDIATION AND REDEVELOPMENT DIVISION, MICHIGAN DEPARTMENT OF ENVIRONMENTAL QUALITY

STATEMENT OF CHARLES BARTSCH

Mr. BARTSCH. Mr. Chairman, and members of the subcommittee, thank you for the opportunity to testify. And I also want to thank you, Mr. Chairman, for your efforts on behalf of brownfield revitalization, which is an important issue. I have a more detailed statement for the record, but my focus over the next few minutes is going to be on the critical intergovernmental foundation of successful brownfield revitalization efforts.

I'm Charles Bartsch, director of brownfield studies at the Northeast-Midwest Institute. For the past years I've been tracking State-level brownfield initiatives, and I have also worked very closely with the executive leadership of several of the State chapters of the National Brownfield Association, including the Ohio chapter, on these same issues in my capacity as co-chair of its policy advisory board. And this year, in fact, the NBA devoted its annual Washington, DC, leadership summit to examining the components in an optimum State brownfield program, and we have also provided those findings for the record.

To get at the question posed in your charge to us as witnesses, yes, State incentive programs are capable of working toward a solution to America's brownfield problem, but they must do so in partnership with Federal and local efforts in ways that attract private investment to these sites. One sector cannot solve the problem on its own.

All of the research and analysis has reinforced what many of us have observed over the past decade, namely, that State brownfield programs continue to evolve and mature. Today more than half the States have some type of program in place to support brownfield reuse, and these represent many different but equally effective approaches in place to bring the resources together to meet the diverse challenges of brownfields. They recognize that no specific type of public, private or intergovernmental partnership and no single approach fits the financing needs of all brownfield projects.

The most hard-to-generalize State incentive programs fall into four common categories, helping to facilitate real estate transactions and site reuse in various ways, and I want to lay out for the committee and explain how they can contribute to success.

First, State tax credits, abatements and other incentives are increasingly being applied to brownfield projects. These programs have worked by helping with a project's cash-flow, by allowing resources and project revenue to be used for brownfield purposes such as site cleanup rather than for tax payments.

Most State tax incentives are targeted to offset cleanup costs or to provide a buffer against increased tax assessments before the site preparation costs are paid off.

State and Federal tax incentives historically have been used to channel investment capital and promote economic development in areas that have needed it, and brownfield targeting is a natural evolution of this type of program tool, as you have recognized, Mr. Chairman, through your legislative efforts.

Currently 23 States offer some type of tax incentive, and today you're going to hear from some of those States; other examples, Colorado's incentives, which have been designed to support smaller site cleanup. Colorado allows tax credits to offset remediation costs, 50 percent against the first $100,000 in cleanup costs, 30 percent of the second $100,000, and 20 percent of the next $100,000.

In New Jersey, brownfield site owners can negotiate for tax rebates from the State to allow recovery up to 75 percent of the remediation expenses.

Missouri offers a variety of property income and job creation tax incentives as part of its brownfield redevelopment program. Site reusers in Missouri pick from the menu according to their project needs and package them together, with the total value of the incentives being able to equal the cost of remediation.

And Rhode Island has adopted the State historic preservation tax credit to complement the existing Federal credit, and the combined credits there have contributed to a substantial increase in brownfield activity.

I think what we see is that we need to make sure that State incentives are allowed to work in full partnership with Federal incentives and are not limited or constrained by recapture or penalty provisions.

Second, States are targeting financial assistance programs directly to promote brownfield reuse. Capital gaps remain the biggest barrier to brownfield reuse, and 22 States have worked to address this issue by putting some sort of financing incentives in place such as loans or grants to reduce initial cash needs. These can be used to increase the lender's comfort with projects by offering guarantees to limit their risk of potential losses, or they can ease the borrower's cash-flow by plugging critical capital holes or offsetting brownfield costs, and these types of incentives can be critical to small sites.

Third, States are establishing direct brownfield financing efforts. Often capitalized with bond proceeds, these programs directly match resources to needs usually in places where the private sector may fear to tread. About 14 States have done this, and you will hear from some of those.

And fourth, more States are exploring innovative programs to support the brownfield financing process. About half a dozen programs do this by limiting risks or offsetting critical costs such as those for site assessments. Most of these programs were enacted as a way to leverage private investment while limiting public spending, and they represent an important maturation in brownfield public-private partnerships.

In closing, we know that funding gaps are a primary deterrent to site and facility reuse; however, creatively crafted and carefully targeted incentives and assistance can help advance cleanup and reuse activities and achieve significant community benefits.

In short, governments at all levels can find ways to help overcome reuse challenges; however, brownfield reuse will only succeed in the long run if State efforts can be complemented by Federal initiatives in a true intergovernmental partnership.

Thanks for the opportunity to speak, and I look forward to your questions.

[The prepared statement of Mr. Bartsch follows:]

Statement of Charles Bartsch
Director of Brownfield Studies/Senior Policy Analyst for Economic Development
Northeast-Midwest Institute

Co-Chair, Policy Advisory Board
National Brownfield Association

on
Brownfield and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfield Problem?

before the
U.S. House of Representatives
Committee on Government Reform
Subcommittee on Federalism and the Census

September 13, 2005

Chairman Turner and members of the Subcommittee on Federalism and the Census, it is a pleasure to appear before you today to discuss the critical intergovernmental foundation of successful brownfield revitalization efforts.

For the past five years, I have been working at the Northeast-Midwest Institute to track state-level brownfield financing initiatives, developing the first national analysis of various state incentive offerings back in 2001. I have also worked closely with the executive leadership of several of the state chapters of the National Brownfield Association (NBA), including the Ohio chapter, on these same issues in my capacity as Co-Chair of its Policy Advisory Board. This year, in fact, the NBA devoted its annual Washington, DC leadership summit to examining the components that are needed in an optimum state brownfield program. NBA Executive Director Robert Colangelo will discuss in more detail the findings that have emerged from those discussions.

All this research and analysis has documented and re-enforced what many of us have observed about the brownfields market over the past decade, specifically, that state brownfield programs continue to evolve and mature – even as their program goals remain the same, namely, to:

- bring more certainty to the cleanup process;
- establish greater levels of finality to cleanups, with liability relief and no further action mechanisms; and

- offer incentives to new site owners and prospective purchasers, to help level the economic playing field between old brownfield and new greenfield sites, to give these sites an opportunity to take advantage of their full economic and community revitalization potential .

Encouraged by passage of the federal Small Business Liability Relief and Brownfield Revitalization Act in January 2002, all states now have brownfield or voluntary cleanup programs (VCPs) in place, to offer some type of liability relief to those wishing to remediate and reuse brownfield sites. Equally important, though, more than half the states now have some type of program in place to help finance brownfield reuse. States are putting many different – but equally effective – approaches in place to bring the resources together to meet the diverse challenges of brownfield reuse. They recognize that no specific type of public-private or inter-governmental partnership -- and no single approach -- fits the financing needs of **all** brownfield projects. And while it is hard to generalize, state financing programs fall into four common categories, helping to facilitate real estate transactions and site reuse in various ways.

(1) State tax credits, abatements, and other tax incentives are increasingly being applied to brownfield projects. These programs help with a project's cash flow, by allowing resources and project revenue to be used for brownfield purposes rather than for tax payments. This can help site reusers get the cash together to deal with some of the site preparation costs that contamination involves. This cash flow cushion from a tax break can also help a project's financial look in the eye of a lender.

State and federal tax incentives historically have been used to channel investment capital and promote economic development in areas that have needed it – and brownfield targeting is a natural evolution of this type of program tool. Most state tax incentives are targeted to offset cleanup costs or to provide a buffer against increases in property value that would raise tax assessments before the site preparation costs are paid off.

Currently, 23 states offer some type of tax incentive. One of the more interesting approaches is that of **Michigan,** which has adopted a new, 100 percent, 12 year abatement of its single business tax to encourage site reuse in distressed areas. Abatements are available in communities that designate what the law terms "obsolete property rehabilitation districts. This incentive is designed to free up capital for site reuse at an early stage.

Colorado's incentives have been designed to support smaller site cleanups. In 2002, the legislature authorized tax credits to offset remediation expenses – a 50 percent tax credit against the first $100,000 in cleanup costs, 30 percent of the second $100,000, and 20 percent of the next $100,000.

In **New Jersey**, brownfield site owners in designated Environmental Opportunity Zones can negotiate with their local communities and arrange to use some of their annual property tax levy to cover up to 75 percent of their site clean-up costs, instead of paying it to their local tax collector. Site owners can also get tax rebates from the state, through redevelopment agreements with developers, to allow recovery of up to 75 percent of their remediation expenses.

Ohio is trying to level one aspect of the site selection playing field by offering a state franchise or income tax credit for Phase I and II assessment and cleanup costs. Site owners can claim the lesser of 10 percent or $500,000 for these purposes.

Illinois provides a 25 percent income tax credit of up to $150,000 per site — this is available to developers who spend at least $100,000 to restore contaminated sites, and these credits are transferable to new owners. This can be important to encourage site redevelopment by parties who will not eventually be the end-users of the property.

Missouri offers a variety of property, income, and job creation tax incentives, for up to 10 years, as part of its Brownfield Redevelopment Program. Site reusers pick from the menu according to their project needs, and package them together. The value of the incentives can total up to the entire cost of remediation.

And **Minnesota** has modified its tax increment financing (TIF) laws to recognize one of the realities of brownfield sites — stigma. In Minnesota, communities can define a hazardous waste TIF sub-district and value brownfield sites within them at zero, for TIF purposes. This boosts the increment and the potential to raise proceeds for cleanup and redevelopment.

(2) States are targeting financial assistance programs directly to promote brownfield reuse. Capital gaps remain the biggest barrier to brownfield reuse, and 22 states have worked to address this issue by putting some sort of financing incentives in place – both direct financing tools, such as loans or grants, or indirect financing assistance such as tax abatements or credits. These programs meet several objectives. They are targeted to help finance specific parts of the project, such as site preparation. They can be used to increase the lender's comfort with these projects, by offering guarantees to limit the risk of potential losses. Or, they can ease the borrower's cash flow by plugging certain capital holes or off-setting the extra up-front costs of site cleanup. In the past few years, more state legislatures have focused on this aspect of brownfield financing than any other.

For example, **Indiana** has a $10 million environmental RLF in place. The program is structured to allow the state to forgive 20 percent of its loan amount for

projects meeting community determined development goals, with priority given to gas stations and facilities located within one-half mile of a school or child-care center.

Illinois offers a Brownfield Redevelopment Loan Program to offer low-interest loans to local governments and private parties, for site assessment, remediation, and demolition costs. This is intended to complement the state's existing grant program that gives cities up to $120,000 to pay for site assessments and preparation of cleanup plans.

Wisconsin offers a Brownfield Environmental Assessment Program, known as BEAP. Under BEAP, the state Department of Natural Resources provides funding to communities to conduct Phase I and II assessments at city or county nominated sites, to complete the informational picture needed to market brwonfield sites.

Florida has enacted a package of financial assistance programs targeted to brownfields. A loan guarantee program provides 5 years of guarantees or loan loss reserves for primary lender loans made in defined brownfield areas for redevelopment projects. Another program provides loan resources to communities and non-profits to redeem contractor liens on brownfield properties, in order to move them more easily into productive reuse. Still another Florida initiative targets the employment opportunities of brownfields, by allowing employers who open operations on designated brownfield sites to claim a $2,500 state income tax credit for each job created there.

Kansas created an Agricultural Remediation Fund in 2000, to provide up to $300,000 in low-interest loans to sites where pesticides and other agricultural-related contaminants have left brownfields in their wake.

Finally, a few states are working on brownfield financing connections with federal funds that the state receives. **Wisconsin** has been earmarking $2.5 million annually in its state-administered CDBG funds for small cities, for site assessment and cleanup costs. **Connecticut** and **Washington** are currently considering pledging some of their small cities CDBG allocation as collateral to establish multi-million dollar Section 108 loan guarantee funded pools to help small cities cover brownfield redevelopment costs.

(3) States are establishing direct brownfield financing efforts. Often capitalized with bond proceeds, these programs directly match resources to needs, usually in places where the private sector may fear to tread.

About 14 states have done this. Most recently, **Ohio** has set the pace, as voters there approved a major environmental bond issue in 2000 that included $200 million for various brownfield reuse initiatives, administered through the Clean Ohio Fund. Mr. Chairman, your home city of Dayton has been one of the leading beneficiaries of these

resources, receiving funding in successive competitive rounds to carry out a creative strategy to clean up and revitalize the central core of the city.

A few other states – such as **Michigan, Connecticut,** and **New York –** have also set aside general obligation bond proceeds specifically for brownfield purposes.

Nearly a dozen states have provided general appropriations to capitalize loan and grant funds. These include **Delaware,** which makes low-interest loans of up to $250,000 to cover 90 percent of cleanup costs. **New Jersey** has an industrial sites recycling program in place, which covers half the cost up to $1 million per site; **Pennsylvania** offers up to $1 million per site for remediation. **Minnesota's** contamination cleanup grant program covers 75 percent of the cleanup costs at eligible projects. **Indiana** recently enacted a "just-in-time" site assessment financing initiative, to provide communities with critical resources to complete assessments at properties where prospective purchasers have shown interest, but the lack of solid information deters them from acquisition or development. And **Wisconsin** last year authorized nearly $40 million in targeted brownfield financing, for a variety of grant and debt-style programs.

(4) More states are exploring innovative programs to support brownfield financing by helping to level the economic playing field between greenfield and brownfield sites. About half a dozen programs do this in various ways, by limiting risk or offsetting critical costs such as those for site assessments. Most of these programs were enacted as a way to leverage private investment while limiting public spending.

Michigan has authorized the establishment of Brownfield Redevelopment Authorities, which have TIF and bonding authority. Some 75 authorities have been set up around the state to date, and they are proving useful as "one-stop" shops for information and technical assistance, as well as resources.

Wisconsin has addressed a tax issue that has proven to be a brownfield barrier in cities all over the country, namely, the issue of payment of back taxes on abandoned sites. Wisconsin now allows cancellation of delinquent taxes for new purchasers as part of an agreement to clean up contaminated property.

Pennsylvania, through its Key Sites initiative, supports state-funded contractors who conduct site assessments and prepare work plans that promote the reuse of abandoned industrial properties, and then help coordinate with the state's three major brownfield financing programs.

The **Massachusetts** Access to Capital program includes funding to pay for 25 percent of the premiums on environmental insurance needed to attract private lenders to

brownfield projects, through two policies negotiated by the state with the AIG company. Several other states are exploring this concept.

In closing, we know that funding gaps are a primary deterrent to site and facility reuse. However, the state and federal governments can do much to help balance the playing field between greenfield and brownfield sites. Creatively crafted and carefully targeted incentives and assistance can help advance cleanup and reuse activities and achieve significant community benefits. Moreover, these efforts need not be "giveaways." The notion of the entrepreneurial city, prevalent in many development programs, can be extended to brownfield initiatives. Agencies and organizations that share in project risks can also recover some of their investment during subsequent site sale or development.

As stated, no single public-sector approach fits the financing needs of all brownfield projects, which vary by project situation, type of developer, level and type of contamination, and desired rate of return. As we have seen from the experiences of numerous cities, successful brownfield revitalization requires ever-more innovative funding partnerships, which link together a number of federal, state, and local financing programs and resources to provide the continuum of financing that is needed to take a brownfield project through its complete cycle of redevelopment, from site assessment to cleanup to construction. Many communities have also discovered how to take these types of partnerships to the next level, to link state program resources with federal funding and technical support in order to realize even greater leveraging opportunities.

Governments at all levels can find creative ways to help overcome reuse challenges. However, brownfield reuse will only succeed if state efforts can be complemented by federal initiatives -- such as cleanup credits, historic tax incentives, and targeted program funding -- in a true inter-governmental partnership. The federal government, whose programs, policies, and regulations form the foundation on which many state and local finance initiatives are built, must play an even stronger role if financing for brownfield redevelopment is to become more widely available.

Thank you for the opportunity to speak, and I look forward to your questions.

Mr. TURNER. Ms. McGinty.

STATEMENT OF KATHLEEN McGINTY

Ms. MCGINTY. Thank you, Mr. Chairman, members of the committee, Mr. Kanjorski especially. Very good to see you again. And thank you for your leadership on greyfields and on all other environmental remediation measures. Very timely attention to this issue, Mr. Chairman. Pennsylvania is very encouraged by your attention and our ability to share some of our experiences.

First, as we present to you today, we do have a successful program; 10 years into the program we are on the brink of cleaning up our 2,000th site. What I wanted to do is share a couple of the key reasons why we have been successful to date, but then to emphasize some of the measures you have pointed to that would be critical in further building our success.

First, in terms of the four key elements that have built a successful program in Pennsylvania, first and foremost, clear, predictable, reliable remediation standards that are geared toward the future land use of the site; second, clear, thorough and effective liability relief for the successful performance of those cleanup standards; third, money.

No question that the playing field is still tilting against brownfields, it is still much easier to develop a greenfield, and money is key; money in three categories: site assessment, site remediation, but then also especially site infrastructure improvement so that site is pad ready, ready for redevelopment. That goes beyond just the cleanup of the contamination itself, but looking at water, looking at utilities, looking at road infrastructure leading to that site.

Fourth and key, time is money. So the extent to which we can streamline permitting and put a thumb on the scale for brownfield redevelopment such that a brownfield either does not need an individual permit, or it would receive priority attention in the permitting process has been a key for us. Those are the things that have worked to date.

Two key enhancements that have been added to the program in the last year and a half: first, very important, a Memorandum of Understanding that we have with U.S. EPA that aims to create one cleanup policy, which means when Pennsylvania says it is clean pursuant to EPA's standards, it is clean for State and Federal liability purposes.

I commend EPA for working with us on this, but I would note a shortcoming. We do have full and effective liability relief for some Federal programs once Pennsylvania says it's clean, but for others we are still working on it, we're not there. And more appropriately or more accurately, our understanding with EPA is a paper processing agreement; in other words, they have undertaken to process with us in real time their statutes and responsibilities as we do, too, on priority sites. Very helpful, but we need to make the next step to full liability relief.

Second is the matter that Mr. Kanjorski pointed to. Pennsylvania has five sales in abandoned mine sites. For us to redevelop abandoned properties means a greyfield has to be in; that has been a key enhancement to our program.

Having said that, what are some of the improvements that we would look to? First, tax credits, absolutely essential, and I would highlight a key piece, especially to underwrite the purchase of insurance that can backstop remediation costs. Quick example: A State-led remediation in Pennsylvania, the cost has skyrocketed as, for example, what we anticipated at $2 a ton to move soil to the site, with diesel prices through the roof, we are now looking at $7 a ton to move that same soil to that same site. What was a bankable project, what was a financeable project is now something that is quite difficult for us to get done. So insurance to backstop those remediation costs in these days of skyrocketing commodity prices would be very, very helpful.

Second, some of the bills that have been introduced that offer tax-exempt financing, tax-free bond financing of brownfield sites, are key. We have done that at the State level, but frankly we are pushing up against our State volume cap, and to the extent that tax-free bond financing opportunity could be shared with the private sector, that would help us very substantially.

Third, grants. In the grant category, we have a very important program with U.S. EPA. We have benefited greatly from the grant moneys we have received, but those grant moneys are restricted. And the particular restriction I would point your attention to is an inability to use more than 50 percent of that grant money for remediation. That is important for new brownfield programs where moneys need to be invested in outreach; but for ours, remediation is key, and we would like to see that money freed up.

And last, they come back to liability relief. If we could move from what has been an important beginning in our Memorandum of Understanding with EPA to full and effective Federal and State liability relief, that would add the certainty that investors and developers need.

Mr. Chairman, and members of the committee, thank you for the opportunity to share a few thoughts in this key program.

[The prepared statement of Ms. McGinty follows:]

Kathleen A. McGinty, Secretary
Department of Environmental Protection
On
"Brownfields and the State Tax Incentive Redevelopment"
Before the
U.S. House Committee on Government Reform,
Subcommittee on Federalism and the Census
September 13, 2005
Washington, D.C.

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today. I appreciate the opportunity to share some ideas that can enhance all of our efforts to promote redevelopment projects that create jobs, revitalize communities and grow our tax bases.

I would like to start by highlighting some of the elements that have made Pennsylvania's Land Recycling Program a national model for transforming abandoned, idle properties into new economic opportunities. I then would like to address several key recommendations for this panel to consider as we move forward to ensure the continued success of brownfield remediation across the country.

Prior to 1995, the general business consensus among potential Pennsylvania businesses was to abandon so-called "brownfields" rather than put them back into productive use. Pennsylvania's Land Recycling Program --- promulgated collectively as the Land Recycling and Environmental Remediation Standards Act (Act 2 of 1995), the Economic Development Agency, Fiduciary and Lender Environmental Liability Protection Act (Act 3 of 1995), and the Industrial Sites Assessment Act (Act 4 of 1995) --- helped to reverse this trend.

In Pennsylvania, tens of thousands of jobs have been created or retained, and the state is closing in on its 2,000th approved cleanup, including 700 in the last three years. The success of the program rests on several key cornerstones --- scientifically sound and reasonable cleanup standards, liability relief from future cleanup requirements under state environmental statutes, standardized reviews and time limits, development authority, lender and fiduciary liability protection, and financial assistance.

Pennsylvania has a significant track record of making environmental protection work for businesses and employees. Governor Edward G. Rendell has expanded these efforts, working aggressively to provide new incentives and put in place enhanced management approaches that hasten brownfield redevelopment.

The Governor's Business in Our Sites Fund provides $300 million for local redevelopment authorities and economic development corporations to make brownfield sites "pad ready." The money helps to pay for site acquisition, remediation and preparation, enabling these local entities to market shovel-ready sites to businesses that are seeking to build or expand immediately. This Business in Our Sites Fund was part of an ambitious $2 billion economic stimulus package that offers a clear set of strategic investments to rebuild the economy and revitalize Pennsylvania.

Another critical piece of that package was PennWorks, a $250 million voter-approved bond initiative that finances improvements to Pennsylvania's water and wastewater systems. Aging

infrastructure can be a disincentive to development, making it more difficult to lure businesses. PennWorks funds upgrades to make older sites more attractive while also ensuring a clean, safe water supply in Pennsylvania.

DEP and the Department of Transportation unveiled a Smart Growth Permit in October 2003 to speed up infrastructure improvements in aging communities, reducing the number of individual stream work permits by 22 percent and cutting the processing time from several months to a few weeks for most projects. And, our new Clean Fill Policy creates a general permit for the placement of materials in residential and industrial settings, revising standards that environmental groups and contractors said were inordinately complex and didn't do the job. Both of these revisions speed up the permitting process to make greenfield development less attractive.

Governor Rendell also put in place policies aimed at making government more efficient and saving the regulated community time and money --- all while moving to clean up contaminated sites and eliminate any threat to public health and safety. The Brownfield Action Team, launched in 2004, created a single-point-of-contact system to streamline permitting processes and redevelopment efforts for those sites that local officials target as redevelopment priorities. BAT relies on communities to tell the Department of Environmental Protection which brownfield projects are priorities for revitalizing an area, and requires communities to show cleanup and financing plans as well as the proposed use of the site and its benefits to the area. Local and state governments and private development efforts will work to get the job done as quickly as possible. BAT cuts permitting time in half.

DEP approved its first BAT project last summer to redevelop 1,600 acres of the former Bethlehem Steel Corp. site in Northampton County with a mix of commercial, office, manufacturing and warehousing spaces that eventually will employ 6,000 workers with an annual payroll of $210 million. Since then, other projects have been approved and are moving ahead in Adams, Beaver, Berks, Bradford, Cambria, Chester, Lackawanna, Luzerne, Monroe and Philadelphia counties.

For low-risk brownfield sites, the Governor streamlined the process so that remediation plans that receive the stamp of approval from a licensed professional engineer are considered to meet all of the requirements of the Land Recycling Program's cleanup standards. This allows communities to reclaim smaller, low-risk sites that might not appeal to larger developers but still mean a great deal to small businesses seeking to reinvest in neighborhoods.

The Rendell administration also added another enhancement through a historic Memorandum of Agreement (MOA) between DEP and the U.S. Environmental Protection Agency to make Pennsylvania's Land Recycling Program the first and only in the nation to serve as a "one-stop shop" for state and federal standards guiding the cleanup of brownfield sites. The MOA clarifies that sites remediated under the state's brownfields program also satisfy requirements for three key federal laws: the Resource Conservation and Recovery Act; the Comprehensive Environmental Response Compensation Liability Act, commonly referred to as Superfund; and the Toxic Substances Control Act. Removing the threat of federal legal action once a site meets Pennsylvania's stringent cleanup standards will encourage more businesspeople and economic development agencies to clean up and redevelop old industrial sites. The Commonwealth thanks and commends EPA for its leadership and partnership on this new way of doing business that has been so helpful to us.

Pennsylvania also is moving ahead to allow mine-scarred lands, what some call "greyfields," to be eligible for benefits similar to those now enjoyed by brownfield redevelopers. This has tremendous import for our Commonwealth, where we have more abandoned mines than any other state in the nation, and it promises to transform many of our coal communities into thriving commercial districts again.

One of the reasons our brownfields program has been so successful is that it has evolved to meet the changing demands of the market. That market continues to change, so our programs must continue to evolve to keep pace and ensure brownfield redevelopment remains competitive. Despite the many successes in Pennsylvania's Land Recycling Program, there is room for improvement --- but most of that depends on the support and assistance of our federal partners. There are several steps the federal government can take to help states advance brownfield redevelopment programs.

First, we need more flexibility in the U.S. Environmental Protection Agency's brownfield funding program. EPA provides what commonly is called Subtitle C money that helps states start up and maintain brownfield programs. These funds have been of critical importance to us and we are grateful for them. We feel, however, that the money can be more optimally deployed. In states without brownfields programs, federal grant money gets passed directly to local governmental agencies, not the states. Because Pennsylvania has an established brownfields program of its own, we receive the EPA funding directly. Our Commonwealth under the Rendell administration has received $988,000, $1.06 million and $1.02 million from EPA over the last three fiscal years, respectively.

The rules governing the allocation of these federal dollars are unnecessarily restrictive to states that have successful brownfields programs. For example, no more than 50 percent of our federal grant can be spent on remediation. The remainder must be spent on things such as marketing and administrative support. For states starting up a brownfields program, these costs are important. But for states like Pennsylvania, the real need is remediation, and giving states with established programs more flexibility could make all the difference in ensuring resources to help rebuild communities.

The stark reality is that brownfield redevelopment is difficult --- both from a perception standpoint and a cost standpoint. Many developers are still hesitant to tackle a brownfield remediation project without strong assurances with regard to both remediation costs and legal liabilities. Without liability protection, developers, local redevelopment authorities and businesses are hesitant to consider any form or ownership or even redevelopment partnership. Banks and other institutions are unlikely to finance these projects.

Pennsylvania's Land Recycling Program does provide liability protection for brownfield development. Moreover, through our MOA with EPA, as described above, we can give developers limited comfort with respect to associated federal liabilities. Necessary improvements to this good foundation would include a more comprehensive federal assurance of liability relief. In addition, the Pennsylvania MOA with EPA really extends only to joint processing of applications. It does not mean that federal liability can be relieved by successful participation in the state brownfields program. To provide the assurances that are necessary to developers, these efforts need to progress to genuine liability relief as opposed only to joint processing of applications.

In addition to liability relief, developers also seek assurances with respect to remediation costs. Fixed prices provide an incentive to move forward with redevelopment. It helps developers prepare budgets and attain financing because it removes the worries that financial institutions have when lending toward contaminated properties. A federal tax credit would enable developers to purchase the insurance they need to guarantee fixed pricing in remediation. The insurance guarantees that remediation costs to the developer will not climb above a set amount. The tax credit puts the insurance costs within reach and provides assurances needed to move ahead with cleanup, removing a hurdle that developers face when confronted by the decision to take on revitalizing abandoned industrial sites. Pennsylvania currently is considering legislation (H.B. 687) introduced by state Rep. Dan Frankel that would create a program for the purchase of certain types of environmental liability insurance, and for grants to pay the costs of those premiums.

Many developers still lack the capital to undertake brownfield ventures. Investors are reluctant to commit money for projects when the return on their investment could be years down the road. Congresswoman Melissa Hart has introduced two pieces of legislation designed to hasten efforts to redevelop old industrial sites common to western Pennsylvania. One bill would confer tax-exempt status on bonds to be used to help finance the cleanup of brownfields. That currently is not the case. Bonds provide developers and businesses with the access to capital they need to clean up the sites. The other bill would allow businesses or developers to build savings accounts free of taxation for the cleanup of such sites. The tax advantages would apply only if the money is spent on remediation. The savings accounts would be the business equivalent of Individual Retirement Accounts, or IRAs. Congress should examine both of these bills as a means to enhance support for brownfield remediation.

Finally, all federal departments should streamline their permitting to favor redevelopment of brownfield sites. Providing incentives and ensuring liability are essential. But streamlining the process is critical to ensure that these sites remain competitive on the open market. The faster we move permits through the process, the more quickly we reclaim these sites and clean up communities.

At the end of the day, revitalizing a brownfields site is a winning proposition --- given a favorable regulatory climate and the right incentives. All of these efforts are critical for redeveloping blighted areas, revitalizing downtowns and strengthening communities. I look forward to working with Congress and our own General Assembly in Pennsylvania to keep this successful program moving forward.

I thank you for your attention. Mr. Chairman and members of the Subcommittee, I'd be happy to answer any questions you have at this time.

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Mr. TURNER. Mr. Magill.

STATEMENT OF JOHN MAGILL

Mr. MAGILL. Good morning, Mr. Chairman. I'm John Magill, director of the Office of Urban Development, and on behalf of Governor Bob Taft and Lieutenant Governor Bruce Johnson, director of the Ohio Department of Development, I thank you for the opportunity to highlight Ohio's initiatives in brownfield finance and opportunities for Federal, State and private market collaborations.

Over the past 5 years, the State of Ohio has developed one of the Nation's best brownfield programs, the $200 million Clean Ohio Revitalization Fund. The program, funded by bonds approved by Ohio voters in November 2000, is serving as a catalyst for the redevelopment of brownfields. Since 2002, Ohio has granted $97 million to 94 projects to cleanup and assessment activities. These 94 grants are expected to leverage more than $731 million in new investment.

I think it is important to note that Ohio's successful strategy was developed from a task force formed to address the challenges facing the inner core of our cities. Brownfield redevelopment was the No. 1 issue identified by communities during this process.

Ohio's two goals for investing funds into brownfield projects are economic benefit and environmental improvement. We also realize that brownfields are most likely to be successfully converted to a new use through the free market and decisionmaking at the local level. The results are new, productive land uses including supermarkets, housing and industrial commercial space. A number of examples: The city of Dayton received over $5 million in grants to conduct demolition and remediation activities at the former GHR Foundry and Delphi Harrison properties. Select Tool International hopes to expand onto a portion of the GHR site, while the remediated Delphi property will be the western boundary of a new downtown technology campus in Dayton.

On the opposite end of the State is Dave's Supermarket, located in east Akron. The city received a $2.8 million grant for cleanup, which they used to leverage an additional $10 million for redevelopment. Dave's Supermarket opened in October 2004, creating more than 100 new jobs, and is leading to additional development around the property located in one of the poorest sections of Akron. Likewise, through a $3 million award, the city of Cleveland was able to leverage $8 million in private and public funds to clean up a contaminated site, allowing a local manufacturer, Presrite, to expand and create 50 new manufacturing jobs.

Brownfield successes can change an urban real estate market by attracting private capital. The acquisition, cleanup and demolition activities at AC Humko, a former Columbus margarine factory, totaled more than $7½ million, funded in part by a $3 million grant. Estimated private investment from equity and private markets in the final development will exceed $50 million for market-rate housing now under construction.

And in Cincinnati, the Polk Building is being renovated and turned into market-rate apartments ready for occupancy in November. Asbestos contamination made the private sector reluctant to invest capital in the project, but a $650,000 grant to abate the as-

bestos triggered $35 million in new private investment for the renovation activities.

In active markets, brownfield reinvestment is more likely to occur at a lower public cost and with greater likelihood of success. Public policy is able in a variety of ways to affect the vibrancy of a brownfield market. In the 108th Congress, Chairman Turner proposed to allow taxpayers "a credit against income tax for expenditures to remediate contaminated sites." Ohio believes tax credits can be a tool to attract additional private sector investment by enabling developers to offset costs by using or assigning credit. That is why we encourage Congress to continue to explore additional flexible brownfield tools which are performance-based, enabling local citizens to seek tangible results.

A combination of private and public resources leads to projects with an economic and environmental return. In Ohio, we are fortunate to be able to support projects of both State and Federal resources. For example, my office administers a U.S. EPA Brownfield Revolving Loan Fund. To date, we have made two loans, with two more expected to close this fall. I would like to acknowledge the staff of U.S. EPA for their support and flexibility to meet the needs of our borrowers.

Access to additional sources of Federal dollars through the tax credits or increased resources at U.S. EPA are crucial to stretching State funding to undertake additional local projects. I encourage you to look at these and other tools as you continue your work. On behalf of the State of Ohio and the Ohio Department of Development, I thank you for your time and effort to identify new ways to combine State and Federal resources to energize and invigorate brownfield redevelopment throughout the Nation. Thank you.

[The prepared statement of Mr. Magill follows:]

Statement of John M. Magill
Deputy Director, Ohio Department of Development
To
The Subcommittee on Federalism and the Census
Of the Committee on Government Reform
Of the
U.S. House of Representatives

"Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfield Problem?"

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successfully converted to a new use through the free market and decision-making at the local level. The results are new productive land uses including, among other things: supermarkets, housing, and commercial space.

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Brownfield successes can change an urban real estate market by attracting private capital. The acquisition, cleanup and demolition activities at AC Humko, a former Columbus margarine factory, totaled more than $7.5 million funded in part by a $3 million Clean Ohio grant. Estimated private investment in the final development will exceed $50 million for market rate housing now under construction.

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in the project. But, a $650,000 Clean Ohio grant to abate the asbestos triggered $35 million in private investment to renovate the building.

In active markets, brownfield reinvestment is more likely to occur at a lower public cost and with greater likelihood of success. Public policy is able in a variety of ways to affect the vibrancy of the brownfield market. In the 108th Congress Representative Turner in H.R. 4480 "proposed to allow taxpayers a credit against income tax for expenditures to remediate contaminated sites." Ohio believes tax credits like this can be a tool to attract additional private sector investment by enabling developers to offset costs by using or assigning the credit. That's why we encourage Congress to continue to explore additional flexible brownfield financing tools, which are performance, based enabling local citizens to see tangible results.

A combination of private, and public resources leads to projects with an economic and environmental return. In Ohio, we are fortunate to be able to support projects with both state and federal resources. For example, my office administers a USEPA Brownfield Revolving Loan Fund (BRLF). To date, we have made two BRLF loans with two more expected to close this fall. I'd like to acknowledge the staff of the USEPA for their support and flexibility to meet the needs of borrowers.

Access to additional sources of federal dollars through the tax credits or increased resources at USEPA are crucial to stretching state funding to undertake local projects. I encourage you to look at these and other tools as you continue your work. On behalf of the State of Ohio and ODOD, I thank you for your time and effort to identify new ways to combine state and federal resources to energize brownfield redevelopment.

Ohio Department of Development

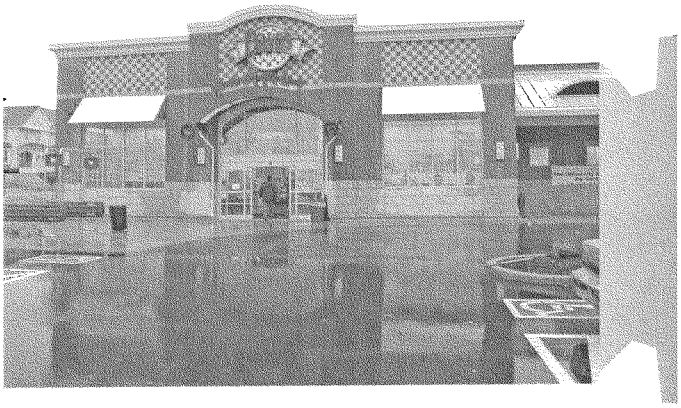
Ohio's Brownfield Portfolio

Prepared by:
Ohio Department of Development
Office of Urban Development
John Magill, Deputy Director
September 14, 2005

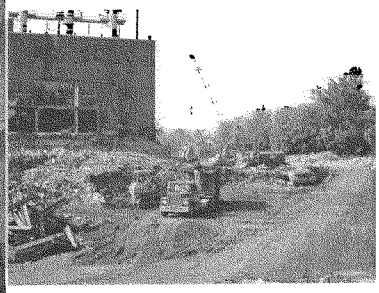
Middlebury - Akron

- Total Grant:
  - $2.8 Million
- End Use:
  - Dave's Supermarket
  - Commercial Development
- Amount Leveraged
  - $10 Million

Dave's Supermarket

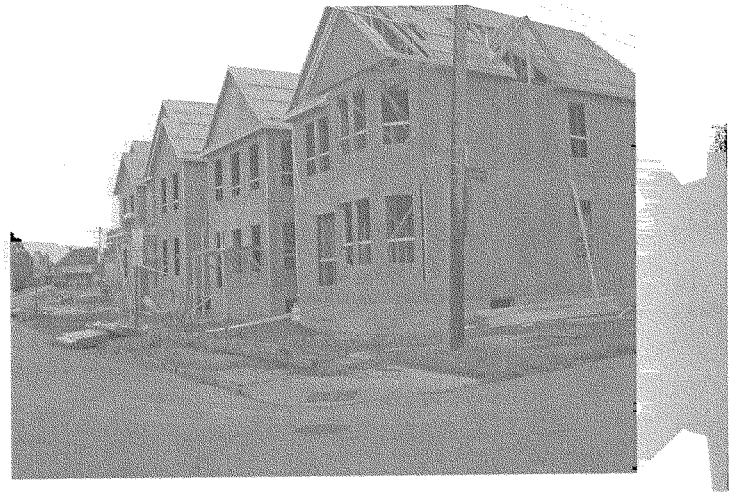


AC Humko – Columbus

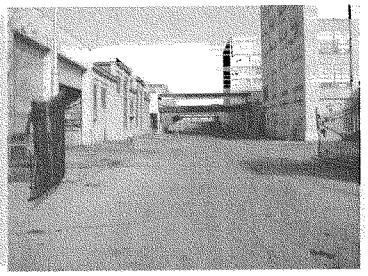


- Total Grant:
  - $3 Million
- End Use:
  - Residential Development
- Amount Leveraged:
  - $55 Million

AC Humko – Columbus

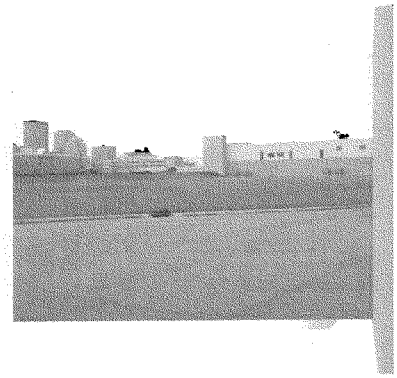


GM Delphi / GHR – Dayton



- Two Grants:
  - $5 Million
- End Use:
  - Marketing Technology Campus
  - Industrial Site
- Amount Leveraged:
  - $5 Million

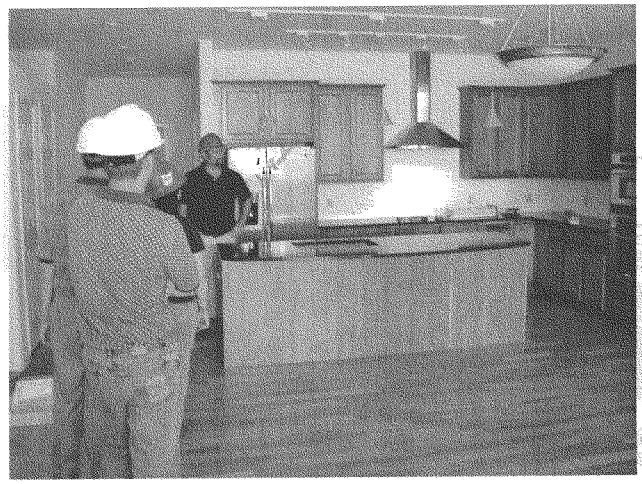
GM Delphi / GHR– Dayton



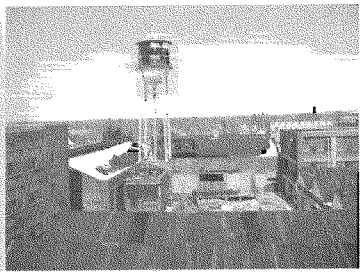
Polk Building - Port of Cincinnati

- Total Grant:
  - $650,000
- End Use:
  - Mixed Use Commercial and Residential Space
- Amount Leveraged:
  - $35 Million

Polk Building - Port of Cincinnati

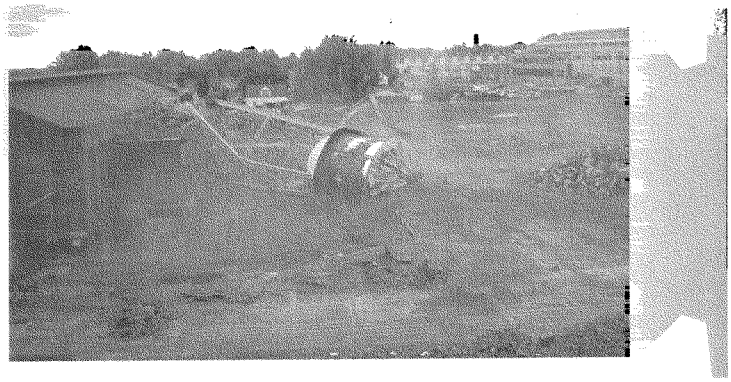


Cleveland Pneumatic – Cleveland



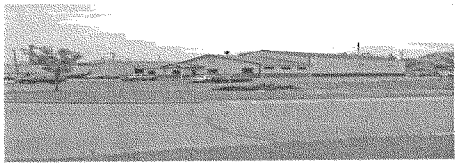
- Total Grant:
  - $2.8 Million
- End Use:
  - Industrial
  - Recreation/Green Space for Adjacent School
- Amount Leveraged:
  - $8 Million

Cleveland Pneumatic – Cleveland



Ohio's Brownfield Success

- 94 Grants
- Total Grant Dollars:
  - $97 Million
- Total Leverage:
  - $731 Million in New Investment



Lockland – New Fredrick's Landscaping Facility

Mr. TURNER. Mr. Scott.

STATEMENT OF DOUGLAS P. SCOTT

Mr. SCOTT. Thank you, Mr. Chairman, members of the subcommittee. Good morning. My name is Doug Scott, and I am the director of the Illinois Environmental Protection Agency. And on behalf of Governor Rod Blagojevich, I want to thank you, Mr. Chairman and members of the subcommittee, for holding these hearings, and also you, Mr. Chairman, for your leadership on this issue. You have been recognized for that leadership by the National Brownfield Association as well as a number of mayors, and it is very well deserved.

Brownfield remediation and land reuse is one of the most important issues facing the urban areas in Illinois, and although it is not as obvious, it is incredibly important for the nonurban areas as well. Obviously there is an environmental benefit to cleaning up areas that have contamination or are abandoned; there is certainly a community benefit in reclaiming property to put it back into productive use to either support new businesses and generate new tax revenue, or to become recreational land. There is a benefit to helping to reduce sprawl not just by putting a particular property back into use, but also by spurring other inner-city development and protecting farmland.

We have seen in recent years a renaissance of cities, and brownfield redevelopment certainly augments that trend. And there is certainly a shared community benefit in helping communities to reclaim properties that were once a symbol of vibrancy in their community only to become symbols of decay.

I have had the experience of working on a brownfield issue from a number of perspectives, as a municipal attorney in Rockford where we dealt with numerous abandoned sites and with a Superfund area that affected 10 square miles of our city; as a State representative where we passed some cleanup legislation that is very progressive in providing flexibility to risk assessment and shared cleanup levels; as mayor of Rockford, during which time I served as chair of the Illinois chapter of the National Brownfield Association; and now as director of the IEPA. As a result, I have developed an understanding of what I think works and what could spur even more brownfield development.

Illinois has a very aggressive brownfield plan, and under Governor Blagojevich has become even more progressive, using economic development funds through the Governor's Opportunity Returns Program to supplement cleanup, as well as utilizing other funds to clean additional sites, and providing loans, site assessments and technical expertise.

It has become clear to me that brownfield development at its heart is a real estate transaction, and just as in any development, there are associated costs. In these cases, the environmental considerations may be very large, but other costs, such as infrastructure, may be reduced.

It is essential for us to do those things that entice private developments to the sites by providing the conditions and incentives that make these sites attractive, or at least comparable to greenfield areas. And it is equally clear to me that State and local gov-

ernments alone can't make this happen. As I said, our State has been very proactive on this issue monetarily, including through our first-in-the-Nation noncapitalized loan program.

In addition to financial help, our efforts have also included comprehensive risk-based remediation process focusing on planned reuse, as you heard from Pennsylvania; No Further Remediation letters and a Memorandum of Understanding with U.S. EPA that says except in very narrow circumstances our NFR letter will also end Federal involvement; voluntary cleanup program with timely and effective decisions under well-established procedures; Web-based access to key environmental site data; partnerships with other government agencies, not-for-profits, trade associations in the private sector; and site assessment and technical assistance.

And the State and local governments have been very creative in utilizing all of the myriad resources that they have financially to try to assist with these sites, but it is pretty clear to me that the number of sites isn't being lessened to the rate that any of us would like to see. Now, it is easy to say that more money is the answer, but unfortunately it is part of the answer. More grant dollars to States and municipalities to specifically target site assessment, infrastructure and cleanup are needed. More sites have been put into play, for example, by simply not forcing loan guarantees of Section 108 and making more grant money available.

In addition, more funds under the Brownfield Revitalization Act would help tremendously as I'm sure we're not the only State that has more sites than we have funds, and more dollars for Superfund site cleanup that are under the Federal guidelines are also needed.

When I was a legislator, I know we always heard how spending money in a particular area would save money in the long run, but I really believe that is true here, through diverted infrastructure and transportation costs and increased tax revenue. But money is only part; the rest must come from tax credits and other targeted incentives to the private sector to bring them into these sites. So I was very encouraged last year by your efforts, Mr. Chairman, with H.R. 4480, and would hope that similar efforts would be successful in this Congress.

In addition, efforts such as H.R. 4480 that can be made to make more certain the lines of liability and possible exposure to future or reopened claims would help tremendously to make these sites more insurable and more bankable. In speaking with many developers who work on these sites, one of the major stumbling blocks is the uncertainty of future liability, which is another factor that makes it more desirable to locate to greenfields.

Again, on behalf of Governor Blagojevich, I appreciate the opportunity to appear before you, and thank you for your leadership on this issue. I would be glad to take any questions that you have. Thank you.

[The prepared statement of Mr. Scott follows:]

TESTIMONY OF

DOUGLAS P. SCOTT, DIRECTOR

ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

FOR THE HEARING OF THE U.S. HOUSE OF REPRESENTATIVES

GOVERNMENT REFORM COMMITTEEE

SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

ON THE ISSUE OF:

"BROWNFIELDS AND THE FIFTY STATES: ARE STATE INCENTIVE PROGRAMS CAPABLE OF SOLVING AMERICA'S BROWNFIELDS PROBLEM?"

SEPTEMBER 13, 2005

Testimony of
Douglas P. Scott
Director, Illinois Environmental Protection Agency
before a hearing of
the U.S. House of Representatives
Government Reform Committee,
Subcommittee on Federalism and the Census
On
Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfields Problem?

September 13, 2005

Mr. Chairman, Members of the Subcommittee, thank you for inviting me to appear before you today. I am Douglas P. Scott, Director of the Illinois Environmental Protection Agency. Prior to becoming Director on July 1, I also worked on brownfields issues over a period of 20 years as Mayor of the City of Rockford, Illinois, as a state legislator, and Rockford City Attorney. In addition, prior to being appointed by Governor Rod Blagojevich to lead the Illinois EPA, I was the President of the Illinois Chapter of the National Brownfields Association. So, the topic that is the subject of your hearing today is one that is certainly near and dear to me, both personally and professionally.

Eight years ago the Illinois Environmental Protection Agency testified before a House Subcommittee on the subject of Brownfield sites and Superfund Reauthorization, reporting our initial successes, and recommending changes that would accelerate state progress in cleaning up Brownfield sites. Many of the changes to federal law that Illinois, and other states recommended in 1997 became law with the Congressional enactment of the Brownfields Site Revitalization Act, effective January 11, 2002.

I am here today to report to this Subcommittee on the continued successes that have been achieved in Illinois and to recommend other changes that Governor

Blagojevich and I strongly believe are needed to further accelerate Brownfield cleanups in our state.

ACCOMPLISHMENTS

The Illinois EPA administers six programs that address the clean up (remediation) of hazardous substances and petroleum. Through these programs we assure that private parties, municipalities and contractors investigate and clean up sites using procedures and objectives that assure that human health and the environment are protected.

Leaking Underground Storage Tanks (LUST) program: Since its inception in 1989, over 19,000 acres (or 11,245 sites) have been remediated, surpassing the program's objective of 14,000 acres by the year 2005. Over the past four years, the program has closed more sites than the number of new releases reported.

Site Remediation Program (SRP - Voluntary Cleanups): The Illinois EPA's site remediation program is one of the most mature voluntary cleanup programs in the nation (one of two that started in 1989). Almost 3,000 sites have been enrolled into the program, with 821 sites (or over 27 percent of all sites) enrolling since Governor Rod Blagojevich took office in 2002. Since 2002, the program has issued 527 No Further Remediation Letters (or 36 percent of all NFRs issued) designating successful completion of cleanup activities. In 2004, the voluntary cleanup program exceeded its objective of remediating 9,400 acres by 2005. Two of the sites that have gone through the program and are now being redeveloped were the recipients of the prestigious national Phoenix Award, recognizing excellence in brownfields redevelopment. Those sites, described in more

detail later in the testimony under "Success Stories/Case Studies" are the former Owens-Illinois glass container factory site in Alton, Illinois, which won a 2001 Phoenix Award and the Chicago Manufacturing Campus adjacent to Ford Motor Co.'s Torrance Avenue Assembly plant, which won a 2004 Phoenix Award.

Superfund (National Priorities List) Program: As the Superfund program finished its twenty-fourth year in 2004, construction had been completed at 22 of the 48 NPL sites in Illinois. This represents over 4,700 acres of the 2005 goal of 6,000 acres remediated (or 79 percent of the goal). Construction projects are ongoing at nine NPL sites. The Superfund program has a longstanding "enforcement first" policy to pursue viable, responsible parties to pay for or carry out cleanups. In Illinois, 78 percent of the NPL construction projects underway are led by Potentially Responsible Parties.

Federal Facilities Program – Sites addressed by the Federal Facilities Program include some of the largest properties undergoing remediation in Illinois. These sites offer tremendous potential for economic redevelopment and restoration of wildlife habitats. Since 1995, at least partial remediation has been completed at 23 federal sites (or 36,000 acres) in Illinois.

RCRA Corrective Action Program – This program directs owners and operators of hazardous waste management facilities in the cleanup of releases from regulated units, such as tanks, impoundments, landfills, and drum storage. Since 1996, over 9,000 acres have been remediated under the requirements of this program.

Response Actions Program – This program takes preventive or corrective remedial action, particularly where other cleanup programs may lack the ability to take short-term remedial actions. During 2003 and 2004, the program performed investigations and cleanups at old manufacturing plants, former waste oil recycling operations, contaminated agricultural facilities and other sites where surface water, groundwater, soil and air are contaminated with hazardous substances. By the end of 2004, over 1,000 acres were remediated by this program.

The program also concentrated its efforts on stabilizing 33 abandoned landfills as part of a five-year statewide public works program. At the end of 2004, 20 of these landfills had corrective action completed, three were undergoing construction, and 10 were in various stages of planning.

Technical Support

Brownfield Representatives – Illinois EPA Brownfields Representatives act as a liaison for communities to various Illinois EPA technical, financial, and regulatory staff. In 2003 and 2004, representatives assisted 33 municipalities on 67 brownfields projects.

Targeted Site Assessments – Illinois EPA offers limited site evaluations services to municipalities (free of charge) to determine the potential costs and to identify potential

environmental obstacles for brownfields redevelopment. To date, 47 targeted site assessments have been completed. Of these, 11 were conducted in 2003 and 2004.

Statewide Illinois Brownfields Conference – Each year, the Illinois EPA sponsors a statewide Illinois Brownfields Conference to promote the cleanup and reuse of brownfields. Attendees are informed about strategies for site selection and land acquisition, updated on regulatory changes affecting cleanups, presented new financing strategies and funding opportunities, and introduced to new remediation technologies. In addition to the statewide conferences, Illinois EPA has worked with individual communities to sponsor charrettes and other workshops to develop a vision for brownfields sites in a community that are particularly difficult to address but also hold great opportunity for the future.

By efficiently and effectively cleaning up land in Illinois we not only protect human health and the environment, our primary mission, but we make land available for reuse and redevelopment to the benefit of our communities and citizens. In 2000 the Illinois EPA made the sweeping commitment to remediate at least 80,000 acres of land by 2005. I am pleased to report that at the end of 2004, 96 percent of this cleanup goal had been completed.

Although all of Illinois EPA's cleanup programs are focused on making sites available for reuse, I would like to comment further on two Illinois programs that have had substantial impacts relative to brownfields, Both of these programs have seen a rapid acceleration of activity since Governor Blagojevich took office in January 2003.

Through its Municipal Brownfields Redevelopment Grant Program, Illinois EPA offers municipalities up to $240,000 for investigation and cleanup of brownfields. Since

the program's inception in 1998, 114 municipalities have been awarded $14.2 million. Demonstrating the acceleration of efforts, during 2003, $600,000 was awarded to 11 municipalities while in 2004 over $1.6 million was awarded to 22 municipalities. So far in 2005 we have awarded grants to 13 municipalities for almost $850,000. Despite very difficult times for the State of Illinois budget, Governor Blagojevich has recognized the importance of investing in our communities by providing funding for this State brownfields financial assistance program. The grants have been issued under Governor Blagojevich's *Opportunity Returns* regional economic development initiative, which links local leaders and developers with coordinated assistance from state agencies. The individual regional *Opportunity Returns* plans also place a strong emphasis on brownfields sites. Establishing strong partnerships with municipalities---both individually and on a regional basis---- has been a key to the success of many of our Illinois sites, especially when the risks and challenges may appear too great for private developers and lenders.

In addition to the state grants over the past seven years, coupled with technical advice and cleanup oversight to the municipalities, has allowed many of these projects to move forward to final cleanup phase. However, some municipalities do not have the ability to fully finance cleanups without additional assistance. To address that issue, Governor Blagojevich and Illinois EPA launched an innovative initiative – the first of its kind in the nation - to develop a non-capitalized revolving loan program for municipalities to use for cleanup and demolition. As a result of negotiations with U.S. EPA, IEPA is using a $3.5 million federal grant for this purpose, after earlier finding a reluctance of either developers or municipalities to apply for this money on a traditional

loan basis. The Illinois EPA Brownfields Revolving Loan program gives the municipalities up to 15 years to repay what they can from their proceeds resulting from redevelopment of the property and also gives the municipality first priority on using the money it repays for loans on other eligible brownfields projects in the community.

Since this approach began in 2004, the Illinois EPA has authorized five loans for a total of just under $2 million, with a cap of $425,000 per loan, from the Brownfields Revolving Loan Program and anticipates obligating the balance of the full $3.5 million by early next year.

Illinois has also strongly encouraged municipalities in the same region to work together to pool resources and share creative ideas. For example, in the Illinois Quad-Cities area, Illinois EPA has worked not only with individual municipalities but regional economic development groups to provide nearly $900,000 in state grants and $455,000 in leveraged U.S. EPA funds, as well as extensive technical assistance for brownfields sites in four adjacent communities. The IEPA is also currently working with the South Suburban Mayors and Mangers Association and five individual municipalities to build a regional partnership for brownfields redevelopment in the South Cook County area near Chicago. So far, the Illinois EPA has provided these communities more than $1.8 million in brownfields grant funds, which in turn was leveraged to generate an additional $2 million in brownfields cleanup funds for the area.

Illinois EPA also assists communities in making maximum use of all available resources and some of our municipalities have moved difficult projects along by obtaining state investigation grants, federal brownfields grants and federal USTFIELD grants.

I believe that the Illinois EPA's successes have also been achieved because five key policies have been put into place. These policies have been continuously refined and improved as the State's cleanup programs have moved forward.

1. Illinois EPA established a comprehensive, unified, risk-based methodology for determining remediation objectives that is based on the planned reuse of the property, rather than a one-size-fits all cookie cutter approach. In Illinois we call this the Tiered Approach to Corrective Action Objectives, or TACO, and it has proven to be an impetus to spur more cleanups at lower cost while still protecting public health and the environment.
2. Reduced liability concerns of land owners and developers through No Further Remediation (NFR) Letters and a Memorandum of Agreement between the State and U.S. EPA that states that U.S. EPA will not, subject to narrow limitations, take enforcement action under Superfund against firms that have received an NFR letter.
3. Established a voluntary cleanup program that makes timely and effective decisions under a well-understood set of procedures.
4. Provided web based access to key site environmental data about sites in cleanup programs at www.epa.state.il.us.
5. Established strong and growing partnerships with municipalities, EPA and other federal agencies, Illinois departments, other States, trade organizations, industrial and commercial owners, and land developers.

ILLINOIS BROWNFIELDS SUCCESS STORIES AND CASE STUDIES:

Alton Center Business Park (Owens-Illinois site)

Location: Alton

Area: 177 acres

Working with a developer specializing in large brownfields properties, Clark Properties, Inc. of St. Louis, this site of the former Owens-Illinois glass container factory, once the largest of its kind in the world and employing more than 5,000, went from years of abandonment and extensive contamination from more than a century of operations, to a successful environmental cleanup, with assistance and oversight from the Illinois EPA's Site Remediation Program. The site currently houses a business park and tenants have created more than 400 new jobs. Long-term redevelopment is expected to contribute more than 1,000 jobs and $80 million in private investment to the local economy.
This site won the City of Alton and Clark Properties the prestigious national Phoenix Award at the National Brownfields Conference in 2001.

Chicago Manufacturing Campus LLC

Location: Southeast Chicago

Area: 115.6 acres

This site is in an industrial corridor on the south side of Chicago between Wolf Lake and the Calumet River. Originally the site and the surrounding areas were wetlands. In 1941, Republic Steel purchased the site and began filling the wetlands with steel processing slag. CenterPoint Properties Trust acquired the site with the intention of redeveloping it

into an industrial manufacturing campus containing warehouses and support businesses for the expansion of Ford Motor Company.

For the purposes of evaluation and cleanup, CenterPoint divided the site into eight parcels and enrolled them between 2003 and 2004 into the Site Remediation Program. Remediation of the various parcels has included the excavation and removal of hazardous and special wastes and the reliance on engineered barriers and institutional controls to minimize risks to future users of the site. Between 2003 and 2005, the Illinois EPA issued No Further Remediation Letters for the eight parcels for a total of 115.6 acres. The site is restricted to industrial/commercial land use.

The site is particularly attractive for redevelopment because it is located in Enterprise and Empowerment Zones, is a planned development with all new infrastructure and has ready access to I-94. Businesses locating on the campus include: Tower Automotive, ZF Lemforder, Brose Chicago, Inc., Lear Operations Corporation, Summit Polymers, Inc., S-Y Systems, VC Regional Assembly & Manufacturing LLC, and Ford Motor Company. CenterPoint was recognized with a Phoenix Award for this site during the 2004 National Brownfields Conference.

Byron Salvage Yard

Location: Ogle County

Area: 140 acres

The Byron Salvage Yard and the adjacent Dirk's Farm site located near the City of Byron accepted industrial waste including electroplating wastes and other materials (oil sludge, paint sludge, cutting wheels, solvents, and scrap metal) during the 1960s and early 1970s. On-site disposal of wastes included impoundments, dumping on the ground, spraying on nearby dirt roads for dust control, or burying in drums (which later corroded and leaked).

A series of regulatory actions culminated in the Byron Salvage Yard being placed on the National Priorities List (i.e., Superfund) in 1982. In 1984, the U.S. EPA constructed a fence to prohibit site access and provided bottled water to local citizens. In 1985 and 1986, the Illinois EPA disposed of approximately 11,000 drums and excavated, disposed or treated roughly 3,000 cubic yards of highly contaminated soils. In 1986, the Illinois EPA installed carbon filtration systems in affected homes to replace the bottled water supplied previously by U.S. EPA. In 1988, Illinois EPA connected approximately 180 homes to the Byron municipal water supply. In 1998, U.S. EPA extended municipal water services to 27 additional homes.

Investigations at the Byron Salvage Yard indicated that similar waste disposal practices occurred at the adjacent Dirk's Farm site. In 2002, excavation and off-site disposal of contaminated soil from the site was completed and long-term groundwater monitoring was initiated.

Construction was completed at both sites in August 2003. A five-year review is scheduled in 2008 to determine if additional groundwater remediation is necessary.

Savanna Army Depot

Location: Carroll & JoDaviess counties

Area: 13,062 acres

The Savanna Army Depot was founded in 1917 for ammunition manufacturing, testing and storage. In 1995, the Depot was placed on the U.S. Army's base closure list and officially closed in 2000. The U.S. Army is pursuing the cleanup of metals, pesticides, explosives, lead-based paint chips, and organic chemicals to allow increased management and public recreational use. To date, remedial actions have included excavation and disposal of contaminated soils, incineration, and stabilization and disposal of lead contaminated soils. The cleanup is estimated to cost $350 million.

The site contains 7,000 acres of uplands and 5,500 of bottomlands. At least 47 Illinois Endangered and Threatened animal and plant species have been observed at the Depot. The U.S. Fish & Wildlife Service is scheduled to receive over 9,000 acres to become the Lost Mound Unit of the Upper Mississippi River National Wildlife and Fish Refuge. In 2003, over 3,000 acres were transferred to the U.S. Fish & Wildlife Service. The remaining acreage will be transferred in the future as parcels are certified clean from environmental contaminants.

In 2004, over 500 acres were approved for transfer. Approximately 370 acres were transferred to the JoCarroll Depot Local Redevelopment Authority for industrial and

commercial ventures. The remaining 177 acres were transferred to the U.S. Army Corps of Engineers for recreational purposes and access to the levee.

BP Main Plant

Location: Wood River

Area: 600 acres

Constructed in 1907 and closed in 1981, the BP Refinery in Wood River was considered an unusable industrial brownfield. However, a partnership that includes BP, Triad Industries, RLJ L.L.C., the City of Wood River, U.S. EPA, and the Illinois EPA have undertaken the redevelopment of this site. In 2001, the project was selected as one of five RCRA Brownfield Prevention pilot projects to showcase the flexibility of the RCRA corrective action program. BP has invested more than $70 million for remediation. No federal or state money has been involved in the cleanup.

In 2002, a groundbreaking ceremony was held for phase I of the redevelopment projecting including the American Commons, a six-acre business and retail park and the 30-acre Deer Park Wildlife Habitat. The Deer Park includes an observatory and a walking trail.

To date, the Illinois EPA has issued No Further Action determinations for five areas of the site totaling 156 acres.

Special Brownfields LUST Fund Projects

Locations: Streator, Rock Island, Monticello, Belleville

Area: 5 acres (total)

The Illinois EPA administers the U.S. EPA Special Brownfields LUST Fund to help communities address contamination associated with leaking underground storage tanks. In 2004, the Illinois EPA awarded $100,000 to four communities (Streator, Rock Island, Monticello, and Belleville) to assist in the removal of nine underground storage tanks.

- The City of Streator was awarded $45,000 for the removal of four underground storage tanks from a former gasoline station next to the Streator Public Library. A portion of the site will become a commercial building and the remainder will become a parking lot serving both the library and the municipal building complex.
- The City of Rock Island received $10,000 for the removal of four cone-shaped underground storage tanks located at former drycleaner site. The building has since been rehabilitated and recently opened as a coffeehouse/café.
- The City of Monticello received $17,500 for the removal of a 12,000-gallon underground storage tank at the former Pepsin Syrup Company site in a west side downtown area. The site has considerable appeal to commercial developers because of its location near downtown Monticello. Monticello has also received the maximum $240,000 in state Municipal Brownfield Redevelopment Grant funds and $425,000 from the Brownfields Revolving Loan Program for cleanup and demolition at the dilapidated century-old pharmaceutical plant abandoned for nearly two decades.

- The City of Belleville received $25,800 to remove a 7,500-gallon underground storage tank located at the RUST Company site. Community leaders hope to convert the area into a business corridor.

RECOMMENDATIONS

Under the leadership of Governor Blagojevich, Illinois has expanded existing programs and developed new initiatives to clean-up and return brownfields to productive use. These efforts have accomplished far more in recent years than could have been expected, but the challenges and the inventory of sites remains large. The successes have occurred because Governor Blagojevich and other state and local leaders in communities throughout Illinois had the vision, the determination, and the persistence to make brownfields cleanup and reuse a reality. Much more, however, needs to be done, and more help is needed from the federal government and Congress to support these efforts. In my view there are three areas where support is critical:

First, I support the principles set forth in the proposed Brownfields Redevelopment Enhancement Act (H.R. 280) that authorize the Secretary of Housing and Urban Development (HUD) to make grants (without certain otherwise-required loan guarantees) to municipalities to assist in the environmental cleanup and economic development of brownfield sites. These grants would make brownfields - related environmental cleanup and economic development activities eligible for community development block grant (CDBG) assistance. By de-linking grants for brownfields development from section 108 community development loan guarantees and the related

pledge of community development block grant funds, as this bill proposes, more communities will have access to funding for redevelopment of brownfield sites.

Second, I support the continued funding of States and municipalities through the mechanisms of the Brownfields Revitalization Act of 2002. As both an agency director and a city mayor I have seen these funds catalyze brownfield cleanup and reuse. It is essential that this funding be provided at authorized levels, at the minimum, and preferably at increased levels. Demand for these cleanup funds far outstrips availability in Illinois and I am sure that is the case in most other states. I believe strongly this funding will more than pay for itself in the long run by reducing sprawl and its accompanied transportation and other infrastructure costs. In addition to grants, innovative and flexible leveraged loan programs, such as the Illinois Brownfields Revolving Loan fund, which I described earlier, should be encouraged. To support this revolving loan fund, Illinois is in great need of additional federal seed money to support requests for assistance from communities around our state.

Third, I support the need for a strong federal Superfund program to address the most egregious sites that are beyond the resources of owners, communities or States to address. Federal Superfund will continue to be needed as a critical backstop for handling the major contamination typical of sites on the National Priorities List. A strong federal commitment to Superfund is needed because no community can solve the problems of cleaning up heavily contaminated NPL sites on their own. As Mayor of Rockford I had to contend with a Superfund site extending over much of my city. Great progress has been made addressing this site; however, without a properly funded Superfund program, similar sites will lay dormant and continue to adversely affect the health and quality of

life for the citizens of those communities. The steady and substantial erosion of funding to states to implement their portions of Superfund needs to be reversed and I urge the Congress to tackle this difficult issue sooner rather than later as the inventory of unaddressed Superfund sites mounts in Illinois and across the nation.

I believe strongly that providing greater resources to clean up and redevelop our brownfields sites will pay off in healthier and more stable communities. Under Governor Blagojevich's leadership we have seen that happen across Illinois at thousands of sites but we need more help from the federal government and the Congress to address the thousands more that need a little extra help to move forward.

I also believe it is appropriate for Congress to further evaluate and pass legislation providing some form of tax credits for private entities that are remediating brownfields. Last year, H.R. 4480 was introduced in part for that purpose and hearings were held to consider its principles. Although H.R. 4480 did not pass, I commend Chairman Turner on his efforts to address through legislation some of the important deficiencies that are inhibiting brownfields cleanup and reuse. These impediments were identified in the General Accounting Office Report *"Brownfields Redevelopment: Stakeholders Cite Additional Measures* That *Could Complement EPA's Efforts to Clean Up and Redevelop Property*." I believe it would be appropriate for Congress to further evaluate the testimony gathered at the H.R. 4480 hearings and move forward on a bill that both addresses the principles and implementation concerns.

On behalf of Governor Rod Blagojevich and Illinois EPA, thank you for the opportunity to provide testimony today on this important subject.

STATEMENT OF ANDREW HOGARTH

Mr. HOGARTH. Good morning, and thank you for your interest in this huge program that Michigan feels requires a substantial coordinated effort by both local, State and Federal parties.

During the last 10 years, Michigan has done a lot to try to provide incentives to help redevelop brownfields primarily through a three-pronged approach: The first, providing financial incentives; the second, State funding to do site cleanup; and the third, a change in our liability standards. And I will talk about those as well as identify continuing obstacles that we see existing.

In terms of the financial incentives, we have a Renaissance Zone Program that has been created to encourage the development of selected areas across the State, and properties in those areas virtually have 100 percent of their real, personal and State and local income taxes eliminated.

Single business tax credits on a case-by-case basis are provided to help with the expensive demolition, environmental cleanup and other remedial actions at specific sites. Since June 2000, this program has awarded more than $273 million in single business tax credits, which we believe has generated more than $3.8 billion of private investment in distressed areas.

Tax increment financing. Under Michigan's Brownfield Redevelopment Financing Act, brownfield redevelopment authorities across the State are able to capture local taxes and school taxes to reimburse developers for cleanup-related costs. As developers develop a site and increase the value of their property, the additional increment in tax—not property tax—is captured by the brownfield authorities and used to reimburse the developer for their expenses.

Since 1996, more than $300 million in tax increment financing has been approved for more than 80 projects throughout the State.

In addition to those incentives, the State of Michigan has provided—spends a considerable amount of money directly to do site cleanup both through grants and loans to communities and by direct spending. Since 1992, we have provided $122 million in grants and loans for some 300 individual projects. This money is available to use for site assessments, cleanup costs and demolition.

In addition to the money we provide for grants and loans, we have spent over $585 million in State revenues in the last 17 years to investigate and clean up and monitor over 1,600 sites. Many of those sites were sites that have been abandoned and taxed to the communities.

Probably the biggest impetus to getting contaminated properties redeveloped in the State of Michigan has been a substantial change in the liability scheme under Michigan's cleanup law. In 1995, we went from a liability situation where anyone that bought a piece of contaminated property, whether they caused the contamination or not, being liable for it, to where they would not be liable for it in the future if they did a baseline environmental assessment. So a new purchaser or anyone that forecloses on a piece of property, like a bank, can conduct a baseline environmental assessment prior to or within 45 days of purchase, occupancy or foreclosure, and that baseline environmental assessment is intended to describe the existing contamination on the site in a manner that enables new releases to be distinguished from the prior contamination. If this is

done, and the baseline environmental assessment is submitted to the State, then the new owner or operator is protected from liability for the existing contamination.

As of 2005, the DEQ has processed 8,600 baseline environmental assessments. That means there have been 8,600 parcels of property in the State of Michigan that were contaminated that were transferred to new owners or operators, most of which probably would have not occurred in the past.

Our cleanup standards are risk-based and land-use-based, which helps assure that unnecessary cleanup expenditures are not made. I mentioned at the outset that this requires substantial coordinated effort. We put substantial effort into working closely with communities. For example, with the city of Detroit, we meet at least bimonthly with staff at high levels of both the city of Detroit and the State of Michigan, multiple agencies, to identify barriers to redevelopment of specific properties and bring the resources and government decisionmaking to the table that is necessary to help facilitate projects in a hurry. And, in fact, we have directed over $100 million in State funding to city of Detroit projects in the last 10 years.

What obstacles remain? Federal liability continues to be a problem. Many potential property transactions fail due to the inability of the buyer to resolve liability under RCRA, and to some extent CERCLA. However, we do have a Memorandum of Agreement with EPA that says that as long as a developer is in compliance with the State's cleanup program, that EPA will, for the most part, take a hands-off approach. However, the inability of a prospective purchaser to resolve RCRA liability remains a substantial hurdle.

Another obstacle is unrealistic expectations on the part of the developer and the buyer or seller, lack of comprehensive planning by communities, lack of sufficient site characterization, overwhelming predevelopment costs, lack of startup funds for small businesses, and lack of State and local government resources. We will not be able to provide the funding we have at the State level in the future.

I want to thank you for your interest in this program and applaud your efforts to try to address it at the Federal level.

[The prepared statement of Mr. Chester follows:]

Testimony for the House of Representatives Government Reform Subcommittee on Federalism and the Census

Oversight Hearing
"Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfields Problem?"

Submitted by:
Michigan Department of Environmental Quality
Steven E. Chester, Director

Testimony Given by:
Andrew Hogarth, Chief
Remediation and Redevelopment Division

Michigan's Brownfield Redevelopment Programs

I. Introduction and Background – Michigan's History of Industrial Development and Current Trends

II. Challenges of Brownfields

III. What Michigan is Doing to Overcome These Challenges

- A. Tax Incentives
  - 1. Renaissance Zones
  - 2. Single Business Tax Credits
- B. Economic Development Incentives
  - 1. Tax Increment Financing
- C. Funding for Contaminated Site Assessment and Cleanup
  - 1. Site Assessments
  - 2. Site Cleanups
    - a. Grants and Loans
    - b. State and Federally Funded Cleanups
  - 3. Other Redevelopment Programs
- D. Legislative Changes to Liability

IV. Continuing Obstacles to Brownfield Redevelopment

V. Contact Information and Websites

I. Introduction and Background

Michigan has a long history of industrial development. Most people think of the auto industry when they think of Michigan, which is very fitting. Automobile manufacturing began in Michigan at the turn of the last century and the auto industry grew in prominence throughout the early 1900s. In addition, Michigan is home to other industries as well. Major chemical manufacturing businesses were established in Michigan in the late 1800s, as were large furniture, paper, food, and pharmaceutical industries. These and other industries all required thousands of laborers, and contributed to the rapid urbanization of Michigan's cities throughout the first half of the 20th century, thus creating the foundation for today's focus on brownfield redevelopment.

Changes in development patterns started in the post World War II housing boom. Most residential areas of the larger cities were already built out, and new homes were being constructed in the nearby suburbs, attracting families. Even as the suburbs grew, most industrial activity still occurred in the cities. Over time, however, businesses followed their employees to the suburban areas, enticed by cheap land, lower taxes, highway access, and a ready and willing skilled workforce. Additionally, technology and manufacturing advancements created a need for different sized and flexible production space, and increased auto transportation led to a need for large parking areas for employees. These and other causes led to an abandonment of obsolete commercial and industrial buildings and very often contaminated land and groundwater due to decades of manufacturing related activities. These abandoned properties, with all their attendant physical and environmental challenges, are what we now refer to as "brownfields."

It is important to note that the abandonment of outdated or inefficient buildings and properties is still occurring in Michigan. The first tier suburbs that benefited initially from the post war boom are now facing the loss of jobs, businesses, and residents to their once-rural neighboring communities. In an effort to remain viable in an increasingly competitive marketplace, many Michigan businesses are shutting their doors in order to reduce their costs and find a competitive advantage. In the last two years, major manufacturers in Albion, Greenville, Marshall, and Grand Rapids have either closed their facilities completely or have announced that they will be closing and moving major parts of their operations. These plant closings not only have a substantial impact on local economies, but also leave properties that have little or no chance of ever being used in the same manner.

II. Challenges of Brownfields

Brownfields have several unique attributes that make them not only more expensive to redevelop, but also make it difficult to attract private investors.

Obstacles include: little or no information regarding historical material handling and disposal practices and the environmental consequences that may result from those practices; extremely high investigation and remediation costs that must be incurred before any construction activities can take place (adding months or years to the development); outdated infrastructure such as roads, water, sewer, and electrical service; and demolition costs. Many brownfield sites have to be completely converted to other uses, such as commercial or residential, either due to changing land use conditions or the incompatibility of more intensive property use with the surrounding neighborhoods. Communities that want to facilitate redevelopment by acquiring brownfield sites are, for the most part, unable to find funds to purchase property. In assuming such a custodial role, they frequently cannot afford to undertake the steps necessary to protect the public from existing environmental hazards (known as "due care" under Michigan's program) prior to finding a developer, much less to procure cleanup funds without an interested developer ready to take over when the site is prepared.

III. What Michigan is Doing to Overcome these Challenges

Michigan has been a leader in promoting redevelopment of brownfield sites by taking a three pronged approach at eliminating development obstacles. This approach includes - the use of numerous economic development and tax incentives; public investments to fund cleanups; and changes in liability standards to allow new purchasers to avoid liability for contamination that they did not cause.

A. Tax Incentives

1. Renaissance Zones

The Renaissance Zone program is a valuable and effective tool. Created by PA 376 of 1996, it is used to encourage the development of selected areas across the state. Businesses located within these zones are exempt from:

Local Real Property Taxes (General property taxes on land and buildings are nearly 100% abated);

Local Personal Property Taxes (These general property taxes are nearly 100% abated for the business' personal property that is located in the zone);

Six mil State Education Tax (SET) (The state property tax levy for schools is 100% abated);

Single Business Tax (A tax credit is allowed against the Michigan Single Business Tax (SBT) for business activity attributable to the zone);

Local Income Tax (City corporate income taxes, if applicable in the zone, are 100% abated);

Utility Users Tax (This applies only in the City of Detroit, which levies a 5% tax on utility bills. Businesses located within one of the zones are exempt from this tax).

Residents in these zones have the same benefits, including exemptions from both local and state income taxes. Currently, there are 152 geographic locations in 38 of Michigan's 83 ties that are virtually-tax free.

2. Single Business Tax Credits
The state of Michigan provides Single Business Tax (SBT) credits, on a case-by-case basis, to help with the expense of demolition, environmental cleanup and other remedial actions needed to facilitate reuse of undesirable properties. Credits are available for up to 10% of eligible investments to a limit of $30 million. All brownfield SBT credits must be applied for through the Michigan Economic Growth Authority (MEGA). (Brownfield SBT credits awarded for $1 million or less must be approved by the chairperson of MEGA. Brownfield SBT credits awarded for over $1 million, but $30 million or less, must be approved by the MEGA board.) Since June 2000, the program has awarded more than $273 million in credits that in turn have generated more than $3.8 billion of private investment in Michigan's distressed urban and suburban communities. One major advantage of these credits, is that a developer can pass them through to subsequent purchasers and lessees, or lenders can accept credits to offset the risks of their investment in the projects.

B. Economic Development Incentives

1. Tax Increment Financing
In addition to qualifying for SBT credits, contaminated and, under Michigan's Brownfield Redevelopment Financing Act (PA 381 of 1996, as amended), some blighted and functionally obsolete properties, may qualify for tax increment financing (TIF) for specific redevelopment-related costs. This allows projects that are identified by one of 249 Brownfield Redevelopment Authorities across the state to capture local taxes and school taxes to reimburse developers for cleanup-related costs. An eligible property is property that was used or is currently used for commercial, industrial, or residential purposes and is either in one of 103 qualified local governmental units (core communities) and is known to have been impacted by releases of hazardous substances at levels that exceed criteria (a "facility" as defined in Part 201 of the Michigan Natural Resources and Environmental Protection Act), is functionally obsolete, or blighted **or** is not in a qualified local governmental unit and is a "facility" under Part 201. Parcels that are contiguous and adjacent to the eligible property are also considered eligible if development of the contiguous parcels will increase the captured taxable value of the subject property.

Baseline environmental assessments, "due care" actions and other cleanup activities qualify for TIF at facilities, and demolition, lead and asbestos abatement and infrastructure improvement costs qualify for TIF in the core communities.

The Department of Environmental Quality has approved over $66 million in eligible environmental activities costs at brownfield sites at some 80 different projects. These activities are expected to generate $1.5 billion in private investment, create 8000 jobs and redevelop some 1700 acres across Michigan.
The MEGA Board has approved over $241 million in total infrastructure and site preparation activities from over 81 work plans in 50 of Michigan's core communities.

C. Funding for Contaminated Site Assessment and Cleanups

1. Site Assessments

Assessing brownfield sites is a critical component in the redevelopment process, giving a full picture of the historic uses of a property, where contamination might be present, how much cleanup will be necessary, and to help potential developers to understand their risks and obligations. The DEQ has been a leader in providing grants to local governmental units to perform Phase I and Phase II site assessments. 117 grant projects, supported from state funds, have been given to 44 communities to do site investigations to support redevelopment efforts. In addition, the DEQ's Superfund Site Assessment Group performs up to 12 brownfield assessments for local units of government every year. They have completed over 100 such assessments in Michigan communities. Funding for this program comes from the EPA. In addition to these programs, the DEQ received a $250,000 EPA site assessment grant in 2004 to conduct Phase I and II assessments at 7 rural brownfield sites in conjunction with state funded cleanups.

2. Site Cleanups

The DEQ has programs which provide grants and loans directly to communities for redevelopment projects and the DEQ directly oversees state-managed cleanups including state-lead Superfund site cleanups.

a. Grants And Loans

Since 1992, Michigan has provided local governments with $122 million in grants and loans for some 300 individual projects. This public investment helped to create an estimated 13,700 jobs and leveraged some $2.7 billion in new investments. In 2005, $3.4 million in grants were awarded to 8 recipients and $1.4 million was loaned to 5 recipients. Currently there is about $12.9 million in grant money available (plus another $7.5 million to be appropriated), and about $9 million in loans (with another $22.5 million to be appropriated, plus proceeds from loan repayments). Either grants or loans can be used for site assessments, cleanup costs, and in some circumstances, demolition. Lead paint and asbestos abatement are eligible expenses for grants and loans.

b. State And Federally Funded And Managed Cleanups
The State of Michigan has also invested state funds to investigate, clean up, and monitor 1674 individual contaminated sites, spending over $585 million in the last 17 years. This includes over $440 million from two environmental bonds passed in 1988 and 1998. Many of these sites have been abandoned or tax-reverted and are now owned by the state or municipalities. This also includes liable party cleanup sites that the state is overseeing.

Under the Superfund program, the DEQ has 20 projects currently managed where the state is the lead on a least a portion of the project and 13 that are completed.

Using the state's collection of fees for wholesale gasoline sales, the new Refined Petroleum Fund is being proposed for $45 million for cleanups of leaking underground storage tanks (LUSTs) under a reimbursement program to owners and operators, and $15 million for state-lead cleanups of orphaned LUST sites.

3. Other Redevelopment Programs
EPA grants/loans: Statewide, the DEQ and county and municipal governments have received $18,895,000 over the last 3 years under the EPA's new brownfield programs for site assessments, cleanups, and revolving loan funds.

Waterfront Redevelopment Grants: Over $49 million dollars from the Clean Michigan Initiative was granted to 62 grant projects which helped clean up and revitalize waterfront areas, which included providing public access, and improvements in public safety and water quality.

Cool Cities: Governor Jennifer Granholm's Cool Cities Initiative promotes downtown and surrounding neighborhoods that are mixed use, pedestrian friendly, safe and clean, diverse, densely populated, and function 24/7. This Initiative is a multi-faceted, multi-agency effort that emphasizes coordination and collaboration. In order for the state's overall economy to succeed, its traditional downtowns and centers of commerce must gain population, generate business opportunities, and attract private investment. Cool Cities grants have funded 20 projects in 2004, and 29 projects in 2005- at $100,000 per project.

Web-based Information: The DEQ uses the web to provide public information on cleanup standards, tools, contacts, etc., including updates on field work, new funding opportunities, and cleanup standards.

Collaboration with Other Agencies: The DEQ works directly with the Michigan Economic Development Corporation to identify cooperative

development efforts, ensure program and policy consistency and help identify cleanup and development needs for communities.

D. Legislative Changes to Liability

- Probably the biggest impetus to getting contaminated properties redeveloped was the change in Michigan law from one of strict liability to a causation-based liability standard. Under Part 201 of the Michigan Natural Resources and Environmental Protection Act of 1994, as amended, new purchasers of property can be protected from liability for existing contamination that they did not cause or contribute to through performance of a Baseline Environmental Assessment (BEA). A BEA is an evaluation of the existing conditions at a property so that in the event of a future release of a hazardous substance, there is a means of distinguishing the new release from existing contamination. To ensure the protection of the public health and safety, property owners and operators must comply with Due Care requirements that include preventing exacerbation of existing contamination and mitigating unacceptable exposures. As of August 25, 2005, the DEQ has processed 8616 Baseline Environmental Assessments and 2174 Due Care compliance determinations.
- Michigan's cleanup standards are risk-based and reflect the potential for human health risk from exposures to potentially harmful substances at sites of contamination. The land-use based cleanup standards are based on the intended use of the property. The cleanup categories include residential, commercial and industrial, with residential being the most restrictive based on the greatest opportunity for exposure. A facility cleaned up to residential standards is considered safe for all uses. Commercial and industrial properties pose different risks of exposure and the criteria for such cleanups reflect those differences. There also are categories of "limited" closures that allow for protection of the public health and safety through deed restrictions and institutional controls. Ultimately, the degree of cleanup is based on the risk of exposure.
- Land-use controls, such as deed restrictions and ordinances, are the other leg of the brownfield redevelopment table. By ensuring that such protective measures as barriers, groundwater use limitations, and monitoring continue at sites where contamination exists, we can better anticipate the need for future actions, while minimizing the cost to business to fully remediate their properties.

IV. Continuing Obstacles to Brownfield Redevelopment

- *Federal liability*- many potential property transactions fail due to the inability of the buyer to resolve liability under RCRA, and to a lesser extent, CERCLA. The EPA has made strides in eliminating the CERCLA liability issues, but the inability of a prospective purchaser to resolve RCRA liability

remains a hurdle. In 1996, Michigan entered into an MOA with the EPA which recognized the state's BEA program and limited CERCLA liability issues to National Priority List sites.

- *Unrealistic expectations*- both on the part of the liable parties who own the sites and the buyers who plan on redeveloping the site. One thinks the property is worth more than what it is, the other wants to get as much profit from the deal as possible- thereby creating a disconnect between what the contaminated site is worth (market value minus remediation and transaction costs), and what it may be worth after cleanup.
- *Lack of comprehensive area planning*- a brownfield redevelopment project can be much more successful if done in concert with other nearby supportive developments. In order to achieve the most long-term success for brownfield redevelopment projects, communities need to have comprehensive plans.
- *Lack of sufficient site characterization*- parties interested in redeveloping brownfield sites frequently have an insufficient understanding of the environmental conditions present at those sites. Previously unknown or misunderstood environmental conditions can have significant impacts on the viability of brownfield redevelopment plans. When coupled with the rapid pace that redevelopment transactions often have, this frequently gives rise to significant project delay, increased project cost, and associated controversy.
- *Overwhelming pre-development costs* such as lead and asbestos abatement, demolition costs, and infrastructure replacement- Often the initial investment to get a property ready to be redeveloped is enough to prevent all but the most financially secure developers from even considering a brownfield site. More funding needs to be put into getting buildings either prepared for rehabilitation or demolished to make way for new development, and to invest in new infrastructure.
- *Availability of other properties* that do not have environmental issues (market competition)- Regardless of how much public support is provided, greenfield sites are still highly competitive in terms of their locations, infrastructure, and amenities, most of which cannot be duplicated at brownfield sites.
- *Lack of start-up funds for small businesses*- Small businesspeople need to be provided as much help as possible in order for them to work their way toward a successful business endeavor when it is occurring at a brownfield site. SBA loans and guarantees are not enough.
- *Lack of local government resources*- The inability of local governments to adequately deal with vacant, dangerous buildings, property ownership, and other issues related to brownfield sites is due to several circumstances, including lack of funding, absence of state legislation to clear land titles, and bureaucratic red-tape. Land Banks may fill some of this gap for tax reverted properties, but so far have not shown much success from a brownfield perspective.

- *Lack of federal support for LUST cleanups*- Approximately $1 million a year is passed through to the DEQ for staff to oversee activities at over 7000 open LUST facilities. No funding actually goes toward cleanups of these sites.

V. Contact Information

Michigan Department of Environmental Quality,
Remediation and Redevelopment Division-
Andrew Hogarth, Division Chief- 517-335-1104, hogartha@michigan.gov
Ronald Smedley, Brownfield Information Coordinator- 517-373-4805, smedleyr@michigan.gov

Environmental Sciences and Services Division
Brownfield Grants and Loans
Susan Erickson, Environmental Stewardship Grants and Loans Unit Chief- 517-241-8707, ericksos@michigan.gov

Michigan Economic Development Corporation- Vern Taylor, MEGA Board Activities Director- 517-373-7696, taylorv@michigan.org

Michigan Department of Environmental Quality: http://www.michigan.gov/deq

Cool Cities: http://www.coolcities.com/

Michigan Economic Development Corporation: http://www.michigan.org/

Renaissance Zones:
http://medc.michigan.org/services/sitedevelopment/renzone/index.asp

Links to Brownfield Legislation in Michigan:
www.michiganlegislature.gov

Brownfield Redevelopment Financing Act, Act 381 of 1996
http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-381-of-1996

Natural Resources and Environmental Protection Act, Act 451 of 1994
http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-451-of-1994

Land Bank Fast Track Act, Act 258 of 2003
http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-258-of-2003

Clean Michigan Initiative, Act 284 of 1998
http://www.legislature.mi.gov/mileg.asp?page=print&objName=mcl-act-284-of-1998

Mr. TURNER. Well, again, I want to thank each of you for participating and bringing your unique knowledge and expertise, and I want to thank you for your dedication to what is an important issue both for your communities and the government, and nationally.

It's interesting in listening to each of you—and, Mr. Scott, you are right, at the base you have a real estate transaction that you're doing, and I was thinking of all the different elements of expertise that you must have to do your jobs, and certainly you must have real estate background, because you have ownership issues, and you have use issues. You need environmental backgrounds because you're dealing with both assessment and remediation; your legal background, issues of liability, financing issues, not only just the products that are available, but in dealing with the financial institutions and their comfort level. And then you have, Mr. Hogarth, what you said was the numerous governmental entities. Of course, you've got numerous laws and regulations, and then after dealing with all of that, you get to go in and invite the private sector and encourage them that this really is a doable and easy transaction when they are not necessarily going to have that expertise. So I want to congratulate you on what you're each accomplishing, and we want to learn from this opportunity.

One of the things that I'm struck about with your expertise is that we often hear anecdotally that the characterization of these sites—that when the assessments have occurred, that generally people are finding them to be less contaminated than suspected. Also, though, we keep hearing anecdotally that the programs that are currently in place might not yet be reaching some of the most difficult sites to develop. So we may only be, in other words, our process may be so selective that we're resulting in the selection of easier sites, and therefore running into less contamination.

I would like if you would each talk about what you're seeing that people are experiencing in these programs; as they're happening in communities, as they're happening in States, what are we seeing in the characterization of sites, and how penetrating are these programs? Are we getting at some of the worst sites? And certainly that brings into the issue of those sites that have the greatest economic potential.

Mr. Bartsch, we will start with you.

Mr. BARTSCH. I guess I would start by saying what we have seen nationally by looking at the data from the EPA grant programs is that about one-third of all sites that are assessed using EPA funds actually are not contaminated at all, they just look lousy. And again, it is that perceptual issue there that has really been an inhibitor, and that is really one of the reasons why EPA has been able to leverage so much private investment, because sometimes it means only a few thousand dollars for a preliminary assessment to really show that there is nothing there, and then the redevelopment process can go forward.

I think Mr. Kanjorski hit on a really critical issue in this whole thing in his opening remarks, and that is there has not been in many places enough information gotten out to local officials in the field who are dealing with these sites. I probably do 50 or 60 workshops a year looking at brownfield basics, and there still is a huge

audience out there that does not really have a full understanding of the situation that you talked about, Mr. Chairman, where you really have to pull all these different components together.

I think a really good example of how information is needed can be found by looking back. The original brownfield expensing tax incentive, which passed in 1997, got virtually no use at all the first few years. One of the reasons for that was that it was viewed at complicated; people didn't understand how it worked, they didn't understand the benefits, so as a result it really didn't get very much use. I think there is a real need, as part of this process, to get information out there, which is why I think, again, efforts like you're doing are important.

Ms. MCGINTY. Thanks, Mr. Chairman. I wanted to say at the outset, we all touched on, one way or another, the liability questions. We do need further work there, but I do want to commend U.S. EPA. They have been terrific to work with and have really been trying to be quite responsive on all of these issues.

You said, Mr. Chairman, and I agree, these issues are about real estate transactions, and real estate is about location, location, location. And for us the challenge, as you say accurately, has not been that the site is too nasty to remediate. Remediation technology has evolved to the point where those sites can be cleaned up. Rather, location and the character of the site, which brings us back to the tax and grant incentives, has been most challenging.

On the small-scale site, those sites are disadvantaged even though they may be the corner dry cleaner. We have cleaned up many of them, we know how to do it, it is not that complex. But the return on investment in redeveloping a site of that size doesn't always pencil out for the developer. So again, not the contamination per se, but the ability to have tax and grant and other financial incentives to achieve the kind of return on investment that is required.

On the large-scale side, the same, at the opposite end of the spectrum where the site is so large, the risk is holding the property for the length of time that will be required to line up first your anchor and then your follow-on tenants. And so, again, financial incentives to bridge that risk gap where a developer is holding a large-scale property in the attempt to market that property and see developers come or renters or leasers come back into that property. Thank you.

Mr. MAGILL. Thank you, Mr. Chairman.

Our perspective would be, first, to follow what Ms. McGinty said, that local decisionmaking and market conditions affect choices about the properties that communities will look at. Once that occurs, the conditions on the site will vary. And one key factor is that most grant programs and loan programs come with a timeline to invest the dollars and compete the cleanup. More challenging cleanups with longer schedules, higher complexity, which often has to deal with groundwater, begin to move off to the side because of the time to actually complete the work.

So you have developers who have a recognition that time is money. They're not looking to work on the most difficult sites, but sites that have locational advantages, Ms. McGinty touched on, produce a community benefit, and can be cleaned up on a timely

and efficient schedule at a reasonable cost, I think are what we are seeing. And so some of the more challenging sites with the longer timelines of remediation are not being seen, at least in Ohio and perhaps in the other States. Thank you.

Mr. SCOTT. I believe the two premises that you had, Mr. Chairman, were that many of the sites are less contaminated than we thought, and we may not be getting at the worst. And I would agree with both of those from my experience in Illinois, for a lot of the reasons that have been said, but part of it also, when you look at it, location is very important. It will differ in each State depending on where in that State that you are. What is transparent in terms of the real estate market in downtown Chicago, for example, where there are a number of brownfield sites that have been redeveloped and have become, you know, magnificent buildings—a lot of riverfront development, a lot of other things that have been substantially cleaned up—the real estate market and the cost of land in the Chicago area make it such that development can be price-competitive with developing somewhere else, and there isn't that much land available in other places.

If you go to other municipalities throughout the State, to Rockford or Springfield or Joliet, it is very different; the cost of land is much different, the availability of land is much different depending on where you are in that particular community. And then if you go to southern Illinois, the economics are completely different than that. So a lot of sites that otherwise would be cleaned up, or if you were in Chicago if these sites were there, would be cleaned up very quickly, get left behind.

And again, that just underscores what I think everybody has been saying, that it is so important to try to provide those incentives that make the playing field level. They give the private investors, the private insurance companies, the banks, the others that have to participate in this the reason to do this particular site as opposed to just building out into the next greenfield.

Mr. HOGARTH. Our experience is that a major portion of the brownfield sites are not significantly contaminated. They are contaminated to the point where they exceed residential criteria, but they don't represent a hazard that makes them not reasonable to redevelop. Now, that's a major portion of the sites.

But I need to point out something about Michigan's liability standard that changes the dynamic for a new developer. I mentioned the baseline environmental assessment process, and if someone does a BEA, they don't have to clean up the site because they're not liable for the existing contamination. Well, that makes the economics much more favorable to the developer. The developer, though, does need to do something in terms of the contamination. They need to not exacerbate it, they need to assure that they don't, by virtue of their use of the property, cause any unacceptable exposures to occur, and they need to take reasonable precautions about what third parties might do, like trespassers.

Now, often what that means is that someone will come onto a piece of property, do a baseline environmental assessment, and determine all they have to do to make the property safe to use is pave it and put their building on it. There may be contamination in the soil, contamination in the groundwater that may migrate off-

site, but the new owner isn't responsible for dealing with it. Now, what that does is it transfers responsibility to public funding when those hazards need to be dealt with. If we can't get the liable party to deal with it, then the State ends up having to address that with public funds.

Now, that is a step that Michigan took, which is significant, though, to try to level the playing field more to get more people to reuse contaminated sites. And of course, there are a lot of sites that are megasites, if you will, that cost hundreds of millions of dollars to address, that we don't think will be able to be redeveloped in our lifetime, but they are few.

Mr. TURNER. Mr. Kanjorski.

Mr. KANJORSKI. This is something that Congress doesn't pay enough attention to.

You know, in listening to your various testimonies, it strikes me that we really have multiple issues here. One is site-specific probably from poor manufacturing, past experiences in major metropolitan areas of the Rust Belt, if you will, and then massive land cleanup, coal lands cleaned up. And I've had more of an emphasis on coal land cleanup simply because the little sites probably do eventually take care of themselves in some way from an economic standpoint, or at least lead toward that, whereas when you get to the coal mine cleanup, it becomes astronomical.

My experience is that we are pouring an awful lot of money into engineering costs. I was thinking of your site assessment. Every small site assessment I have ever seen, it is almost like Washington lawyers, they start at $100,000 and go up and you really can't get an engineering report even on a small cleaning establishment for minimal amounts of dollars. They're very expensive propositions.

On coal land cleanup, though, I discovered that, in the Abandoned Mine Program, 34 percent of the cost is being spent for engineering fees, which is horrendous when you think about it, and yet there is advanced technology out there, GIS systems, that can bring that cost down by at least a factor of a half, if not more, and we haven't utilized it on a national scale.

The other thing I was listening to is that obviously it's a matter of money, and I was curious from your experiences how much—you brought up the point, Mr. Bartsch, that you hold seminars and outreach, but have there been sort of national conventions on this issue where we get best practices, we look at models?

One of the things that disturbs me the most is we're creating another Beltway industry; someone needs extraordinary expertise to know how the hell to get through the Federal system and then the 50 State systems. And not that there is political influence, but, boy, if there ever were—I should say that to Ohio—if there ever were an interest in having political influence, I mean, this would be the ideal area because the developer or the public sector, municipality, nonprofit organization are just absolutely in the grasp and control of that decisionmaking process. And it is so convoluted, it seems to me, that we should step back and try and do a larger overview problem.

One situation that I ran into—and I put it in the form of a bill—looking at mine lands, I suggested that we do a mine land area re-

development act. And we've identified millions of acres in the country, just in my particular part of Pennsylvania about 160,000 acres, and the western part of Pennsylvania another 400,000 acres, astronomical when you look at it, if you look at it in segments. But if you compartmentalize it and say, OK, we're going to view this from a watershed perspective and do the entire watershed study and how the effect of the land and the water would be, how you were consistent.

Now, to accomplish that you need public ownership. You just have any number—in Pennsylvania, and I think West Virginia is famous for this, too, coal cutting means our land banks, they basically own very destroyed lands—I think Ohio is like that, too. They pay next to nothing in taxes, no incentive to move the land out, and they can wait there until land appreciates as far as they want to because there is actually no exposure. And if you don't get the cooperative effort of everybody within the watershed system, to do reclamation is almost meaningless. I mean, we are working on a 16,000 acre parcel of land reclamation now, but we have maybe 10,000 other land owned by coal cutters. If they don't participate, if they aren't designed into the system, doing our 16,000 acres really doesn't accomplish a great deal. Oh, it does in terms of inside the perimeter, but in terms of the totality of the recovery program, it doesn't work.

And I haven't seen any creativity on how we can put land acquisition together, whether redevelopment authorities should have the right to condemn, and how large they would have to be, what would be the authority to do that, what are the prices paid, what are the incentives.

The other thing I listened to is the use of tax credits, and I was just thinking up here it is a field day for lawyers and accountants. I mean, quite frankly, it probably is a very specialized field at this point with extraordinarily high fees, because who the hell else knows what to do?

Now, it seems to me that we have to create the funding, and you, Mr. Scott, pointed out we absolutely need the funding. My mine reclamation bill does a very simple thing, and it uses tax credits, except not individual tax credits awarded in States and by the Federal Government. But in totality, we say, look, we want to create a fund of $20 billion; we're going to sell it into the market, probably mostly to insurance companies, give them a tax credit in lieu of interest so they can write it straight off their return—they get a return today of probably 5 percent, thereabouts—and do it over a 30-year period, and now have a sufficient amount of money in one fund—now this addresses the coal aspect, coal land reclamation—and now require any of the participants on the State level or the local level to create a comprehensive application program. Maybe in the Commonwealth of Pennsylvania you would have six areas establishing what they're going to do with their land, how they're going to use it, how long it will take and the purposes for it. They would go in and get a long-term approved program for site evaluation, for site remediation, for reuse infrastructure, so that you would be moving from reclamation right into reuse or prospective reuse with sufficient funding in place for a period of 30 years to accomplish the end.

I haven't seen a lot of support for the bill on a State level; as a matter of fact, it is somewhat disappointing. I like State and local leadership, I want to encourage it, but, quite frankly, everybody having their own little custom-tailored program doesn't invite for efficiency. We've got to strip away and determine what is the easiest, best and most comprehensive approach, particularly in coal land. It affects 26 States in the Union.

Our $20 billion fund over 30 years will create enough funds to reclaim all of the abandoned coal lands in this country over 30 years. It will cost us in loss of tax revenues around $30 billion over 30 years. And in the end you will have a defined site, you will have a reclaimed site, and you will have utilities and improvements in infrastructure to make it a usable site.

That, I think, is one approach to coal land reclamation. The individual site remediation, I think we probably need a fund for that, too, and we could do it on a Federal level using tax credits, but we're probably talking about losing no more than $1 billion or $2 billion a year in revenue to the Federal Government. That equates to 2 days in Iraq. For 2 days in Iraq, we could clean up all the coal lands in the United States. If you look at it in another way, for actually 3 weeks in Iraq, that would pay for the entire program—not that we're going to withdraw from Iraq, but it may be a little bit of what should go into the equation sometimes as to what's important.

Now, my experience—and that's why I complimented all of your activities—this Earth Conservancy I mentioned in my opening remarks, 16,000 acres of land, we have reclaimed a little over 1,000 acres thus far. We have about 4,000 more to go.

We have never failed to receive more money back for the reclaimed property than the value of the original purchase of the property and all costs of remediation, because it is being done comprehensively. We are taking land that has $100 an acre value and in some instances moving up to $100,000 an acre in value, but that can only be done because we did a total comprehensive program. Using GIS systems, we know exactly how to go at it. And this is just a small experiment, 16,000 acres. What we want to take on is the entire 160,000 acres of the anthracite field. Now, what I am a little disappointed in, and I understand my good friend Rob is a progressive Governor, Governor Rendell in Pennsylvania is a progressive Governor, and the Governors want to get involved and the States want to get involved and they should. But unfortunately by doing it before we get involved, you are taking leverage away from us.

The fact of the matter is probably the States should get together and make the commitment we will put up X number of dollars in our funding; the only condition is that the Federal Government create a program to match or exceed that, maybe 75–25, something like that.

I know I am running over, Mr. Chairman, but I traveled the country about 6 years ago with then-President Clinton, and he knew my problem. We were working on the new markets initiative at the time and how that could impact on using land in developing distressed areas. So we spent a considerable amount of time eating

pork and drinking beer, and during those sessions we would just have an open bull session.

So he asked me, he said, "why haven't your people fixed that land?" Good question. Why don't people fix the land? Why don't the people in Ohio fix the land? Why hasn't Illinois fixed that land, or why hasn't Michigan fixed that land?

Because the people that live on those lands today didn't cause that problem. Most of them, if you look at the makeup of the population, are senior citizens or are a much older part of the population, and, quite frankly, getting to that stage now, your forward thinking sort of starts to limit because you are not going to be around 10, 15, 20 years when the project will be completed. So you ask yourself, why should I pay additional tax costs to repair land that I won't even see, that I didn't cause, I didn't get any benefit from, and more than likely my children and grandchildren are in California, Texas, or Virginia. So you are just not going to do it. So on a local level there is absolutely no incentive in taxing capacity to clean up the environment.

Now you go up to the State level. I don't know about Ohio, Illinois, or Michigan. I can tell you in Pennsylvania, if you are in a hard coal or soft coal area of Pennsylvania, you are not in Philadelphia or Pittsburgh, they just don't give a damn. They don't look at it every day. They don't live with it every day. It doesn't really affect their economy. So the largest portion of the tax ratables in the State have no interest in putting their money there. So the State has no interest to do it. Although progressive Governors, as Rob, have tried to move ahead and do these things.

It is a national problem when you analyze this, I think. Brownfields and the industrial sites are the result of industrialization in the United States 100, 150 years ago, when, like Japan, we had a growing economy. We didn't pay a lot of attention to our environment, but Japan went back and cleaned its environment. The United States abandoned it. It went out and took pristine land. It is now time that we pay back for our great industrialization by reclaiming these areas.

Second, I guess that these areas tend to be abandoned because we don't pay attention. Particularly in the mining area, we don't allow oil and gas industries to destroy an awful lot of land. We have a tremendous fight with the wild natures of Alaska now because we just don't really want to injure an environment sometimes in order to receive energy. But, hell, when we had the coal industry, whether it is bituminous or anthracite, we didn't give a damn. It was Katy get the door and do anything you wish. And they did. And they are gone. The coal companies are gone, the people that worked there are gone, the people that live there are too old to worry about it and aren't going to live that long, so they don't pay attention to it. The State doesn't want to do it because they don't live in the area. It is up to the Federal Government. This is our payback.

I think we are at a propitious time in America to look at long-term capital spending programs using bonding as opposed to appropriations. If you rely on appropriations, it is who has a hot issue today. Who would have ever thought that when we left this city in August, Louisiana, Mississippi, and Alabama were going to be the

recipients of a couple hundred billions of dollars of aid? It happens, and it is always just happening. Who would have ever thought we would be in Iraq for 2½ years? It happens.

It seems to me we have to take this off the appropriation area, put it onto a capital expenditure level, bond it with bonds and do it over 30 years, and make it an honest, hard commitment. But keep it at the local and State level.

I really do believe everything I have ever seen in abandoned mines when it comes to Federal programs, they really don't have the feel. It has to be done on the State and local level. And there will be differences, but there shouldn't be differences in the way laws apply, what benefits are available. And it shouldn't boil down to the competitiveness of one State putting a good program, an industry to reuse land in their State in competition with another State. If we get into that game, we are in a race to the bottom.

Instead, it should be going back to what I said. Look, all of this land, practically, when you look at it, particularly the coal mining land and Colorado and the other mining industry problems are a little different. Their land value is not highly likely to appreciate for use. But particularly knowing Pennsylvania, if we clean up Pennsylvania, our land value and reuse value will just explode, and all of our experience has shown that. I think Illinois and Michigan and Ohio probably are in that boat.

I would like to urge you, and I know Mr. Turner should take the lead on this on behalf of the Congress, but there are a few of us who would be willing to come out and spend a weekend somewhere really hacking some of this over with people of your standard across the country to come up with best practices and what we have to do at our level.

If we have insurance problems or if we have liability problems, the only reason we have them is, quite frankly, we are not very bright here, and we only listen when the sound is deafening, and it is time that you deafen us.

But I think, and my impression of Mr. Turner has been—and I watched him, he is a junior member, he has a heart for this, he understands it, he has the experience and the background to do it. That is a great commodity. He chose this specialty because he has an interest. So let's use him. He may be a Republican, but we will forgive him for that. But let's use him. But it is not a Republican or Democrat issue, it is an American issue, and we actually have a chance to make money for the country and for the people that live in these various areas and for industry. How can you beat that?

But we have to do it in some more comprehensive way that doesn't benefit private, political, or otherwise or economics flowing to anyone. Let's not build a Beltway industry. That would be the worst thing we could do. I am sure they are starting out there. There are a lot of good tax lawyers trying to figure out how they can turn a good dollar by doing this.

Although we want the private sector heavily involved, I think it will require nonprofit or governmental overall comprehensive planning to get to the scheme, to get to the application of what should be done.

In the process of cleaning up land, you are going to clean up water, too, and when you add the savings and the benefits of those things, in our little project-by-project attacking of this, it is going to cost us 5 or 10 times more than it would if we did it comprehensively. So we have the time. Let's do it right. Let's make it a war on anti-environmental activity.

But I happened to have an experience of being on Wall Street yesterday and meeting with some of the financial people. The first time in my life I have gotten the impression—I should say the first time in a decade—they are ready for a progressive era. They now know that America can't just live off its droppings, we have to be inventive. One of the most inventive things—and certainly of great value—is land. God ain't making any more. So it is up to us to make it or return it to its status of good use.

So I want to compliment you all. I didn't have particular questions. I was going to ask a question of Ms. McGinty, to have her have a chance to show her brilliance, but I will save that for another day.

Mr. TURNER. Thank you for your comments and thank you for your passion on this. I certainly look forward to working with you on this issue.

Mr. BARTSCH. Mr. Chairman, can I make a couple of observations on Mr. Kanjorski's comments, because I think what is really critical when we are talking about shaping brownfield programs and strategies, he was talking about a 16,000-acre mine site, and many of us were talking about quarter-acre gas stationsites, and we have named two sites. The real challenge is how do you structure something that really meets this?

I think what you need to do is really have flexibility to allow locals in the private sector to package grants and loans and bond proceeds and things like this together in a way that really works best for them to make this happen, to really do this.

Also from the State perspective, Mr. Kanjorski mentioned the role of new technologies, and there is no better place for new technology to gain acceptance in the marketplace than working through a State volunteer cleanup program to get it into the mix.

Second, I think in support, I would throw railroads into the mix as well as mines. We need to come up with ways that may not be conventional environmental ways to get those folks to the table, and it may be things like more rigorous enforcement of Sarbanes-Oxley or things like that.

Third is we are thinking about these incentive programs. There has never been an issue that has yielded more return on the public investment than the brownfields funding.

Fourth, I just wanted to mention to the committee that EPA, along with about two dozen other organizations, sponsors an annual brownfield conference which will be held this year in Denver, November 2nd to 5th. It is free. Please encourage your constituents to go. Several thousand people will get together to share information on best practices, on new technologies and on strategies, and it is really a good opportunity to get at some of the informational concerns that we have all talked about.

Thank you.

Mr. TURNER. The environmental tax credit bill, which I drafted and am working on the redraft for this Congress, has in it a mechanism for release of liability; the concern being that in setting up a tax credit program, we don't want it to be a revolving loan fund or result in just numerous lawsuits for recovery of the tax credits. We put the tax credits out and apply them for cleanup. We want to make certain that those are a subsidy and a gap filler.

But also we were hoping that we would provide an incentive for the past owners to come to the table, where in my experience from what I have seen so far generally, even if you have a successful brownfield cleanup, that still we haven't reached out and successfully brought those individuals to the table.

In looking at ways to structure liability relief, a suggestion has been made that the tax credit bill have as its liability relief mechanism a requirement that the parties enter the State voluntary cleanup programs; that in those State voluntarily cleanup programs, there is a bar of enforcement by EPA; and that what we would merely do is hook into those liability relief provisions.

So, for example, what we would have is a tax credit that would be administered by the State development agencies, as the low-income housing tax credit is, and that in the application that there would be preferential points that are provided to project that include the past polluter, the individual who has past liability, and the requirement that the redevelopment go through the State voluntary cleanup program, which would then, through the 2001 act, include the bar of enforcement by EPA.

So as each of you have experience in the issue of these State voluntary cleanup programs, I would like your positions and opinion as to whether or not that would be an effective liability release, since what we have found in trying to fashion this tax credit, when we put a liability release in it, we find that people either react very negatively to a whole new release package being created, or are very concerned as to what its limitations and scope will be.

If the State voluntary cleanup program bar of enforcement release is sufficient, if you are finding it is successful in giving people the confidence to enter into a program, then we wouldn't have to reinvent the wheel, we would be able to hook into this.

Kathleen, in your comments you said there is insufficient liability relief in the programs you currently have. So I am interested in your comments.

Ms. MCGINTY. Thank you very much, and I think the direction you are going is really encouraging. So let me be a little more precise in terms of where we do have full and effective liability relief and where we need further work.

Where we have full and effective—and maybe where each of us has a memorandum with EPA—is with regard to CERCLA and Superfund liability. Where Pennsylvania is the only State in the Nation with a further MOA with EPA is with regard to RCRA and TSCA liability. And there, this is the way that breaks down.

For a substantial part of RCRA liability, EPA has granted us in this MOA full liability relief upon successful completion of the State voluntary program, just as you say. However, where, for example, there is groundwater contamination, or where, for example, the proposed remedy is what is referred to as pathway elimi-

nation—in other words, the contaminant stays, but you block it off so that a human or sensitive ecosystem is not exposed—in those cases, to date anyway, EPA retains further enforcement authority.

With regard to TSCA, since that is the bravest new world, if you will, again we thank EPA for putting that on the table with us in our MOA, but so far it is procedural. EPA has committed that they will process the TSCA liability piece as we process the State, the CERCLA, and those pieces of RCRA which EPA has not retained overriding authority on.

So it is further closing out on RCRA and getting a formula together where TSCA also can be satisfied upon completion of the State voluntary program. That is the new universe we need to get into, which is the subject of our MOA, but where we are still working to make it real, and to really have one cleanup program.

The last thing I would just say, I want to pick up on your point about further points if you have the original party with liability at the table, the original responsible party, and come back to Mr. Kanjorski's point.

At least in a State like Pennsylvania, and I think with my rust belt colleagues here it is similar——

Mr. TURNER. It is an impressive lineup.

Ms. MCGINTY. But we are sunny personalities even if we are from the rust belt. Companies are long gone. I can assure you where there is a viable responsible party anywhere still in the mix, we do go vigorously after them. So the point is where there is a responsible party, to bring them to the table. But I just wanted to caution not to hold it against us——

Mr. TURNER. It is set up if they exist, if there is one.

Ms. MCGINTY. Thank you very much.

Mr. TURNER. Thank you. John.

Mr. MAGILL. The suggestion that follows the program mirrors what we do with the Ohio revitalization fund. All of our projects have to go through a State regulatory program so there is a performance-based outcome to be able to hang onto the grant. You perform or the community would have to repay the grant. So I think the key to this is that it is performance-based. I think this is really important in this particular industry. It demonstrates the citizens can get it done and get approved.

From our perspective, I think this is a good place to start because it is known; and the point has been made by other members, do not reinvent the wheel and create new mechanisms. It also then allows for a piloting operation. If it fails, you can make changes. You don't create something new and tinker with that.

The only caveat would be that in some States that the voluntary cleanup program does not cover all cleanups. Brownfields are a wider perspective. We would look forward to working with the subcommittee in the direction to try to make sure to try to capture all brownfields. We could look at RCRA and some of the other sites and not only get after the traditional ones.

Mr. SCOTT. I think it is going in exactly the right direction, because as has already been said by my colleagues here, this is pretty much what we do already. To get somebody into the program that each of us have, although there are some differences, you pretty much have to go through the voluntary site program, and that is

already set up, and there are MOUs with EPA to enable us to do that. So I think, as John said, it will help greatly because you really are just plugging in a new piece to something that exists, rather than creating a new program.

So I think it is heading in the right direction, with, as has already been said, the admonition it is going to need to encompass more than most of our MOUs do right now. In order for it to accomplish all of the things we are trying to do, that we are trying to do and that you are trying to do, it is going to need to be a little bit more broadly based than the MOUs have been to date.

Mr. HOGARTH. I don't have much to add to that. The devil is in the details, and we would certainly be willing to assist with further detailed review and comment as you move forward.

Mr. TURNER. Thank you.

Mr. BARTSCH. I would just add that I think that is a good approach, again, with the reasons given already to be looked at. Each State has a program in place, and I think what we saw after the passage of the national brownfields law a couple of years ago, the States will be able to then change to better fit the Federal structure that is laid out.

What is good about using the State voluntary cleanup programs, I think from sort of an environmental perspective, is it really does provide a recognized mechanism to provide some assurance to the community at large that these things are proceeding properly.

Mr. TURNER. Thank you. I want to give each of you an opportunity to add anything to the record if you would like at this point. If there is a question we didn't ask you or something you would like to respond to or any additional comments you have, to give you an opportunity for any closing statements, if any of you have to.

Mr. BARTSCH. I would just like to again thank the subcommittee for pursuing this. I think that I have been doing community development issues for a long time, and I have not seen one where sort of the environmental overlay on the economic development process has been so significant. Brownfields, as we have said, really are real estate transactions that happen to have an environmental twist to them, and our challenge is really working to structure programs that fit all of these different situations.

So, again, I encourage you to continue with your efforts, and as you do that, just to make sure they can be as flexible as possible to address as many different needs as possible.

Ms. MCGINTY. Thank you. Just two quick points, both of which derive from Mr. Kanjorski's remarks.

First, in terms of transaction costs and reducing some of the analysis that goes into these cleanup programs, we have instituted an initiative whereby the State will defer to a cleanup program for smaller, less complicated sites, if it is PE certified, if you have a professional engineer, a professional geologist, certifying to the cleanup. We do not do iterative reviews. We ultimately decide if it meets our standard, but we do not do the iterative engineering reviews. I share that for your consideration.

The second and last thing I would just pick up on, and we haven't really mentioned it here but it is inherent in the idea of a 30-year bond or patient capital, long-term capital. One of the things about these programs and these cleanups is once you have

the containment structure in place, it is forever and for always, amen. You need to know that those dollars will be there today, tomorrow, and well into the future so that the community and we all have the confidence that contaminant not only today, but 30 years from now, is still contained, that there has been no breach of the containment structure, etc. So the idea of long-term, patient capital could be very, very important to maintaining the integrity of brownfield remediation programs.

Mr. MAGILL. Thank you again, Chairman Turner, members of the community, for your interest in brownfields. I would only add that the programming needs to remain, I think, flexible with the local and particularly private market orientation because, at the end of the day, the private capital resources dwarf our ability to generate government investment; and if they can be attracted to brownfields, they will help us finance the cleanup, construction, resulting in the new jobs or the parks, and, as Mr. Scott referenced, invigorate the local communities, whether they are rural or urban. Thank you.

Mr. SCOTT. Thank you again, Mr. Chairman, and members of the subcommittee. I also wanted to say a couple of things about what I thought were the very good remarks by Mr. Kanjorski.

We too have an interest in mining cleanup, as well as in clean coal technology and the continued use of coal for an energy source, and have done a lot of things toward that regard in the last couple of years.

I think that from our standpoint, if you are going to do something more comprehensive on a national level with respect to mined lands, I think that would be a fantastic thing to be able to do. I think you would help to drive down the transaction costs that are associated with engineering, with legal fees, with financial fees that are associated with that. I think that is a benefit. But also a comprehensive plan to try to get at all of those, I think would be very good.

In terms of best practices or in help to develop any long-range plan, Mr. Bartsch mentioned there are other ongoing brownfields conferences. The State of Illinois—and I am sure all my colleagues do this as well—are continually reaching out to both the public and private sector, plus we have organizations like the National Brownfields Association which is doing that.

But in terms of if this was an offer, I will take you up on it. The suggestion that we sit down with other members who have an interest in this, myself and colleagues from Illinois and from other States, I would be more than happy to do that and would just make that offer to you; that anytime that is something you would like to explore, Mr. Chairman or Mr. Kanjorski or other Members, I would be more than happy to do that.

Mr. HOGARTH. I would just like to mention one piece of the puzzle that didn't get much attention today, and that is leaking underground storage tanks. Just in Michigan, we have 4,200 sites that are orphaned leaking underground storage tank sites. That is the places where the liable party is gone, bankrupt. That 4,200 sites we calculate represents a need of about $1½ billion, with a "b," just in Michigan to appropriately address them. They are spread all over the State, largely in urban areas, sometimes four corners

at an intersection, and they pose a significant part of our brownfield problem.

We have only been getting about $1 million a year out of the Federal trust fund to deal with these sites. So anything you can do to help address that problem would help the States.

Mr. KANJORSKI. Do you move in and drain the containers or do they still contain the pollutants?

Mr. HOGARTH. Well, in most cases, the tanks have been emptied. It is the material that has already leaked out into the ground, the soil, and the groundwater that poses the remaining hazard. Sometimes it is a significant hazard.

Mr. KANJORSKI. I had one in my district that we spent $30 million on, just one site.

Mr. TURNER. As we turn to our second panel, I want to acknowledge that although my hometown is Dayton, OH, and my district is in Ohio, my family roots are in Kentucky. And we have the mayor of Maysville, KY, David Cartmell, who is also the president of the Kentucky League of Cities, and, with Mr. Kanjorski's approval, we are going to add him to our second panel.

I would like to call for that panel. We will take a short recess.

[Recess.]

Mr. TURNER. We will reconvene as we prepare for the second panel. We are going to begin with Robert Colangelo, executive director, National Brownfield Association. Robert, I appreciate your being here.

I was reminded I did not swear you in. As you know, it is the policy of this committee that the witnesses be sworn in prior to their testifying. If you would please rise and raise your right hands.

[Witnesses sworn.]

Mr. TURNER. Let the record show that all the witnesses have responded in the affirmative. I think each of you will recall from when we began panel I that you have on the table a light system. Green is when you are to begin your comments, red is when you to are to end your comments. Each of you has been provided a 5-minute time period. We appreciate the fact you have provided us with written testimony and that you have an oral summary of your testimony. We will end with a question and answer period.

Robert.

STATEMENTS OF ROBERT COLANGELO, EXECUTIVE DIRECTOR, NATIONAL BROWNFIELD ASSOCIATION; JONATHAN PHILIPS, SENIOR DIRECTOR, CHEROKEE INVESTMENT PARTNERS, LLC; CHARLES HOUDER, DIRECTOR OF ACQUISITIONS, PREFERRED REAL ESTATE INVESTMENTS, INC.; KEVIN MATTHEWS, AIG ENVIRONMENTAL, DIRECTOR OF ASSOCIATION AND ENVIRONMENTAL RELATIONS; AND DAVID CARTMELL, PRESIDENT, KENTUCKY LEAGUE OF CITIES

STATEMENT OF ROBERT COLANGELO

Mr. COLANGELO. Mr. Chairman, it has been an honor and privilege to work with you to battle blight and really bring these properties back responsibly to redevelopment. It is also a pleasure to address the honorable members of the subcommittee, and we ap-

preciate your interest in improving State financial incentive programs related to the complex issue of brownfield redevelopment.

I come here today offering two perspectives, one as the founder of a private development company that has successfully redeveloped more than 1 million square feet of brownfield property in the Chicago area, and the other as the executive director of a nonprofit organization dedicated to the responsible redevelopment of brownfields, the National Brownfield Association, where we have more than 900 members from the public and private sector that are really the experts in the industry that are dedicated to bringing these properties back to responsible use.

My experience as a private sector developer is that State brownfield programs provide liability relief, financial incentives, and technical assistance. Most developers who purchase and prepare properties have come to rely heavily on the liability relief offered through State voluntary cleanup programs.

One of the strongest liability reliefs is provided by the Illinois EPA through its No Further Action letter. These comfort levels provide a defined level of liability relief to developers who have responsibly remediated sites and it gives them the ability to secure debt financing for these brownfield projects.

Technical assistance and financial incentives, while great ideas, are often impractical for most private development. The Ohio Clean Revitalization Fund is an example of a program that does work. Developers often consider incentives as an afterthought because of the perceived or real difficulties in securing them, the small amount of assistance typically available within a program in relation to the project cost and the time required to secure these funds.

It is my experience that most financial incentives go directly to cities or nonprofit development corporations and the limited amount of program funds that is available to the private sector often requires an intense investment of time and the use of expensive consultants to help navigate through the program eligibility requirements and the application process. Most traditional developers will pass on a brownfield site rather than take a chance on a project that will only work if government incentives are provided.

Two incentive programs that I have personally found that work well are tax increment financing and State tax credit programs. These incentives are attractive enough to convince private sector developers and investors to take a risk on the brownfield project. The use of brownfield tax credit programs has worked well both in New York, Michigan, and other States.

As time goes on, fewer easy-to-develop brownfield sites are available. Increasingly, cities are left with the harder, more complicated brownfield sites, and these sites will require meaningful government incentives to attract private sector investment and developer interests. The challenge to every government agency is to strike a balance, to be developer friendly, without being overly incentive-rich.

Brownfield sites by their definition require incentives to bring them to par with unimpaired properties. For government incentives to be meaningful to the private sector, programs should be easy to understand and administer, apply to a wide type of projects, allow

flexibility in the use of funds, provide meaningful funding amounts, and allow for unused funds to be transferred or refunded.

Chairman Turner, I personally commend your efforts to look for financial incentive solutions, and I support legislation which would create a Federal brownfield tax credit and that would allow for demolition and remediation expenses to earn a Federal tax credit.

Putting my other hat on as executive director of the NBA, I would like to introduce our recently completed analysis of State voluntary and brownfield cleanup programs. This could be a possible resource to you. Mr. Kanjorski, you asked about some resources and analysis of programs, and this paper was completed by the NBA as a result of our Brownfield Leadership Summit held in Washington, DC, in May 2005. In there we looked at all the State programs and made some key recommendations and we highlighted elements of different State programs that work. So we encourage you to look at this.

What we found is that although no single State has developed a "best program," many States have been very creative in developing specific program elements that work well. When designing incentive programs, we encourage you to consider the recommendations provided in this paper.

Again, Members of Congress are to be commended for their willingness to consider and promote new financial incentives that attract private sector investment to these properties. And I thank the committee for the opportunity to speak and look forward to your questions. Thank you.

Mr. TURNER. Thank you.

[The prepared statement of Mr. Colangelo follows:]

Statement of Robert V. Colangelo
Manager, Brownfield Development, LLC
&
Executive Director, National Brownfield Association

To the Honorable Members of the House Government Reform Subcommittee on Federalism and the Census, September 13, 2005: *Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfields Problem?"*

Dear Senators and Representatives,

It is a pleasure to address those members of Congress most interested in improving state financial incentive programs related to the complex issue of brownfield redevelopment. Thank you for providing me with the opportunity to testify at this congressional hearing.

I come here today offering two perspectives – one as the founder of a private development company that has successfully redeveloped more than a million square feet of brownfield property in the Chicago area; and the other as the Executive Director of the National Brownfield Association, the only international organization that is dedicated to promoting the responsible redevelopment of brownfields. The NBA, with more than 900 members, has a broad base of pubic and private sector professionals including representatives from federal, state and local governments, developers and investors, property owners, and professional service providers – all of whom redevelop brownfields in the United States, Canada and the UK.

My experience as a private sector developer is that state brownfield programs offer three levels of assistance: liability relief, financial incentives, and technical assistance. Most developers who purchase impaired properties have come to rely heavily on the liability relief offered through state voluntary cleanup programs. Typically available in the form of a state-issued comfort letter, developers can secure a defined relief from future environmental actions, giving them the ability to secure debt financing to be used for site acquisition.

Technical assistance and financial incentives, while great ideas, are often impractical for most private developments. Often these incentives are considered as an afterthought because of the perceived difficulties in securing them and the small amount of assistance typically available within a program in relation to project costs. It is my experience that most financial incentives go directly to cities or non-profit development corporations and indirectly flow to private sector projects. The limited amount of program funds or technical assistance that is available to the private sector comes at a great cost and often requires an intense investment of time and the use of expensive consultants to help navigate through program eligibility requirements and properly complete an application for submittal. Most developers will pass on a brownfield site rather than take a chance on a project that will only work if government incentives are secured.

Most state incentive programs provide little cost benefit to private sector developers. The exception to this rule is the use of Tax Increment Financing (TIF) and state Tax Credit programs. These

incentives have worked well, provide enough funds to make the project work, and are attractive enough to convince private sector developers and investors to take the risk on a brownfield project.

As time goes on, fewer easy-to-develop brownfield sites are available in major urban markets. Increasingly, cities are left with the harder, more complicated brownfield sites and these sites will require meaningful government incentives if the public sector is to continue to attract private sector investment and developer interest. The challenge to every government is to be developer friendly without be overly developer friendly. Brownfield sites by their definition require incentives to bring them to par with unimpaired properties. For government incentives to be meaningful to the private sector, programs should:

- Be easy to understand and administer
- Apply to a wide type of projects
- Allow flexibility in the use of funds
- Provide funding to be meaningful and that is cost beneficial to the application process and project size
- Allow for unused funds to be transferable or refunded

As Executive Director of the NBA, I would like to introduce our recently completed analysis of state brownfield and voluntary cleanup programs (VCPs). This paper presents our recommendations for which program elements work best to promote cleanup and redevelopment. This paper is a result of our annual Brownfield Leadership Summit held in Washington, D.C., in May 2005. We recommend four key program elements be considered when looking at state brownfield or VCP programs:

- Environmental closure and liability clarity
- Adequate agency resources
- Cleanup goals to protect human health and the environment
- Financial incentives to meet brownfield needs

Although no single state program has all program elements, a number of states have been creative in developing specific program elements that work well. When designing incentive programs, we encourage you to consider the recommendations provided in this paper and support the creation of a federal brownfield Tax Credit Program that would allow for demolition and remediation expenses to earn a federal tax credit. The use of a brownfield Tax Credit Program has been an important incentive that has worked well in New York, Michigan, and other states. These programs have been a powerful incentive for cities, developers and parties facing brownfield liability to transform those sites into job-producing economic developments and to attract private sector investment.

Members of Congress are to be commended for their willingness to consider and promote new financial incentives that attract private sector investment to these properties.

Thank you for the opportunity to speak, and I look forward to your questions.

National Brownfield Association
www.brownfieldassociation.org

What Works: An Analysis of State Brownfield and Voluntary Cleanup Programs

Objective

This paper assists policy makers and other interested parties in better understanding the key elements in state brownfield and Voluntary Cleanup Programs (VCPs) that will attract all stakeholders to participate in the cleanup and the redevelopment of brownfields. National Brownfield Association (NBA) Chapter Executive Teams provided input and the NBA Advisory Board drafted this analysis. Both groups consist of diverse redevelopment specialists who are NBA members and have worked extensively with state programs around the country. The members also participated in the annual NBA Brownfield Leadership Summit held in Washington, D.C., in May 2005, which addressed this issue.

Background

States began creating brownfield and voluntary cleanup programs in the late 1980s in response to the complexities of the Superfund process and the realization that public funding was not sufficient to address all sites. These programs allow property owners or their designees to voluntarily enter a site into a state regulatory process to complete the cleanup of their property. The state and the voluntary party agree to the cleanup approach needed to achieve state-specified levels that are "protective of human health and the environment." In the mid 1990s, the United States Environmental Protection Agency (EPA) formally recognized the benefits of the state brownfield programs and VCPs. All states have since moved to some extent to create similar forms of programs.

The federal brownfields law, enacted in 2002 (formally titled the Small Business Liability Relief and Brownfield Revitalization Act), largely recognizes states as the primary regulator for brownfield sites. An important element of the Act was the creation of the federal enforcement bar, which ensures that when a site goes through a state program, the state becomes the primary regulator and the federal government cannot use Superfund enforcement authority over that site.

Upon completion of the cleanup process, the voluntary party receives a document (e.g., comfort letter or no further action letter), which provides some degree of environmental closure and clarity of the party's future liability obligation. In most states, the liability protection does not attach to the responsible party who discharged the substance(s) necessitating the cleanup (even if they have done the voluntary cleanup).

States vary greatly in the way in which cleanups are implemented and the amount of state oversight that is provided. Many states take a traditional regulatory approach, while other states have developed alternative programs. For example, Massachusetts was the first state to privatize a portion of the state cleanup program through the use of Licensed Site Professionals (LSPs). Overall, state brownfield programs and VCPs have been effective because they foster public private partnerships to promote redevelopment. The EPA has tallied more than 50,000 properties that have been cleaned up using state brownfield programs

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and VCPs over the last decade, ranging from small commercial properties (e.g., gas stations and dry cleaners) to large industrial facilities.

Most state programs have common components: a definition of a brownfield, eligibility requirements, financial incentives, and some degree of liability relief. However, it is difficult to compare programs because the details of these components vary greatly from state to state. For example, South Carolina defines brownfields as "real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant." On the other hand, Michigan has a more expansive functional definition: a brownfield is "any contaminated or potentially contaminated property with a potential for redevelopment. In 88 of the state's urban areas, this includes blighted and functionally obsolete properties as well as contaminated properties."

To further complicate a comparative analysis, some states have multiple regulatory programs, which a brownfield or VCP-eligible site may enter. A VCP may not be the only state oversight program that regulates property cleanup, and in fact, some sites are obligated by law, regulation or policy to enter into a non-brownfield program instead. For example, in New Jersey, cases are assigned to a specific program based on site type – regulated underground storage tanks (UST) are entered into the UST program while sites in brownfield development areas are in the Office of Brownfield Reuse. Conversely, in Illinois, an owner may be able to choose which program oversees cleanup (for example, an UST site may be entered into either the UST program or the Site Remediation Program). Thus, it is difficult to compare "programs" within states and between states because each is based on a different legislative framework and program rules.

State brownfield programs continue to evolve to meet new challenges, but a number of impediments remain. Buyers and sellers are still concerned that the level of environmental liability relief may not be meaningful, and that lingering third party liability issues remain. The lack of liability clarity is causing a number of corporate property owners to hold on to sites. Another barrier is that, although most states consider planned end use when determining cleanup levels, some do not allow the use of site-specific risk assessments. This causes owners and prospective purchasers to perceive some state cleanup standards as too stringent or inflexible. These impediments create a situation where cleanups may be technically feasible but not economically viable for redevelopment, and result in developers and investors favoring construction on greenfields. Moreover, state programs are beginning to suffer from the success of the brownfield market; the increased number of sites seeking to enter VCPs and brownfield programs has put considerable pressure on these programs, which causes slower response times, competition for financial incentives and increases the administrative cost of operating programs.

In an effort to address these impediments, states have been innovative in developing unique program elements that work. Although no one "best" program exists that addresses all barriers, the National Brownfield Association (NBA) has analyzed and identified the key elements that have worked well in different programs. The purpose of this paper is to assist policymakers in better understanding the key program elements that work.

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Recommended Program Elements

A brief summary of the selected state program attributes that work well (largely in states which NBA has chapters) will be presented in a forthcoming matrix. The matrix will list program elements and include a detailed explanation of the state example along with the specific citing.

The NBA found that key program elements that work could be grouped into four general categories: 1) environmental closure and liability clarity, 2) agency resources, 3) cleanup goals, and 4) financial incentives. Highlights of key program elements that were identified include:

1. **Environmental closure and liability clarity**
    a. ***Programs should maximize liability relief and limit reopeners.*** Many state programs have "reopener" clauses if unknown contamination or factual misrepresentation is discovered. However, this has not been tested in the courts and uncertainty to the extent of the environmental liability relief and to whom the clauses apply is still unclear.
    b. ***The process results in a predictable regulatory path to closure*** that provides for a single point of agency contact and a regulatory process that is easy to follow with defined endpoints.
    c. ***The program is broad-based, with a wide range of sites eligible*** to participate. Broad based programs that encompass more redevelopment scenarios and stakeholders generally add consistency and ease the confusion for redevelopment parties.
    d. ***The program provides relief or a legal defense from third-party statutory remediation and tort action after sites are properly closed.*** Uncertainty of possible third party action restrains property transactions, and some states have started to address the issue this provision provides.

2. **Agency resources**
    a. ***The state provides agency resources and trained staff dedicated to brownfields and VCPs*** to provide information and support to a wide range of stakeholders.
    b. ***A single point of agency contact*** will champion the project to completion and coordinate interagency involvement.
    c. ***The program statutorily or administratively provides for a quick and timely response,*** within time frames needed for decision-making.
    d. ***Program officials and staff have the capacity to treat the applicant like a "customer"*** to attract voluntary participation and ensure proper use.
    e. ***The program provides a mechanism that fosters quality information and outreach*** to the real estate sector, communities, and other brownfield stakeholders.
    f. ***Federal resources given to the state are used to establish, enhance and administer their program.*** States should continue to seek this support.

3. **Cleanup goals to protect human health and the environment**
    a. ***Allow a flexible approach to risk assessment that includes tiered cleanup levels based on the planned end use of property.*** This includes options such as "screening" approaches for simple sites and site-specific risk assessments for complicated sites or those with unusual chemicals of concern. This allows property owners to take advantage of environmentally appropriate, yet cost-effective strategies.

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b. ***Cleanup goals are clear and understandable to all stakeholders*** to minimize uncertainty and the potential for unnecessary conflicts over reuse approaches.
c. ***Cost-effective innovative remedial technologies or "presumptive remedies"*** are permitted and encouraged where they will likely lead to protective cleanups with redevelopment cost-saving.
d. ***Institutional and/or land use controls can be tracked and enforced*** to protect human health and the environment.

4. **Financial incentives to meet brownfield needs**
   a. ***Assistance with site assessments*** can provide financing not available elsewhere to help site owners and prospective purchasers get critically needed information that allows property redevelopment costs to be sufficiently quantified.
   b. ***Help with actual hard cleanup costs***, an activity critical to site redevelopment, is not generally bankable on its own.
   c. ***Incentives that finance demolition of structures, lead-based paint remediation and/or asbestos abatement, as well as offset other site preparation costs (planning, infrastructure, etc.)*** may be needed to balance brownfield and greenfield redevelopment costs.
   d. ***Creative forms of tax incentives that attract private investment***, one of the typical economic development functions of government, can help channel private interest into site cleanup and redevelopment in areas that might not otherwise be economically competitive.

Evolving Issues

During the 2005 NBA Brownfield Leadership Summit, some other significant issues were identified that are becoming apparent as programs gather more experience. These issues should be evaluated by states when looking to reauthorize their programs. Issues to consider include:

1. Who will be responsible when properly remediated sites are reopened (e.g., for assessment of vapor intrusion into buildings)?
2. What is the most appropriate way of tracking, maintaining, verifying and enforcing institutional controls, especially given the staffing and budget pressures that many state agencies face?
3. What is the best and most appropriate use of licensed professionals?
4. How will the use of eminent domain by local governments be affected by the *Kelo v. City of New London* decision? What impact will it have on brownfield redevelopment strategies?
5. What impact will the *Cooper Industries, Inc. v. Aviall Services, Inc.* decision (ability to sue for cost recovery without government regulatory action) have on the redevelopment of brownfields?
6. With increasing frequency, states are beginning to require that property owners provide financial assurance to cover the cost of existing and future cleanups. What impact will this have on the brownfield redevelopment?

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Conclusion

State voluntary cleanup programs have been effective in fostering the redevelopment of brownfield properties for more than a decade, and have gone a long way toward expediting the rate and number of cleanups in many states. Each state program is different, and brownfield and VCP programs have evolved to take account of the differences of that state. As these programs are periodically reauthorized and improved, the NBA suggests that key elements and "lessons learned" from the most successful state programs be considered during reauthorization.

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STATEMENT OF JONATHAN PHILIPS

Mr. PHILIPS. Mr. Chairman, members of the committee, my name is Jonathan Philips and I am senior director of Cherokee Investment Partners. As you may recall, I testified before the subcommittee on April 5th regarding the effectiveness of Federal brownfield programs, and I feel honored to add my testimony today by addressing our experience with State programs. Thank you for this opportunity.

Cherokee is the world's largest and most active firm specializing in brownfield revitalization. Since inception, we have acquired hundreds of impaired properties. Our objective is to transform these sites into productive, sustainable, and liability-free assets. As a result, communities have enjoyed safer, less polluted environments, increases in jobs and tax revenues, and a vast reduction in sprawl.

We can tell you firsthand that well-designed State programs are a critical component of this Nation's efforts to revitalize lands. We also believe they are not sufficient to solve this Nation's brownfield problem in our lifetime.

In my written testimony, I highlight a number of innovative State programs and also reference a number of excellent surveys of them, some of which were conducted with the help of some of my fellow panelists. In the interest of time, I will not repeat that information here today.

Given the diverse tools offered by various States, tax credits, voluntary cleanup programs, tax increment financing and the like, one might mistakenly think that we should have the brownfield problem solved. However, as you know, there are at least 450,000 to 1 million brownfields in this country and only 16,000 sites, less than 4 percent, have been redeveloped or are currently in the process of redevelopment through State and voluntary cleanup programs.

To further illustrate this point, I am pleased to share some internal data from our periodic review of our activity and that of others in our field.

Of the Nation's many sites, we typically focus on a prescreened subset of roughly 450 over a 2-year period and then select as many as 10 for investment. Two years later, when we research those remaining 440 sites, we can consistently find that not more than 5 to 10 have been chosen for investment by others. Frequently, that number is much lower. Please consider this data. The private sector invests in fewer than 5 percent of our prescreened sites, leaving 430 to sit idle indefinitely.

Our data confirms what we all know: Despite existing programs, the vast majority of this Nation's brownfields, not just the prescreened ones, remain unattractive to investors.

Last April, I encouraged this committee to think about sites plotted on an economic continuum with two halves, sites underwater and above water. An economically underwater site is one that the market ignores given the risk-reward calculus.

An above-water site is likely to be revitalized by the private sector without assistance. Along this continuum are sites that fall barely below water. These are sites that have a shot at being redeveloped during a favorable economic upturn or with a slight nudge from an incentive program.

Unfortunately, most brownfields are clustered toward the underwater side of the continuum, many considerably so. Without significant public assistance, these sites may never be touched by the private sector, which raises a critical point: These terms, underwater and above water, simplistically exclude all but the internal cost-reward of a developer. They do not reflect beneficial public externalities brought by transformation, such as less pollution, improved health, more jobs, reduced sprawl and increased tax revenues, each of which can and should be present value monetized on the local, State and Federal levels and used to aggressively stimulate reclamation, much as Mr. Kanjorski and others have discussed already in terms of long-term bonding. TIFs do a good job of this.

A mission of government then must be to target that group of sites that are both underwater from a market perspective and above water from a public perspective. Fortunately, we have models that can show us the way forward. One example is the tax credit for rehabilitating historic structures that Congress created in 1976. It has stimulated more than $33 billion in private investment, with over 325,000 housing units, of which 75,000 are for low and moderate-income families.

I believe that this Federal model has been successful for two reasons: First, it is uniform across the Nation, and; second, it works in tandem with State programs to drive more historic sites from underwater to above-water status. Given this, doesn't it make sense to think about applying the successive tax credits to brownfields?

Chairman Turner's brownfield proposal creates a transferable tax credit for eligible costs at qualified sites. Critically, this credit could be leveraged early in a project, thus allowing a pioneering developer to attract some of the riskiest capital with the equity created by the forward sale of the credit.

For investors the impact is real, as they would be able to delay a portion of their equity investment, thus boosting rates of return and more easily attracting debt and equity.

In this sense, Chairman Turner's proposal tracks the historic credit model. The existence of such a credit would allow us and others to consider sites that are below water from a private perspective but above water from a public benefit perspective. A credit would be a logical extension adopted, such as a 2001 brownfield law, section 198 expensing, and the recently passed bill that was cosponsored by many, including Chairman Turner.

A national transferable credit would be a powerful and fitting complement to State efforts. After all, as a friend once told me, you don't fight a forest fire with a water pistol.

Nearly every Member of Congress has the misfortune of brownfields in their districts. Together we can transform these sites and build healthy communities with robust job and tax bases and strong economies.

We look forward to continuing to work with members of this committee, and Congress as a whole, to explore new ways to accelerate cleanups. Please do not hesitate to call upon us as both a resource for these legislative endeavors and for assistance with specific sites that are in need of targeted assistance.

Mr. Chairman, members of the committee, it has been an honor and privilege to testify here today. I am happy to answer any questions you have.

[The prepared statement of Mr. Philips follows:]

CONGRESSIONAL TESTIMONY

OF

JONATHAN PHILIPS

Senior Director
Cherokee Investment Partners

TO

THE SUBCOMMITTEE ON FEDERALISM AND THE CENSUS

OF THE COMMITTEE ON GOVERNMENT REFORM

OF THE

UNITED STATES HOUSE OF REPRESENTATIVES

REGARDING

BROWNFIELDS AND THE FIFTY STATES:
Are State Incentive Programs Capable of Solving America's Brownfields Problem?

September 13, 2005

Statement of Jonathan Philips, Senior Director, Cherokee Investment Partners, LLC

House Committee on Government Reform, Subcommittee on Federalism and the Census

September 13, 2005

Mr. Chairman, members of the Committee, my name is Jonathan Philips and I am Senior Director of Cherokee Investment Partners, LLC based in Raleigh, North Carolina. I feel honored to be here and want to thank you for the opportunity to testify.

As you know, I testified before this Subcommittee on April 5, 2005 (http://reform.house.gov/UploadedFiles/J.PhilipsTestimonyFinal3.pdf) regarding the effectiveness of federal brownfield programs. In today's testimony, I may refer to points from that previous testimony. In the interest of time, however, I will try to keep duplication between the two statements to an absolute minimum.

My testimony today will highlight the following three points:

1. **Well-designed state brownfield programs are critical to revitalizing the hundreds of thousands of brownfield sites that exist in this country.**

2. **As critical as these state efforts are, federal assistance is essential if the United States is to see a significant portion of its brownfield sites revitalized.** On this point, I want to emphasize that in other fields, such as historic preservation, it is the synergy between state and federal incentives that has allowed such programs to be so successful.

and

3. **Federal legislation such as H.R. 4480 from the 108th Congress would help provide a dramatic impetus to restore America's brownfield sites to productive use.** On this final point, I want to emphasize the important role that H.R. 4480's transferable tax credit would play in attracting investors to help remediate our nation's brownfields.

Before getting to these three points, I'd like to first give a brief introduction to Cherokee Investment Partners, LLC, or "Cherokee."

Cherokee Investment Partners, LLC:

Cherokee is the largest and most active private investment firm in the world specializing in the acquisition, cleanup and revitalization of brownfields. Cherokee is the successor to the investment firm originally founded in 1989 by Chief Executive Officer Thomas F. Darden and Managing Director John A. Mazzarino. Headquartered in Raleigh, North Carolina, Cherokee also has principal offices in Denver and London.

Since inception, we have acquired well over 330 sites across North America and Europe, with an aggregate transaction value of approximately $1.5 billion. We have purchased a wide range of properties including brick companies, agricultural and pharmaceutical manufacturing facilities, lead-based paint facilities, steel manufacturing and processing plants, textile mills, state and federal Superfund sites, landfills and neighborhoods with widespread blight; and remediated an even wider range of environmental impairments. These investments have also allowed us to pursue and support other, not-for-profit ventures, such as the Oak Ranch children's home, a safe home for needy children in North Carolina. We also pursue a host of international community development efforts, including helping to build a higher education complex in Nigeria and raising money for a micro-enterprise loan program and other projects in Ethiopia, an elementary school in India and health care assistance programs in Africa and Latin America.

Through Cherokee's real estate purchases, remediation, and redevelopment, property sellers and communities alike have seen first-hand the benefits of environmental restoration and community revitalization. Included in those benefits are not only safer, less polluted environments, but also a vast reduction in the amount of urban sprawl.

Cherokee deploys more capital toward environmental cleanup than all but a few entities, public or private, in the country. Further, we are not aware of any private organization in the world that voluntarily cleans up more pollution than Cherokee. Importantly, to date:

- Following remediation, none of our redeveloped sites has ever generated any legal or regulatory conflict;

- None of our indemnified sellers has ever paid fines, penalties, or costs stemming from environmental issues at our sites; and

None of our indemnified sellers has ever paid any environmental cost over-run for either known or unknown contamination at our sites -- Cherokee has always fully paid any over-run costs.

1. Well-designed State Brownfield Programs are Critical to Helping Revitalize the Hundreds of Thousands of Brownfield Sites that Exist in this Country.

Importance of Public-Private Partnerships:

In the past 15 years, Cherokee has had the opportunity to work with many of the significant state brownfield programs in the country. These state programs create critical opportunities for public-private partnerships to reclaim contaminated lands and to put impaired sites back into productive use.

As the nation's largest and most experienced brownfield investor, we believe that without public-private partnerships, there can be little hope of reclaiming most of the sites that languish today.

Only those sites that are trivially contaminated and/or situated in the most attractive real estate locations are likely to receive the attention of developers willing to clean them up for re-use. Unfortunately, the vast majority of domestic brownfield sites are more complicated or less economically attractive, and are therefore unlikely to be addressed under current market forces and under current regulatory programs.

It is for this basic reason that an aggressive mix of federal, state, and local initiatives is essential if we are to create the public-private partnerships necessary to tackle this national problem in a meaningful way.

Selected State Programs:

Before highlighting a few of the innovative state programs with which Cherokee has become familiar over the years, it is worth noting a number of excellent summaries of state brownfield programs that are available.

For members of Congress, staff, and the general public who are interested in learning more about the various state and local programs that exist in this nation, I am attaching to this testimony an appendix including six excellent surveys and reports that have been prepared in recent years by the American Bar Association, National Conference of State Legislatures, the Northeast-Midwest Institute, and the U.S. EPA. While I have incorporated some of the information in these reports into this testimony, it is safe to say that, together, these reports cover the breadth of state and local programs in far greater detail than I can today.

Types of Programs:

State brownfield programs typically include one or more of the following types of initiatives in an effort to drive remediation and redevelopment of brownfield sites:

- **Information/Assessments**

Most states maintain lists of priority brownfield sites, and many include grant programs (both state and federally funded) to assist with characterization of existing pollution and/or assistance in planning potential end-uses of remediated properties. While these types of initiatives are important and undoubtedly help move some lightly contaminated sites toward productive use, for some more difficult sites, informational-type programs may not make the difference in determining whether the site is remediated and brought back into productive use.

- **Governmental/Permitting Streamlining**

Many states have adopted "one-stop shopping" or other streamlined permitting processes to expedite and otherwise encourage redevelopment of brownfield sites.

One of the more innovative examples of this type of program is the recent "One-Stop-Shop" Memorandum of Agreement signed by the Pennsylvania Department of Environmental

Protection ("PADEP") and the U.S. EPA. That MOA is designed to clarify how sites cleaned up under Pennsylvania's land recycling program can comply with cleanup requirements under federal statutes (RCRA, CERCLA and TSCA). The PADEP/EPA MOA is the first in the nation that systematizes coordination of state and federal brownfield cleanup standards in this manner.

As I mentioned in my oral testimony from last April, governmental streamlining programs can make a real difference in the rate at which brownfield sites are remediated. At that time I gave an example from Cherokee's experience of two sites in two states on the same day. One site was remediated, rezoned and ready for reuse because the state government was able to respond quickly and efficiently; the other site, with no greater severity of contamination, sat idle because the state government's regulatory agencies were not able to respond quickly and efficiently. While this is just one example from one company's experience, this pattern certainly has been repeated numerous times across this country.

- **Liability Protections and Voluntary Cleanup Programs.**

Many states have incorporated some form of liability protection for developers of brownfield sites. Typically, these liability protections are incorporated into a larger voluntary cleanup program that includes provisions for public involvement, negotiated remediation plans, and certifications that the cleanup is complete. Due to the overlay of federal environmental laws, these types of liability protections are inherently limited in their scope and applicability.

Still, states do have considerable latitude to determine the applicable cleanup standards for a particular site based on the type of expected reuse. In such circumstances, many states will couple voluntary cleanup programs with "no further action" letters that provide developers with some certainty concerning future liability. (*See, for example, the Colorado Voluntary Cleanup and Redevelopment Act; Colo. Rev. Stat,. §§25-16-301 et seq.; see also 2004 Md. Laws, Chap. 73).*

One of the most innovative state programs incorporating these elements is the Brownfield Cleanup Program (BCP) administered by the State of New York. The BCP program provides a structure under which an entity that is not responsible for the on-site contamination may develop a cleanup plan in partnership with the State of New York. If that plan is carried out and certified as complete, then the entity and its successors receive limitations on liability stemming from the contamination. Critically, under the BCP program the entity is also eligible for tax credits to offset the cost of site preparation, on-site groundwater remediation efforts and environmental insurance premiums.

Another leading program in the country in this regard is the New Jersey brownfield program, which not only includes protections against further cleanup requirements, but also provides qualified developers with protection against natural resource damage claims.

By helping to manage risk (and in some instances by also providing financial offsets for voluntary cleanup actions), these types of state programs inherently improve the economics of more difficult brownfield transactions.

- **State Revolving Loan Funds/Loan Guarantee Programs**

A number of states have implemented revolving loan programs that provide low-interest loans to developers seeking to remediate and redevelop contaminated properties.

Many of these state programs tier off of the federal State Revolving Loan Funds established through section 601 of the federal Clean Water Act. (*See, e.g., the Pennsylvania Land Recycling Program, which provides low-interest loans to cover up to 75% of the cost of assessments and remediation).*

Other state programs have tiered off of the EPA's Brownfield Cleanup Revolving Loan Fund Pilot Program that provides states with funds for brownfield assessments, training of residents of communities affected by brownfields, and funds for cleanup of brownfields. (*See e.g. the Colorado Brownfields Cleanup Revolving Loan Fund – though this fund is currently restricted to sites in the Denver metropolitan area).*

These programs, by directly providing low-cost capital can make a critical difference between projects that are mothballed and projects that are remediated and revitalized.

- **Environmental Insurance Programs**

Rather than, or in addition to, lending capital, many states have turned to loan guarantees and other assurances in an effort to attract investors and lenders to transactions that would normally be considered too risky. (*See, e.g., Massachusetts' Brownfields Redevelopment Access to Capital program which backs loans with state-subsidized, volume-discounted environmental insurance).*

I have included in the bibliography at the end of this testimony an article summarizing the numerous different state brownfield insurance programs in existence today.

- **Tax Increment Financing**

While tax increment financing (TIF) is, in some sense, a local financial incentive that can be used to promote redevelopment of brownfield sites, given its state underpinnings, widespread usage, and critical importance to the brownfield market, I would be remiss if I did not mention it here.

At least 48 states have now enacted some form of tax increment financing legislation that permits municipalities or county governments to assist with the financing of redevelopment infrastructure projects by capturing future increases in tax revenues that are expected to flow as a result of the redevelopment project. One of the most recent states to adopt this type of financing mechanism is Cherokee's home state of North Carolina. However, only a small handful of these TIF programs make remediation expenditures eligible for funding. While TIF financing is authorized as a matter of state law, the decision of whether to utilize tax increment financing is typically left up to the local municipality or county government.

And while the details of these state programs vary (for example, some states prohibit TIFs for residential developments, some permit the application of tax increment financing to sales tax revenues, *etc.*), these types of programs can serve as a powerful driver for brownfield remediation and revitalization.

- **Special Assessment Districts**

Like TIF programs, special assessment districts are somewhat hard to categorize as either state programs or local programs. Like TIF programs nationwide, assessment districts have been created at the state level and are one more tool that may be used by local governments. Because we may see this tool used increasingly across the country, I have chosen to include a brief illustration of the tool in this testimony today.

The California example is instructive. In 1978, Californians approved Proposition 13, a ballot initiative that limited the ability of local governments to finance local projects. In 1982, State Senator Henry Mello and State Assemblyman Mike Roos secured passage of the Community Facilities District Act (CFD). This act authorized local governments and developers to create CFD's for the purpose of selling tax-exempt bonds to fund public improvements. Property owners that participate in the CFD's pay a "special tax" to repay the bonds. The services and facilities that Mello-Roos Districts can provide include streets, police protection, fire protection, ambulatory, elementary schools, parks, libraries, museums, and cultural facilities. Subsequent amendments to the Mello-Roos Community Facilities District Act explicitly allow CFD's to levy special taxes and issue bonds to provide funds for site cleanups.

While the Mello-Roos Community Facilities District Act applies only to California, other governmental entities at varying levels have begun to follow the California lead. We expect that, if proven successful at driving remediation and redevelopment projects, we may see similar legislation passed by other states.

- **General Obligation Bonds**

Many states have turned to the use of general obligation bonds as a way of helping to finance brownfield redevelopment projects.

As I'm sure Chairman Turner is aware, one of the significant examples in this arena is the State of Ohio. In November of 2000, Ohio voters approved $400 million in general obligation bonds to create the Clean Ohio Fund. This ballot measure sets aside $200 million for the protection of green space in Ohio and another $200 million to be targeted toward brownfields projects. The brownfield funds are competitively awarded and can be applied to all stage of redevelopment including site assessment, site acquisition, remediation, demolition, upgrade of infrastructure, and development.

General obligation bonds are a tool that can go a long way toward helping close the cost and risk gap between brownfield development and greenfield development.

- **Petroleum Underground Storage Tank Cleanup Funds**

At least 48 states have established special funds dedicated to the cleanup of underground storage tanks. (*See e.g. the Petroleum Underground Storage Tank Remediation, Upgrade and Closure Fund established by the State of New Jersey*). Often, these state UST programs are created by the assessment of a small tax increase on the sale of petroleum products. In many states, the sheer volume of program participants rapidly depleted available funding and outpaced the incremental petroleum tax assessments. As a result, many states still have petroleum underground storage tank cleanup programs on their books though those funds may be practically insolvent.

Many states have transitioned away from continuing to subsidize these types of cleanup funds and moved instead into insurance-type mechanisms designed to help businesses limit their costs for related contamination. (*See e.g. the Florida Petroleum Liability Restoration and Insurance Program (PLRIP)*).

- **Additional Financing Mechanisms**

While I have mentioned a handful of the significant types of state brownfield incentive programs being used nationwide, it is worth noting that literally dozens of other innovative financing mechanisms are being tested at the state level nationwide.

For example, some states have used job creation tax credits to spur redevelopment at brownfield sites, while in Maryland, the State Brownfield Revitalization Incentives Program provides a mechanism under which local governments can provide a tax credit of up to 50% of the property tax attributable to the increased value of the site following cleanup and redevelopment.

Rather than attempt to catalogue each of these various financing mechanisms, it's probably sufficient to note that these different efforts serve as a real source of innovation in this field and, on a state-by-state basis, can serve as powerful and locally meaningful drivers for brownfield remediation and redevelopment.

Given all of these tools at the state level, one might mistakenly think that we have the brownfield problem solved.

This brings us to the second main point that I would like to make here today:

2. As Critical As These State Efforts Are, Federal Assistance Is Essential If We Are To See A Significant Portion Of America's Brownfield Sites Revitalized In Our Lifetime.

In my April testimony, I provided a detailed analysis of the economics that drive brownfield transactions and surveyed some of the barriers that exist that are preventing the remediation and redevelopment of the vast majority of this nation's brownfields.

As set forth in greater detail in that testimony, it is our basic assessment that the environmentally-contaminated sites most plaguing to this country are more often than not either

those which would produce net losses for the investors, or those with a risk-reward ratio that is significantly unattractive relative to commonplace, sprawl-producing greenfield development. In either case, the problem stems from rational economic decisions based upon local market forces of supply and demand.

If we are to concede that a wholesale, publicly-funded cleanup of every contaminated site in the nation is not resource-feasible or easily implemented, we must create better ways to combine public and private resources to effectuate more cleanups more quickly.

The problem of brownfields can be greatly alleviated by creating a rational economic framework in which the private sector may operate, respond and be guided by well-considered, typically local, public decisions for prioritization of private-sector driven site cleanup.

In an unsubsidized setting, market economics drive the cleanup decisions of these challenging sites. With public guidance, private forces can operate efficiently to produce revitalization in places where communities most need it, but where without such public incentive, revitalization may not occur.

If one recognizes that public-private partnerships represent one of the only realistic hopes this country has to solve its brownfield problem, and if one recognizes the importance of the various state programs already in effect, the question then becomes: "Is the federal government a necessary partner on the public side of the equation?"

The answer to this question must be "yes."

As this Committee rightly notes in the invitation to this hearing, there are between 450,000 and one million abandoned or underutilized brownfield sites in this country and yet only 16,000 sites (less than 4%) have been redeveloped or are currently in the process of redevelopment through state voluntary cleanup programs.

Last April, I encouraged this Committee to think about sites as being "under water" or "above water." A site that is under water is a site that the marketplace will not redevelop on its own given the cost of cleanup, the value of the property in a clean state, and various other factors (*e.g.*, risk, difficulty/cost of securing capital, cost of development, likely rate of return). A site that is above water is a site where the economics of redevelopment indicate that the site is likely to be cleaned up and revitalized by the private sector without government assistance.

Along this continuum there are some sites that are barely below water. These are sites that may be redeveloped during a favorable economic upturn or with a slight nudge from a state or local incentive program.

Unfortunately, most of the sites we think of as brownfields are further underwater – many considerably so. Without significant public assistance, these sites are unlikely to be remediated anytime soon by the private sector.

Which raises a critical point. These terms – under water and above water – take into account only what I'll call for lack of a better term, "internal" costs of a developer. On the benefits side, they do not reflect the various public benefits that development would bring, such as reduced risk from pollution, more jobs, a more pristine environment, or even increased property tax revenues. One mission of government, then, must be to focus particularly on those properties that are under water when looking at the internal costs, and above water when the externalities are considered. In this band of sites, government must do what it can to see that the external benefits are realized and that, if possible, the recipients of those benefits (*e.g.*, the municipality that would get increased property tax or sales tax revenue) help defray some of the costs (*e.g.*, through a TIF that will be paid off through those increased revenues). With less than 4% of the nation's brownfields having been cleaned up in the decade since EPA coined the term, "brownfield" and increased its focus in spurring brownfield development, it is clear that more needs to be done. And that increase needs to come not just at the state and local level, but federally as well.

Cherokee's experience in the brownfield market demonstrates that this is undoubtedly true. As I mentioned in my April testimony, because of the portfolio effect that comes with acquiring numerous sites each year, I believe Cherokee's broad diversification allows it to better manage the inherent risks associated with brownfield redevelopment. As a result, in some instances Cherokee may be more willing to acquire a particular contaminated site than would individuals or entities that do not carry diversified or large portfolios.

Yet even with all of the state programs and even with the benefits that we have in this market place, the vast, vast majority of sites that we review each year are still so far under water that we cannot presently afford to invest in their remediation and redevelopment.

In recent years, Cherokee conducted an internal assessment to determine the number of sites that we had reviewed the two years prior and the number of sites that we had ultimately acquired. What we found was that we had reviewed over 450 sites for investment and that in the intervening two years, we had been able to invest in only 10. Critically, we had also reviewed publicly available information to determine whether others had invested in the sites that we had been forced to pass by. What we found was that other entities had invested in another 10 the original 450 sites.

Consider these numbers for a moment. We reviewed 450 sites. In the next two years, we were able to invest in only 10 of the sites and other entities opted to invest in only an additional 10 sites. That leaves 430 sites that were unable to attract investment because, from an "internal cost" perspective, they were too far underwater. And this is despite the state and federal brownfield programs that currently exist.

Given this, I think it is safe to assume that there are many hundreds of thousands of brownfield sites in America that will not be revitalized in our lifetimes even with the existing federal, state, and local programs working in tandem with the private sector to bring them back into productive use.

Clearly we must do more if we are to redevelop the hundreds of thousands of brownfield sites that blight our communities. Without additional federal involvement, these contaminated sites

will continue to cause health and environmental problems, discourage economic development and encourage sprawl into the countryside.

An analysis prepared by the U.S. EPA and George Washington University in September of 2001 concluded that, "unfortunately, the cost of restoring brownfields to economic viability may be beyond the capability of many state and local governments. Though remediation costs are always site-specific, total remediation costs for all of the brownfields located within the United States have been estimated to exceed $650 billion." U.S. Environmental Protection Agency, Office of Solid Waste and Emergency Response and The George Washington University, *Public Policies and Private Decisions Affecting the Redevelopment of Brownfields: An Analysis of Critical Factors, Relative Weights and Areal Differentials* (Sept. 2001).

Clearly, this is a challenge that is beyond the capacity of state and local governments. If we are to be successful, the federal government simply must be an active and significant partner in this effort to attract private investment to solve this problem in our lifetime.

The Historic Preservation Model:

Before turning specifically to H.R. 4480, I'd like to take a brief moment to comment on the tremendous success of historic preservation efforts in this country and to suggest that it could help inform our current discussion if we look to the underpinnings of that success.

In 1976, Congress created the Historic Preservation Tax Credit a tax credit equal to 20% of the amount spent by a taxpayer in a certified rehabilitation of a certified historic structure. According to the National Park Service, since 1976, this tax credit and a related 10% historic rehabilitation tax credit have produced impressive results including:

- Rehabilitation of more than 32,000 historic properties
- Stimulation of more than $33 billion in private investment
- Rehabilitation of more than 185,000 housing units and creation of 140,000 housing units of which over 75,000 are for low and moderate income families.

National Park Service, *Federal Historic Preservation Tax Incentives: Revitalizing America's Older Communities Through Private Investment* (2005).

While this federal model, on its own, deserves attention, I believe that one of the reasons that this model has been so successful is because of the synergy and complementary nature of the state historic preservation incentives and this federal tax credit.

If our goal is to encourage private developers to undertake projects that are underwater from a development perspective but that are above water from a public perspective, then it makes sense to me that we would look to create federal brownfield incentives that can complement state brownfield incentives that already exist.

In the field of historic preservation, our nation has seen great results by coupling a uniform federal tax credit with individual state initiatives tailored to meet local needs.

If we wish to enjoy a similar measure of success in the brownfield arena, I believe we should look to the historic preservation model as we examine the interplay between state and federal programs.

Which brings me to my third and final point:

3. Federal Legislation such as H.R. 4480 from the 108th Congress Would Help Provide a Dramatic Impetus to Restore America's Brownfield Sites to Productive Use.

As I stated last April, Congress has already made some great strides toward being an active partner in helping to solve the brownfield problem. Already, we have adopted important programs such as the seminal Small Business Liability Relief and Brownfield Revitalization Act (H.R. 2869), Section 198 expensing provisions and the critical unrelated business income tax (UBIT) legislation (H.R. 3527) that was sponsored by Representative Nancy Johnson and Senator Baucus and that was enacted into law as section 702 of H.R. 4520, the American Jobs Creation Act (P.L. 108-357). In my April testimony, I provided a thorough rundown on these provisions – especially the newly enacted UBIT legislation.

For the purposes of this testimony, I'd like to focus on H.R. 4480 from the 108th Congress – legislation that could provide help dramatically accelerate the rate at which brownfield sites are revitalized in America.

H.R. 4480 (Chairman Turner)

H.R. 4480, introduced in the 108th Congress by Chairman Turner, seeks to create a transferable tax credit for up to 50 percent of remediation expenditures and utility reconstruction costs at qualified brownfield sites.

Critically, this tax credit would be available prior to the actual expenditure of the remediation costs, thus allowing a pioneering developer to attract more capital with the equity created by the credit.

This point cannot be overstated. By providing up-front equity in the form of a transferable tax credit that can be sold in advance, the Turner legislation creates a powerful incentive for investment funds to deploy capital on brownfield projects for the simple reason that they are able to deploy their investment capital later in the remediation/redevelopment process, thus boosting the rate of return for their investors and thus enabling them to attract new sources of capital to remediate and redevelop additional brownfield sites.

It is worth noting that transferable tax credits have been enormously successful in other contexts and are currently being utilized at a state level for land conservation, historic preservation, and brownfield revitalization to name just a few salient examples. On the federal level, the Historic

Preservation Tax Credit, Low Income Housing Tax Credit, and New Markets Tax Credits have all been used with great success to attract private equity into projects with substantial public benefits.

The program created by the Turner bill, which would be administered by state agencies, would dramatically improve the economics of brownfield transactions and could attract significant volumes of new capital into remediation and redevelopment of brownfields.

The existence of such a credit would allow companies like ours to consider additional investments in property where the remediation costs sufficiently outweigh the potential economic benefits to be derived from the final revitalized site. A significant transferable tax credit could unleash substantial private sector capital for brownfields remediation, attract environmental practitioners and developers to the field, and generate efficiencies within the brownfield submarket that would be beneficial to communities and industry practitioners.

Finally, a tax credit program could prove a tremendous benefit to the Treasury and to thousands of communities across the country. Brownfields revitalization generates jobs and new business development, stimulates additional community investment, and provides an alternative to sprawling development, which has proven to be so costly for so many communities. In addition to the significant savings in transportation, housing and infrastructure costs from smart growth and infill development resulting from brownfield remediation, cities and states will benefit from substantial job creation and added tax revenues.

For example, we estimate that our redevelopment of a 50 acre site in downtown Denver into a mixed-use property with direct access to Denver's light rail system will generate more than 4,000 jobs and an *annual incremental* tax benefit of more than $1 billion. Nationally, the US Conference of Mayors has estimated that Brownfields redevelopment in 150 cities will yield over 575,000 jobs and between $790 million and $1.9 billion in additional tax revenues while preserving approximately 225 acres of undeveloped greenfields. A transferable brownfield tax credit will serve to further unlock the large quantity of environmentally impaired sites around the nation.

In testimony provided to this Committee last April, I provided a case study of how legislation such as H.R. 4480 could drive cleanups nationwide. In that case study, I focused on the Millworks site in Cincinnati as an example of one site where legislation such as H.R. 4480 would have made a tangible on-the-ground difference in driving remediation efforts and so more quickly.

It is beyond doubt that Chairman Turner's legislation would have a dramatic impact in helping to revitalize brownfield sites all across America. Coupled with existing tax provisions such as Section 198 and the newly enacted unrelated business income tax waivers, Representative Turner's legislation will help transform the tax code into a powerful and dynamic driver that will use the strength of private markets to solve one of America's most critical environmental and economic challenges.

Critically, legislation such as that proposed by Chairman Turner is an essential complement to state brownfield programs. Without the assistance that the federal government can provide, state, local and private responses to the brownfield problem will continue to be like fighting a forest fire with a water pistol.

Nearly every member of Congress has the misfortune of brownfields within their own districts. I know many of you here today do, as well. Working together, government and the private sector can address the environmental contamination at these sites and can build healthy communities, with healthy tax and job bases and strong economies.

Working together, federal, state and local governments and the private sector can solve America's brownfield problem.

Cherokee Investment Partners looks forward to continuing working with Chairman Turner, the members of this Subcommittee, and Congress as a whole, to explore new ways to accelerate brownfield cleanups. Please do not hesitate to look to us as a resource both for these legislative endeavors and for assistance with specific sites that you are aware of that are in need of targeted assistance.

Mr. Chairman, members of the Subcommittee, it has been an honor and a privilege to testify here today. I am happy to answer any questions that you may have.

Contact Information:

For more information regarding this testimony, or if there is a site or community area in need of our help or attention, please use the following contact information:

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ACKNOWLEDGEMENTS

This testimony would not have been possible without the help and inspiration of so many wonderful people with whom I work at Cherokee Investment Partners. These people are committed to the ideals for which we stand and I am proud and honored to team with them in the pursuit of community transformation. I would like to offer special thanks and recognition to the following individuals who each provided different, but valuable, contributions to the preparation of my testimony. If this testimony has not induced deep sleep among the audience and readers, it is almost certainly due to the hard work of these individuals: Brittany Burkett, John Gallagher, Michael Hill, Kristin Jacot, Brian Kuehl, Brooke Magee, Rich Ochab, Steve Pearlman and Eric Wisler. These are individuals who paused other undoubtedly important and pressing matters in order to assist with this testimony. I would like to offer a special acknowledgement and tribute to the spirit of Irv Cohen. Irv, whose passing last month the entire brownfield world mourns, was a true pioneer in brownfield redevelopment and a beloved colleague of ours and so many others. Finally, I would like to thank and congratulate Chairman Turner, his wonderful personal staff, the Subcommittee staff, particularly Shannon Weinberg and John Cuaderes, and the other members and staffs of this Subcommittee for shining a national spotlight on solutions that can help unlock tremendous social value for all strata of our nation, so that the ripple of brownfield revitalization can be felt for many generations to come. We are truly grateful for the opportunity to serve you and the entire United States Congress.

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Certain information contained herein has been obtained from published sources and/or prepared by other parties, including companies in which investments have been made. While such sources are believed to be reliable, Cherokee assumes no responsibility for the accuracy or completeness of such information.

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STATEMENT OF KEVIN MATTHEWS

Mr. MATTHEWS. Mr. Chairman and members of the subcommittee, thank you for inviting AIG Environmental to testify on State incentive programs for brownfields. I am Kevin Matthews, and I serve as director of government relations for AIG Environmental.

AIG Environmental is a division of the American International Group. AIG's general insurance operation includes the largest underwriters of commercial and industrial insurance in the United States and the most extensive property casualty network.

AIG environmental pioneered the use of environmental insurance and has 25 years of experience underwriting environmental at-risk and is currently the Nation's leading provider of environmental insurance. We view ourselves as a solutions company as we work to provide innovative approaches to handle environmental liability and cleanup issues.

Throughout our history we have developed new insurance products to respond to new and emerging risks for both the public and private sectors.

Environmental insurance is not the silver bullet for brownfields redevelopment. However, it is one of the tools in the tool chest that helps lead to successful cleanup and redevelopment because it has often helped address some of the greatest concerns of brownfields redevelopment: environmental liabilities and uncertainties concerning cleanup.

We are here today to focus on State programs that utilize environmental insurance to advance the cleanup and reuse of brownfields. The three States we work most closely with in these programs are Massachusetts, Wisconsin, and California. I will speak about the Massachusetts approach. The other States are covered in my written testimony.

The one thing I would like to leave you with is for every $1 that the Commonwealth of Massachusetts spends on environmental insurance, they get $458 in return in private investment. Keep that in mind as we go forward.

The Massachusetts Brownfield Redevelopment Access to Capital Program [MASSBRAC], was created by the Commonwealth to provide a pool of funds to be used to guarantee loans made to developers who agreed to clean up and reuse brownfields. What was quickly learned by Mass Business is that capital is available for brownfields. However, what stymied brownfields redevelopment was the fear of environmental liability from a historic contamination and the concerns that cleanup costs would exceed the cleanup cost estimate.

The staff of Mass Business took it upon themselves to determine if tools were available that could address such concerns and spur redevelopment. What they discovered was that environmental insurance could address these issues. So Mass Business entered into a contract with AIG Environmental where member companies of AIG would provide site owners or developers pollution legal liability insurance and cleanup cost cap insurance at prenegotiated rates and coverage. Mass Business would subsidize the premium cost of insurance to qualified developers. The subsidies ranged from 25 percent to 50 percent of the insurance premium costs.

The program has led to rapid growth in the Massachusetts brownfield program. Here are the results as provided by Mass Business. The number of sites in the program totals 259. The dollar value of the sites cleaned up is $145 million. The investment in loans created out of this is $2.1 billion. The number of jobs created is 25,000. The amount of money the Commonwealth of Massachusetts has spent on environmental insurance is $4.8 million. That ratio is $1 for every $458 in return.

What MASSBRAC did was address the concerns with regard to environmental liability issues by making two AIG environmental insurance policies available to MASSBRAC program participants. These environmental insurance policies, pollution legal liability and cleanup cost cap insurance, are detailed in my written statement.

AIG Environmental is extremely proud to have participated in this program since its inception. We are just as proud of the results we have achieved in the Commonwealth. In fact, the greatest success was last year the U.S. EPA Region I Phoenix Award winner was one of our insureds in the Commonwealth of Massachusetts.

Fortunately, Congress had the foresight in the 2002 brownfield law to allow EPA grant recipients to use funds from those grants to purchase environmental insurance. Therefore, local and State governments and qualified nonprofits can use EPA brownfield funds to offset the cost of establishing State or local environmental insurance programs or using the grants for specific brownfields transactions.

AIG Environmental is extremely proud of our role in brownfield transactions. We truly enjoy working at all levels of government to make brownfields redevelopment a reality. One of our greatest joys was when the Atlantic Station project in Atlanta, GA, was selected as the National Phoenix Award winner in 2004. AIG Environmental companies were intimately involved in this project at numerous levels, and we take great pride in our contribution of making that section of Atlanta come alive again.

Again, environmental insurance is just one of the tools utilized in brownfields redevelopment. Perhaps its use is one of the best leveraging tools available. State programs that have used this tool have been proven very successful, and we look forward to working with this committee and the chairman to assist in developing legislation that will allow States to take advantage of similar programs.

Thank you. I will be happy to answer any questions you might have.

[The prepared statement of Mr. Matthews follows:]

Testimony of
Kevin L. Matthews
Director of Governmental Relations
AIG Environmental®
Before the Subcommittee on Federalism and the Census
U.S. House of Representatives
Tuesday, September 13, 2005

Mr. Chairman and members of the Subcommittee, thank you for inviting AIG Environmental® to testify on State Incentive Programs for Brownfields. I am Kevin Matthews and I serve as Director of Governmental Relations for AIG Environmental®.

AIG Environmental® is a division within the member companies of American International Group, Inc. ("AIG"). AIG's general insurance operations include the largest underwriters of commercial and industrial insurance in the United States, and the most extensive international property-casualty network. AIG is a company with over $800 billion in assets and a wide variety of insurance and financial products to serve our clients. AIG Environmental® pioneered the use of environmental insurance and has 25 years of experience underwriting environmental risks and is currently the nation's leading provider of environmental insurance. Our portfolio of environmental insurance products ranges from liability coverage for underground storage tanks, to liability coverage for environmental remediation contractors to coverage that insures the cleanup of hazardous waste sites across the country – including Brownfields and Superfund sites.

We view ourselves as a solutions company, as we work to provide innovative approaches to help handle environmental liability and cleanup issues. Throughout our history, we have developed new insurance products to respond to new and emerging risks for the public and private sectors. AIG Environmental® began by offering insurance for Superfund Remedial Action Contractors (RAC), RCRA Treatment Storage and Disposal facilities (TSDF), and Underground Storage Tanks operators. We continued moving forward by offering insurance for both public and private sector cleanups.

Environmental insurance is not the silver bullet for Brownfields redevelopment. However, it is one of the "tools in the tool chest" that helps to lead to a successful cleanup and redevelopment because it often helps to address some of the greatest concerns of Brownfields redevelopment – environmental liability and uncertainties concerning the cleanup. We are here today to focus on State programs that utilize environmental insurance to advance the cleanup and reuse of Brownfields. The three states we work most closely with in these programs are Massachusetts, Wisconsin and California.

One of the most successful programs from our standpoint is the Massachusetts Brownfield Redevelopment Access to Capital (Mass BRAC) program. Created in 1998 by the Massachusetts Legislature and implemented by Mass Business Development Corporation, this program is helping to move 259 Brownfields in Massachusetts from contaminated unused or underutilized sites into cleaned up and redeveloped sites. In a moment I will provide the numbers on how this achievement was reached, but I would like to take a minute to tell how Massachusetts created this program.

As originally intended by the Commonwealth of Massachusetts, the Mass BRAC program was for the Commonwealth to create a pool of funds for use by the Commonwealth to guarantee loans made to developers who agreed to cleanup and re-use Brownfields. What was quickly learned by Mass Business is that capital for Brownfields is available. However, what stymied Brownfields redevelopment was the fear of environmental liability from historic contamination and the concern that cleanup costs could exceed the clean-up cost estimate.

The staff of Mass Business took it upon themselves to determine if tools were available in the private sector that could address such concerns and spur redevelopment. The Mass Business staff research lead to a program that would use that pool of funds, not for loans, but to subsidize the purchase of environmental insurance to help address these two over-riding concerns.

Specifically, Mass Business entered into a contract with AIG Environmental® where, subject to underwriting, member companies of AIG would provide to site owners or developers, Pollution Legal Liability and Cleanup Cost Cap Insurance at pre-negotiated rates and coverage. Mass Business would subsidize the premium cost of the insurance to qualified developers. Such subsidies ranged from 25% to 50% of the insurance premium cost. This program lead to rapid growth in the Massachusetts Brownfield program.

Here are the results as provided to me by Mass Business:

Number of Sites in Mass BRAC Program:	259
Dollar Value of Cleanups:	$145M
Investment and Loans by Developers:	$2.1B
Job Impact:	25,000
Program Funds spent on EI:	$4.8M

The ratio, based upon the stated number – for every $1 dollar of Commonwealth Funds used to subsidize environmental insurance $458 has been leveraged in investment and cleanup of sites.

What Mass BRAC did was address the concerns with regard to the environmental liability issues by making sure that two AIG Environmental® insurance policies were available to the Mass BRAC program. These environmental insurance polices are Pollution Legal Liability and Cleanup Cost Cap insurance.

Pollution Legal Liability is an AIG Environmental® coverage for fixed facilities. It is designed to be tailored for the differing environmental liability concerns facing property owners and managers. Subject to underwriting and the specific terms and conditions of the insurance policy, PLL can cover legal liabilities associated with:

Cleanup Cost for unknown pre-existing Pollution Conditions both on and off site
Cleanup Cost for new Pollution Conditions both on and off site
Third Party Liability for Property Damage and Bodily Injury due to Pollution Conditions
Defense Cost associated with Claims for Clean-Up Costs, Property Damage or Bodily Injury due to Pollution Conditions
Third Party Business Interruption and Diminution-in-Value
Non Owned Disposal Site Liability
Transportation Incidents

These coverages go to the heart of what concerns many would-be Brownfield redevelopers. What if a Pollution Condition is found that no one knew was there? What if the Government requires more cleanup of a known Pollution Condition after providing a "No Further Action" letter? What if there is a toxic tort law suit? These questions can be addressed by Pollution Legal Liability insurance. PLL helps to bring a degree of certainty with regard to these issues to any Brownfield transaction.

Cleanup Cost Cap insurance is utilized with the actual cleanup of Brownfields and addresses one of the Brownfield developer's greatest concerns – what if the cleanup of the site cost more than expected? Cleanup Cost Cap is designed to cover cost overruns that might occur during the cleanup of a Brownfield. The policy works by establishing an "attachment point" or the estimated cost of cleanup, or in insurance terms a Self Insured Retention. If the cleanup cost of the site due to greater contamination or governmental changes exceeds that "attachment point" those excess cost are covered, subject to the terms and conditions of the policy, up to the limits of the policy. CCC can be designed to cover excess cost incurred for both Known Contamination and/or Unknown Contamination that is discovered during implementation of the cleanup plan.

This coverage greatly assists developers as they plan their project. By using CCC, their covered Cleanup Costs are capped. The developer is able to better estimate the cost associated for the site cleanup when backed up by CCC.

The Commonwealth of Massachusetts listened to the Brownfield community and heard its concerns. Mass Business created a partnership with AIG Environmental® that has created a program to make Brownfields redevelopment happen. AIG Environmental® is extremely proud to have participated in this program since its inception, but we are just as proud of the results it has achieved for the Commonwealth. We were extremely pleased to watch last year as the winner of the US EPA Region 1 Phoenix Award at the National Brownfields Conference was a project in Dorchester that was a Mass BRAC participant and an AIG Environmental® insured. The Dorchester Bay Economic Development Corporation (DBEDC) turned the Project, a $15 million redevelopment project of the former 4.7 acre site into a place for new jobs and hope for the community.

The site was home to industrial use for 80 years and then abandoned for ten years before the DBEDC bought the site in 1994 and planned its redevelopment. A new building was opened on the site in 2002 which serves as the headquarters for a Boston-based marketing firm which designs, prints and distributes marketing materials from its two-story facility. The marketing firm's new headquarters employs over 100 people, which includes some entry level positions. The firm offers job training for local residents in this lower income area of Dorchester to prepare them for some of these entry level positions.

Prior to redevelopment and reuse, contamination that was concentrated on a 1.1 acre portion of the site that contained a lagoon and a railroad spur that had to be removed. Both the lagoon and ground water in this portion of the site were contaminated with lead and silver, volatile organic compounds, oil and grease. The railroad spur also contained lead, polycyclic aromatic hydrocarbons (PAH) and total petroleum hydrocarbons (TPH).

The innovative use by states of environmental insurance began in Massachusetts, but does not stop there. The State of Wisconsin developed a program utilizing a PLL policy with AIG Environmental® that insures the State of Wisconsin, subject to the terms and conditions of the policy, against future cleanup costs. This program – known as Voluntary Party Liability Exemption (VPLE) – allows the state to give full releases of liability to prospective purchasers of Brownfield sites for known groundwater contamination at the site that is being cleaned up using natural attenuation. If that remedial approach fails, the State of Wisconsin can look to the policy to cover the cost of cleaning up that ground water up to the limits of the policy.

Here again, the state listened to the concerns of those wanting to develop Brownfields and designed a policy so that those concerns could be addressed and the cleanup and redevelopment of sites could move forward. And, Wisconsin did not stop there. Early this year it awarded to AIG Environmental® the contract for this program similar to Mass BRAC and we are currently in negotiations with the state on the program and hope to have it fully launched late this year. Again, another tool, another problem fixed.

The State of California also adopted legislation similar to Mass BRAC and again AIG Environmental® was pleased to be conditionally selected as the insurance carrier for that program. Unfortunately, budget issues and changes of administration, plus a complicated enacting statute, have prevented that program from being successfully launched at this time. However, AIG Environmental® is committed to seeing it come to fruition and serving the State of California.

The lessons learned by these states have not been lost on others. The State of New York passed a tax credit program that allows Brownfield developers who purchased environmental insurance to take a tax credit for the premium up to a limit of $30,000. The Commonwealth of Pennsylvania has introduced legislation to establish an environmental insurance program there and the Governor of Delaware announced plans to have an environmental insurance program in that state by year end. Other states are actively studying the results and are examining ways to implement similar programs.

Fortunately, Congress had the foresight in the 2002 Brownfield law to allow EPA Brownfield grant receipts to use funds from those grants to purchase environmental insurance. Therefore, local and state governments, and qualified non-profits, can use EPA Brownfield funds to offset the cost of establishing state or local environmental insurance programs or using the grants for specific Brownfield transactions.

AIG Environmental® is extremely proud of our role in Brownfield transactions. We truly enjoy working with all levels of government to make Brownfields redevelopment a reality. One of our greatest joys was when the Atlantic Station project in Atlanta, GA was selected as the National Phoenix Award winner in 2004. AIG member companies are intimately involved in that project at numerous levels and take pride in our contribution to making that section of Atlanta come alive.

Again, environmental insurance is just one of the tools utilized in Brownfield redevelopment, but its use is perhaps one of the best leveraging tools available. State programs that have used this tool have proven very successful and we look forward to working with this Committee and Chairman to assist in developing legislation that will allow states to take advantage of similar programs.

Thank you and I will be happy to answer any questions you might have.

STATEMENT OF DAVID CARTMELL

Mr. CARTMELL. Mr. Chairman and members of the committee, thank you so much for letting me speak on such short notice. I am here today wearing three hats. I am a developer, not in the developer sense, but I come from a city that has done brownfield developments. I am the mayor of Maysville, KY, a city of multiple brownfield issues. I am the president of the Kentucky League of Cities, which has taken the lead in the redevelopment of Kentucky cities, and I am the chairman of the executive committee of the newly formed National Brownfields Association Chapter in Kentucky.

Maysville is a small city of 9,000, but we have 10,000 jobs. I come from a town built on sin, whiskey, tobacco, and hemp. But it is the milk that did us in, because we had Carnation, and we have a condensary that condensed all the milk in Ohio and Kentucky, and consequently through the lead process and canning process it contaminated virtually half of our city.

Through a partnership with the Kentucky EPA and Federal EPA, we cleaned this site. The city acquired this site from Nestle, or from its predecessor—or successor, Silgan. We cleaned the site. We won the Kentucky Earth Day Award for 2005, but as of today we have not received a clean bill of health from the EPA. This is ongoing for 10 years. This is our 10th year.

It is difficult for us, simply because there is a new company from New Jersey located there with 100 employees that wishes to purchase. They will not purchase without the clean bill of health.

Moreover, with each administration change, there is a change of interpretation of rules. In addition to this, Maysville has 31 tobacco warehouses abandoned, an abandoned hospital with a $1.3 million asbestos cleanup bill, and multiple cotton mills and other factories. It is a disappointment that Kentucky received no EPA grants this last funding cycle, even though there were multiple applications.

Personally, as a city, we have used every smart growth tool available to us. We have planning and zoning, we have stopped growth beyond our urban services boundary. But we need help with streamlining this process. We do need the targeted incentives, we need Chairman Turner's tax incentives, we need help to cope with the future liabilities, and we need a timely release on liability.

Mr. Chairman, I would like to thank you for pursuing this interest so vital to the redevelopment of our cities, and thank you for letting me speak today.

[The prepared statement of Mr. Cartmell follows:]

Mayor David Cartmell
Maysville, Kentucky
President, Kentucky League of Cities
Sept. 13, 2005

Chairman Turner and members of the Subcommittee on Federalism and the Census, my name is David Cartmell and I'm happy for three reasons to provide testimony for today's hearing on the subject of brownfields remediation. I'm here in my capacity as a mayor who is required to be a steward of the environment and a promoter of economic development. I am also here in my capacity as President of the Kentucky League of Cities because we're strong advocates for state policies that support the concept of home rule and local decision-making. And, finally, I'm happy to be here because I have been asked to chair the executive committee that is currently forming a Kentucky chapter of the National Brownfields Association.

These are exciting yet frustrating times for those of us in Kentucky who support the smart growth approach of recycling abandoned and under-utilized properties that, in some cases, are harboring potentially hazardous materials. In the last five years Kentucky has:

- enacted a voluntary environmental remediation program and a thoughtful and flexible set of implementing regulations
- authorized tax credits that will provide up to $150,000 to an individual property owner who carries out a state-approved brownfield clean-up project
- created a historic property tax credit that will provide real incentives for the restoration of significant commercial and residential structures
- become one of 10 states to adopt the Uniform Covenants Act that will facilitate enforcement of environmental covenants that are often used when properties are recycled for new uses

These have been difficult preliminary steps but now that we have taken them, Kentucky is poised for progress when it comes to environmental restoration programs. The establishment of a Kentucky Chapter of the National Brownfields Association will help us press ahead with the challenges of creating new remediation incentives and educating the public about the need to channel development toward recycled land and away from the green fields we would like to protect.

The Kentucky brownfields tax credits for private property owners are a good start but local governments play an important role in the elimination of brownfields and could benefit from additional resources such as revolving loan funds. Small cities like mine are at a real disadvantage when it comes to competing with larger communities. Last year, Kentucky was the only state in EPA's Region 4 to be completely shut out in the competition for federal brownfields grant money. Imagine how disheartening that was for officials in Maysville and five other Kentucky communities who committed significant time and effort to the grant application process.

Not only do we suffer from the common misperception that hazardous, abandoned industrial sites are all in big cities, but we are also the least likely to have the considerable resources it takes to write an effective grant application meeting the long list of applicable EPA rules and regulations. Small towns like Maysville have challenging environmental issues such as the two abandoned milk processing plants we've already cleaned up and the imposing old hospital building that sits empty right on the edge of our downtown historic district. In addition to the former hospital with contamination issues we have 31 tobacco warehouses and processing facilities in our community and, as that industry declines, an increasing number of them will become abandoned properties.

I have a vision for my picturesque Ohio River community and that vision includes convenient condominiums in the old hospital with great views of the scenic river valley, and information age businesses in former tobacco warehouses. It's tough to dream big in a small town with limited resources and no large-scale developers who could single-handedly transform a downtown, but big dreams can become reality with financial assistance that makes it possible for the local government to play the roles of project initiator and facilitator.

Another vision I have is of a brownfields remediation process that is simple and easy to understand and provides the sort of liability protection that commercial lenders appreciate. It took us 10 years to deal with the two former dairy plants in Maysville that I mentioned earlier. Ten years to get closure on two properties that were nowhere close to being Superfund sites. How can I convince a developer to sign on to a project where the environmental preliminaries may take a decade? I certainly don't want a process that exposes anyone in my community to needless risk, but we've got to find a way get challenged properties turned around in a reasonable period of time.

Individual states are moving to simplify their brownfields cleanup process and to give property owners a sense of security when it comes to issues such as "how clean is clean?". This is an area where the EPA could play a very positive role through the creation of a national model for a streamlined remediation process that would be appropriate for the moderately contaminated sites that are most likely to be encountered in small cities.

As I look around the country, the common thread I see in effective brownfields programs in Ohio, Indiana, Illinois, Pennsylvania, New York and Michigan are the state-level grant and loan programs. When combined with the willingness of cities to commit their resources to community re-development projects, state incentives under an umbrella of common sense federal rules and guidelines can be a powerful force in jump-starting work that has been long delayed by fear of the unknown.

In summary, I'm not here looking for a handout. I'm here asking you to help me be a more effective participant in a public-private partnership that gets things done.

STATEMENT OF CHARLES HOUDER

Mr. HOUDER. My name is Charlie Houder. I am the director of acquisitions for Preferred Real Estate Investments. I want to thank the committee for the opportunity to be here today, and also want to thank Mr. Colangelo of the NBA for his efforts in this regard and for at least bringing me here today. When I first spoke to him, I contacted him about playing point guard for the 76ers, and then realized the NBA stood for something else and I realized we had other things to talk about; namely, brownfields.

Preferred Real Estate Investments is a private real estate developer. We are a for-profit company first and last. We are not a brownfields developer in the sense that we seek properties that are contaminated to focus our development efforts on. However, we do have a major development focus on infill sites and large corporate surplus sites around the country, and invariably they bring along with them environmental liability. So over the 20-years history of the company, we have by necessity developed an expertise in being on the very front lines of dealing with environmental liabilities.

I am also a big believer in the fact that pictures speak 1,000 words. In my business, in my day-to-day work, it is much more conversational than presentational, so I thought the best way to kind of work through some of these examples is to show pictures of what we are actually here talking about. And what we are actually here talking about, especially in the context of what I do, is specific sites. Yes, contaminated sites, yes, but what these sites lead to.

And the purpose behind cleaning them up—and this speaks to Mr. Kanjorski's comments—is that there are communities that are beholden to these sites and that rely on the land that oftentimes comprises a large majority of the city or town or neighborhood that these sites are located in. And I thought we could walk through a couple examples as a way of illustrating the import of what we are talking about here today.

This is an example of some of the companies that we have done business with over the last 20 years. I think one of the common themes underlying everything that we talk about here today is paying attention to the corporate owner of real estate and the corporate seller. These are cases where the corporate owner is well known; the corporate site that they own, that they may have mothballed or put into minimal use is well known; but the problem is that because of a lack of regulatory certainty and because of all of the minefields, perceived or otherwise, that pertain to taking environmentally challenged problems through a transaction, they refuse to put them back into productive use.

These are a few examples of companies that have taken that leap and worked through that maze, sometimes minefield, of working with a private developer to bring properties back into productive use.

This site I am going to focus on in particular is a former PECO site. PECO stands for Philadelphia Electric Co. It is a subsidiary of Exxon which is based in Chicago. This was a former power plant on the banks of the Delaware River, just south of Philadelphia, PA. It is located in Chester, PA, which historically was a heavy manufacturing town.

This power plant was built and designed by the same architect that designed Union Station in Washington. It was built at a time when power plants were designed to be monuments to their product, to convince people of the certainty and reliability of the energy that they provided. Over time, this power plant provided the energy that built most of the ships for the World War II war effort and fueled all of the industry along Chester's waterfront. Over time, it became functionally obsolete. The buildings and industry in Chester became obsolete and moved offshore or simply closed down.

As a result, Chester as a community essentially closed down. Largely a minority community, the typical social ills crept in: crime, educational problems, AIDS, poverty and every other social ill you can imagine.

When we came to this site, PECO had brought in every expert in the United States to figure out what to do with this site. It is an 80-acre piece of ground right on Chester's waterfront. Every expert in the world told them, "the only functional use for this is to knock it down. Even if you were able to do something with the property, what would you have? There is simply no market for it."

We took a different approach. We thought that it could be the linchpin of a major economic redevelopment on the Chester waterfront, so we undertook in partnership with the Pennsylvania DEP and the EPA what was at the time the most complex demolition project in the United States. It involved a major rehabilitation of the environmental condition of the site and a major deposition and rehabilitation of the interior portions of the site.

Over the 4-year course of the project, it was redeveloped into an office building. It is now fully leased to the likes of Wells Fargo and a software company. It has created 2,000 jobs in a city where, when we started this project, there were a total of 3,000 jobs. I think it speaks highly to the fact that targeted environmental efforts, with State and certainly Federal cooperation in conjunction with private developers, can lead to a dramatic resurgence of an entire community.

This one building has led to an entire rejuvenation of the Chester waterfront. This is what it looked like once the building was complete. This is a master plan. You will see the small blue square at the bottom left is the original building. This has given rise to a major redevelopment of retail, residential, and further commercial redevelopment of the Chester waterfront.

This is just some examples of what the original turbine hall looked like and how it was basically gutted and new office space created.

I think this speaks volumes to the import of why we are here today. This project was done utilizing Federal tax credits, historic tax credits, and I think those programs and programs like that work very well in making projects like this work.

Some further examples of the interior once it was redone. This is another quick example.

I am going to run through a couple of other case studies of projects that were done. This is a former Bud plant in Philadelphia. Again, a large contaminated site where there was an even greater perception of contamination than there actually was.

This is in a former American Standard plant, a former toilet factory in Hamilton, NJ. Again, a contaminated site that worked with the public and private partnership, and again with the corporate seller, convincing the corporate seller to come to the table to effect a sale.

Texas Instruments in Attleboro, MA. Again, an old dilapidated, functionally obsolete surplus corporate site that, working with Texas Instruments, we were able to navigate through environment concerns.

Last, a former Ingersoll Rand site in Phillipsburg, NJ, where Ingersoll Rand had the belief in the town and worked with us to help navigate through the environmental questions.

I will conclude my testimony with that and look forward to answering any specific questions.

[The prepared statement of Mr. Houder follows:]

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September 8, 2005

The Honorable Michael R. Turner
Chairman, Subcommitte on Federalism and the Census
United States House of Representatives
2157 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Turner:

Thank you for granting me the privilege of speaking in front of the House Government Reform Subcommittee on Federalism and the Census on the incredibly important topic of brownfield redevelopment. Preferred Real Estate Investments, Inc. is a billion dollar real estate development company, with a twenty-year track record, that specializes in the redevelopment of not just specific real estate sites but in the rejuvenation of entire communities. Although we are not "brownfield developers" in the sense that we seek out brownfield sites to redevelop – we have become experts in brownfield redevelopment due to the fact that so many of the sites that we seek to develop – sites that are in key, urban and suburban infill locations – have a troubled environmental history.

In my business, details are everything. As such, we believe that the best way to frame a discussion of brownfield programs and their efficacy is to work through specific examples of real projects - the challenges faced and the challenges overcome. Only by working through these specific examples can a practical and effective policy be formulated.

The best example of, not only our holistic approach to real estate redevelopment, but of Preferred's commitment to improving the ability of developers to take on brownfield projects, is Preferred's ongoing participation in the redevelopment of what was one of the worst places in America - Chester, Pennsylvania. As you will read in the attached case study – the lessons learned in Chester could lead us toward a whole new approach to leveraging brownfield redevelopment into the complete remaking of towns left behind by the twenty-first century economy.

We have also included summaries of case studies for other projects we have undertaken where the environmental hurdles were no less daunting. Illustrations and pictures are the only way to demonstrate the magnitude of these projects. As those pictures make for a cumbersome file, we have provided summaries here of what we plan to illustrate during our testimony.

Our goal is to work with corporate sellers, federal, state and local government to bring that expertise, passion, experience and vision to other cities and towns across the United States - with the goal of helping those places regain their status as pillars of the economy and as great places to live, work and prosper.

With respect to the federal government, our belief is that Congress has a key role to play in the area of brownfield redevelopment. If we can collectively work toward the goal of enacting federal legislation that creates a high degree of regulatory certainty and consistency in the area of brownfield redevelopment, we will have gone a long way toward remaking our cities and towns, preventing suburban sprawl, fostering smart growth and fueling the economy of the next century.

I look forward to appearing before you on September 13, 2005 and to working in partnership with you on this critically important issue.

Respectfully,

D. Charles Houder
Preferred Real Estate Investments, Inc.

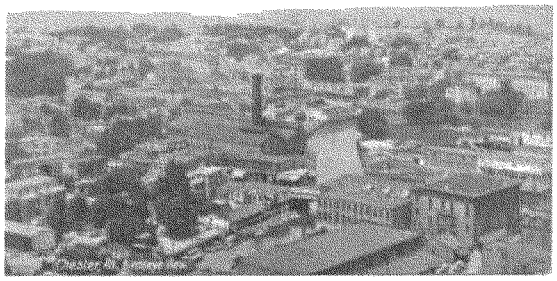
THIS IS PREFERRED . . .

The Rise, Fall & Rebirth of a Great American City

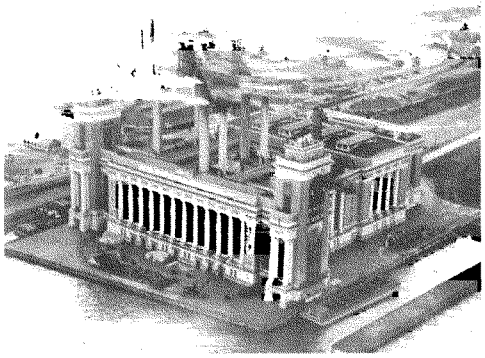
A Great American City:

Chester, Pennsylvania

Founded in 1642, Chester is the oldest City in Pennsylvania and among the oldest cities in the United States. Situated just 15 miles south of Philadelphia on the banks of the Delaware River, Chester is equidistant to New York and Washington. For the first two centuries of its existence, Chester was a prosperous manufacturing community with industries concentrating on machinery, metal manufacturing, locomotive and shipbuilding, textiles and oil refineries.



This strong manufacturing base fueled a steady growth in both population and employment. At the dawn of the twentieth century, Chester was poised to take advantage of the growth in manufacturing that future world events would demand. Seeing this, the Philadelphia Electric Company (a/k/a "PECO" and now a part of Exelon Corporation) built a massive new generating station on the Delaware River as a monument to the new "alternating current" that it was generating, marketing and selling to the burgeoning industries in Chester. That power plant, designed by the renowned architect John Windrim, is a prime example of the Beaux-Arts style and was a testament to Chester's vitality.



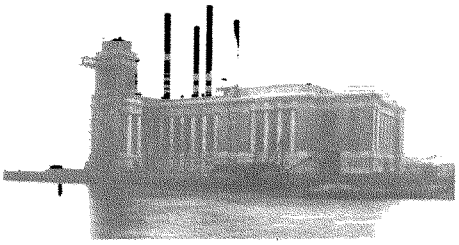
In 1910, Chester's population was 38,000. By 1920 it had grown to 58,000 as people moved into the City to fill the many jobs generated by the war effort. World War II stimulated a second period of economic expansion. Employment increased and demand for housing grew. Business and industry were operating at an all time high in the City. By 1950, Chester's population peaked at 70,000 people.

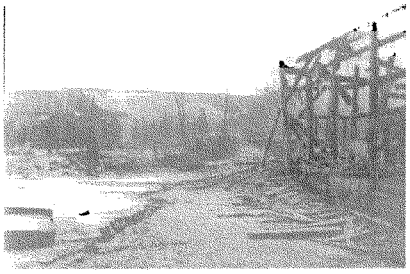
"Company-Town Syndrome":
Chester's Post-Industrial Desolation

Unfortunately, in the decades that followed the war, a changing world economy led to the decline of manufacturing jobs of the type that historically located in Chester. As major industries moved out of the City, retail growth declined, the rest of Delaware County (which had once relied on Chester for employment opportunities) became more independent and affluent. With the loss of its employment base, Chester became

increasingly cut-off from the surrounding communities. That combination of factors led to a severe downward spiral.

By 1999, Chester's population had been cut in half from its 1950 high. With manufacturing jobs reduced to practically zero, the City and its resources were overwhelmed by poverty, drugs, crime and AIDS. In 1999, the violent crime rate in Chester was 14 times higher than that of surrounding Delaware County. The City's school district, ranked dead last among Pennsylvania's 501 school districts, was taken over by the state in 1994. The once mighty PECO generating station, long since shut down, had become a dark, foreboding, contaminated wreck that stood out – as a reminder to all – of Chester's desperate straights. The City was at rock bottom.





Enter Preferred Real Estate Investments and its team of real estate professionals.

The Preferred Way:

Remaking Communities Through Brownfield Remediation, Comprehensive Real Estate Development & Community Economic Development Initiatives

In 2000, Mike O'Neill, Founder and Chairman of Preferred Real Estate Investments, Inc., was driving on the highway past Chester when he saw the old decrepit power plant looming in the distance. As a real estate visionary and pioneer in the field of adaptive reuse of former industrial buildings, O'Neill saw the spark of possibility. When Exelon was contacted about the status of the property, they reported that it was closed, heavily contaminated and slated for demolition. Every real estate "expert" had advised Exelon that there was absolutely zero demand for real estate in Chester and that the only option was to demolish the building and put a barbed wire fence around the site.

In fact, Preferred was not even allowed to tour the site without medical clearances, plastic "space suits" and respirators. However, as had happened many times before in his career, where others saw only the impossible, Mike O'Neill and Preferred Real Estate Investments saw hidden beauty, utility and opportunity.

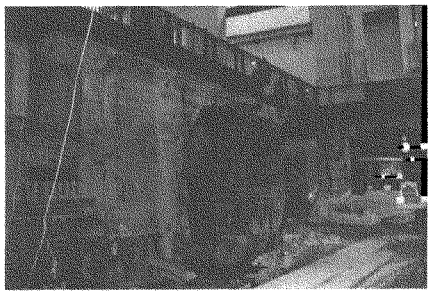
In sizing up what the property could be, Preferred started with the most logical conclusion and worked backwards. What Chester needed was jobs – good paying jobs with strong, "new economy" companies. However, to sustain those jobs it also needed new housing, better schools, cultural resources and new recreational facilities. Always believing that all economic revitalization begins with job growth, Preferred determined that the former power plant site had to be converted to a place that would create a large number of jobs – an office building.

But not just any office building. An office building that would overcome the statistical fact that Chester had not experienced a net gain in jobs in over 45 years and that its employment base had fallen to less than 2,000 jobs (in a City where at one time a single shipbuilder employed more than 30,000 workers). An office building that would thrill corporate employers and draw them into a city that was struggling for its very existence.

However, before striking a deal with Exelon to acquire the site, Preferred had to deal with the immense challenge and expense of the site contamination. With an anticipated budget of over $10 million for the remediation alone, tackling this brownfield location in the face of the existing market conditions was next to impossible for a private, for-profit development company. If not for the commitment of both Preferred and Exelon to work together to make Chester work again, the property and the city would never have moved forward.

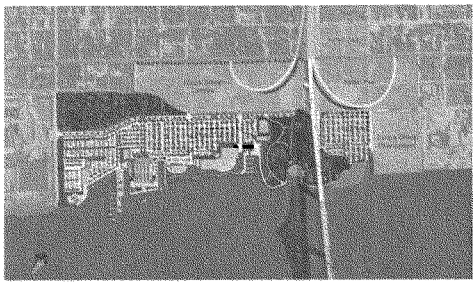
Attracted by the prospect of disposing of the site and returning it to productive use, Exelon gladly accepted the ongoing responsibility to remediate the contaminated soil and water on the site. In fact, though Exelon invested millions into the transaction to make the project a success, that investment was far, far less than Exelon had originally allocated to deal with the demolition, remediation and ongoing responsibility for the site.

Once the remediation was complete, Preferred commenced what was, at the time, the most complicated demolition project in the United States. By hollowing out the core of the old building, Preferred was able to construct a new, modern office building within the old, historically significant façade.



Before the building was even completed, Preferred's formidable marketing team had spread the message of the project far and wide and secured long term leases with the best of the best including Wells Fargo, one of the fastest growing financing institutions in the United States, and Synygy, the nation's largest provider of software to manage corporate incentive compensation plans.

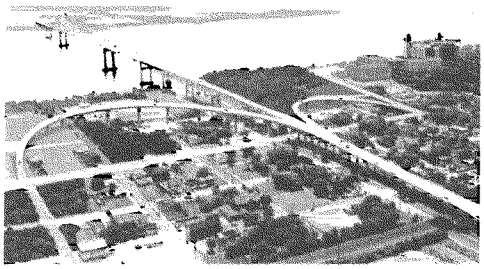
The final result was a $70 million office building, renamed The Wharf, that became the centerpiece of an expansive mixed-used development originally envisioned by Preferred. Home to over 2,000 jobs, The Wharf doubled the employment base in Chester and put it on a path toward its new future.



An essential component of Preferred's approach to real estate development is the realization that isolated buildings on "islands" of redevelopment do not work. Without a comprehensive solution to the problems faced by the surrounding community a single

real estate project – no matter how dynamic – is not sustainable. Therefore, as an integral part of its development business, Preferred engages in what it calls Preferred Priorities. The mission of Preferred Priorities is to meet the needs of the communities in which Preferred does business by marshaling private, corporate and public resources to create lasting community institutions.

For example, the lifeline of any economy is its infrastructure. As the major highway arteries were developed in and around Chester during the second half of the twentieth century, Chester's declining economy, increasingly problematic socio-economic situation and largely African-American population, allowed short-sighted and racially biased decisions to be made about limiting access to Chester from these new roads. Without adequate access to vital infrastructure, Chester's already dying economy declined even faster. Working with the state and federal government, Preferred secured a $20 million appropriation from the federal ISTEA highway funding legislation to construct two new access ramps from the nearest major highway into the heart of Chester's business district.



To foster the creation of safe, new affordable housing within the City, Preferred was instrumental in solidifying the City's applications for two Hope VI grants through HUD. With over $25 million of new construction, the revitalized Chester Housing Authority now serves over 2,000 families by providing them with safe, affordable homes in Chester.

In addition to the previously discussed affordable housing, the rejuvenation of Chester has brought about the first new, market-rate housing developments in Chester in 40 years. This new housing is attracting high-income individuals back to Chester.

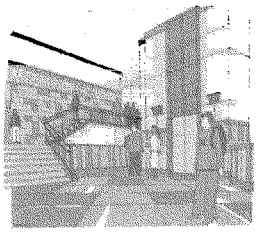
The influx of new residential development in Chester has spurred the development of new entertainment venues. Harrah's Entertainment, the world's largest casino operator, is investing millions of dollars in a new horseracing track complete with a casino. This new facility will attract millions of visitors and millions of dollars per year to Chester.

In Chester, Preferred raised hundreds of thousands of dollars in private funds, including donations from Major League Baseball, to completely replace and renovate Chester High School's aging and decaying athletic fields and facilities.

To build a Community Arts Center, Preferred also secured federal grants and raised significant private capital to create a community resource for the arts – where adults and children would have access to artistic and cultural activities.

Historically, Chester's Boys & Girls Club was a haven for children seeking an escape from the dangers of drugs and violence that pervaded the streets of the City. Over the years, thousands of children played sports, did homework, learned crafts and stayed out of trouble at the B&G Club. Due to a lack of funding, the Club's facilities declined to the point where they were almost unusable. Working with the City, Preferred raised private, corporate and public funds to build a new B&G Club to serve future generations of Chester's youth.

Among all of Chester's problems, its public schools stand out as the worst and most heartbreaking. Consistently ranked dead last among all Pennsylvania school systems, the Chester public schools are in crisis. To combat that reality, Preferred is working with Mastery Charter High School to establish a new, non-profit charter high school in Chester. If the public school cannot be fixed overnight – at least students can be offered a better choice. Preferred was instrumental in founding the original Mastery Charter High School in Philadelphia and over the 4 years of its existence, the Mastery model has been named one of the 15 best charter schools in the United States and has received a significant funding commitment from the Bill & Melinda Gates Foundation for expanding its operations to 6 new schools. Mastery Charter High School will begin educating hundreds of students in Chester by September of 2006.



As stated previously, the lifeblood of any revitalization effort is the creation of jobs. All of the previously described improvements have caused the local companies that did still exist in Chester to reinvest in their operations and to expand. The local medical center, Crozer-Keystone Health System, invested $80 million in a new burn center and created hundreds of new jobs. Kimberly-Clark Corp., a leading manufacturer of paper products and a $31 billion dollar company, recently completed a $100 million renovation to its facility thereby creating and preserving thousands of jobs in Chester. In addition, hundreds of thousands of square feet of new office and industrial space is being constructed in Chester, which will house thousands of additional new jobs.

CROZER KEYSTONE

Protection. For life. Kimberly-Clark

New Hope:
Chester Rises to Meet the 21st Century

A famous and telling sign of Chester's past, its troubled recent history and its bright future was the large roadside sign that dominated Chester's sight lines for almost 50 years. The large illuminated sign read:

That statement was never truer than in Chester's heyday, when its plants and factories turned out the materiel that won the First and Second World Wars. Once those industries disappeared, Chester made nothing and was nothing to many people. Now, after decades of decline and decay, what Chester is making is new jobs, new opportunities and **new hope**.

Preferred Real Estate Investments, Inc.

We take commercial real estate personally.

PREFERRED REAL ESTATE INVESTMENTS, INC.

Who is Preferred Real Estate Investments?

- Full service developer, owner and operator of office, industrial and multi-use real estate properties in markets across the U.S
- Financial strength of an institutional investor with the flexibility and responsiveness of a private entrepreneurial development company
- Specializes in acquiring large, surplus, corporately-owned real estate assets
- Unique expertise in the acquisition of large, complex sites, including those with environmental, lease-back, phase-out, operational and/or entitlement challenges
- In-House Acquisitions, Underwriting, Finance, Marketing, Construction and Property Management
- Over 100 employees with offices in multiple states
- Over $1.0 billion in assets

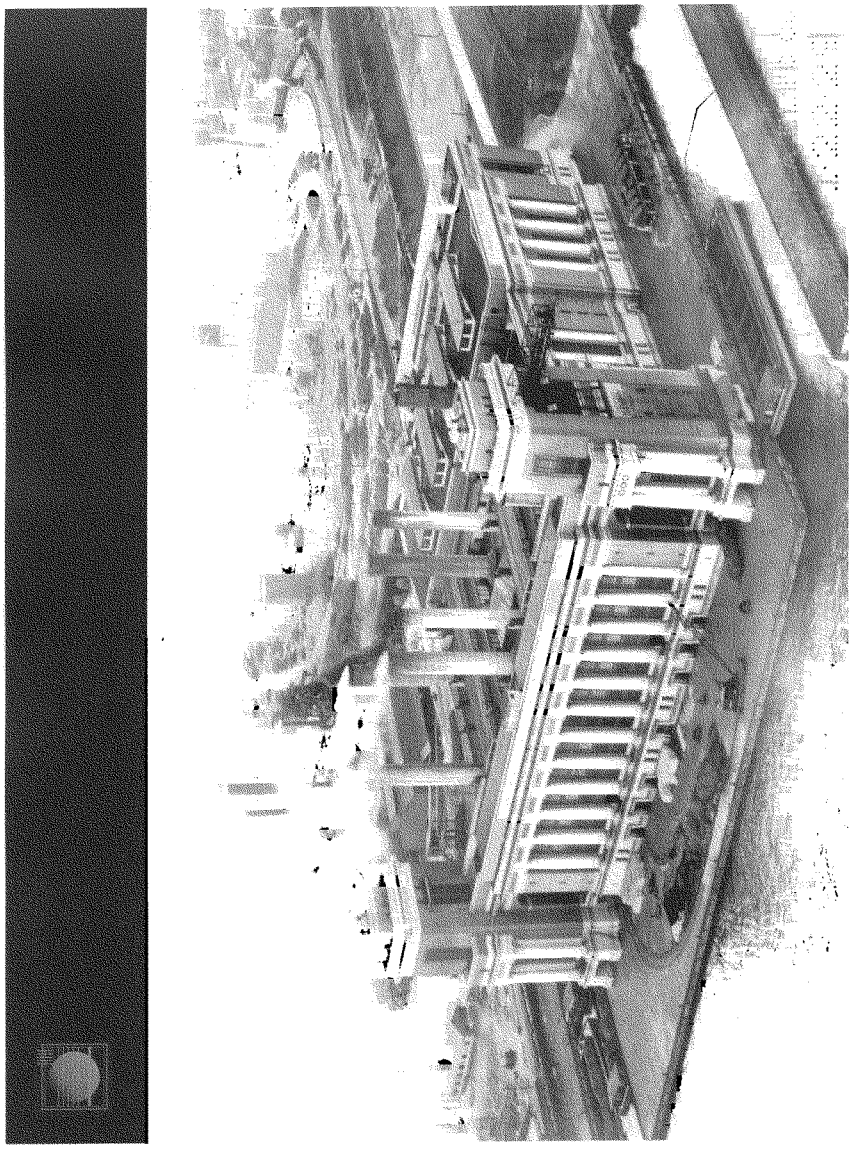
PREFERRED REAL ESTATE INVESTMENTS, INC.

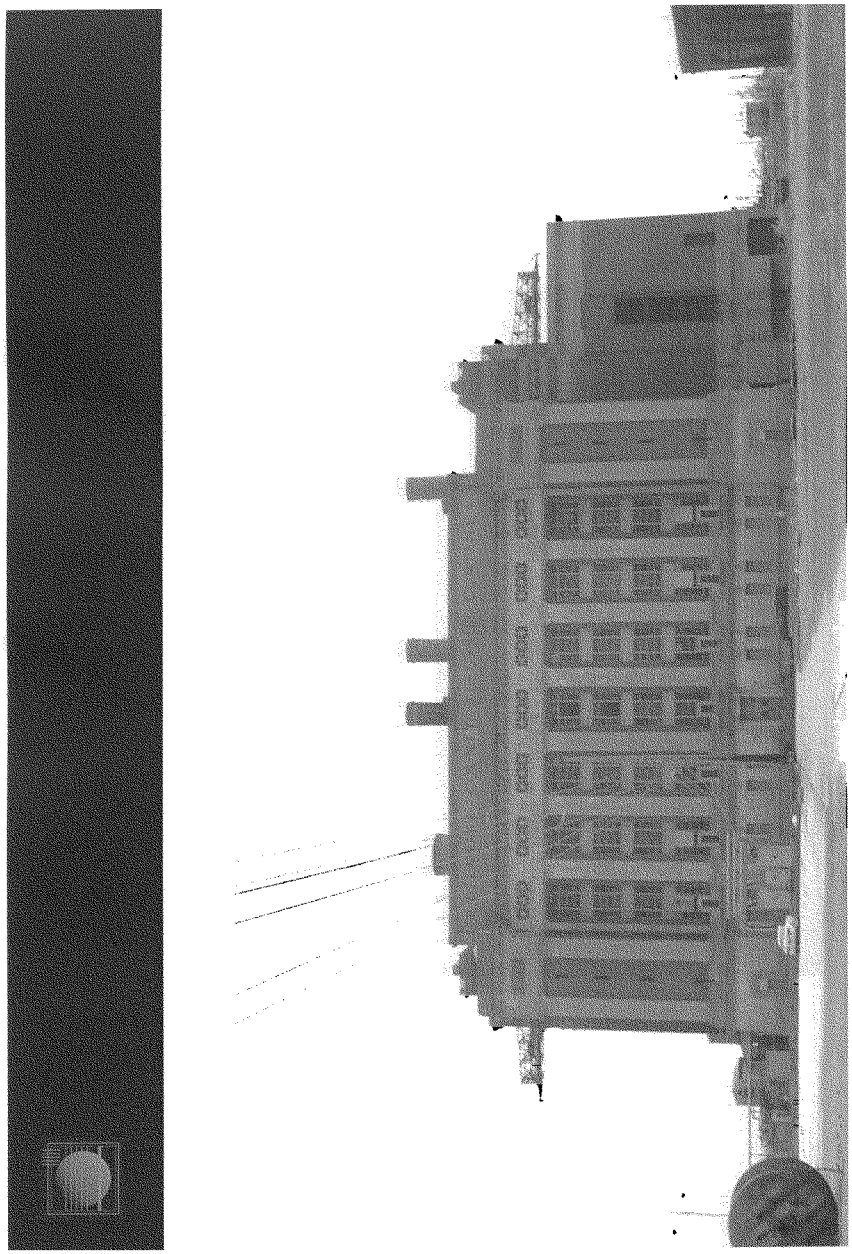
Recent Developments

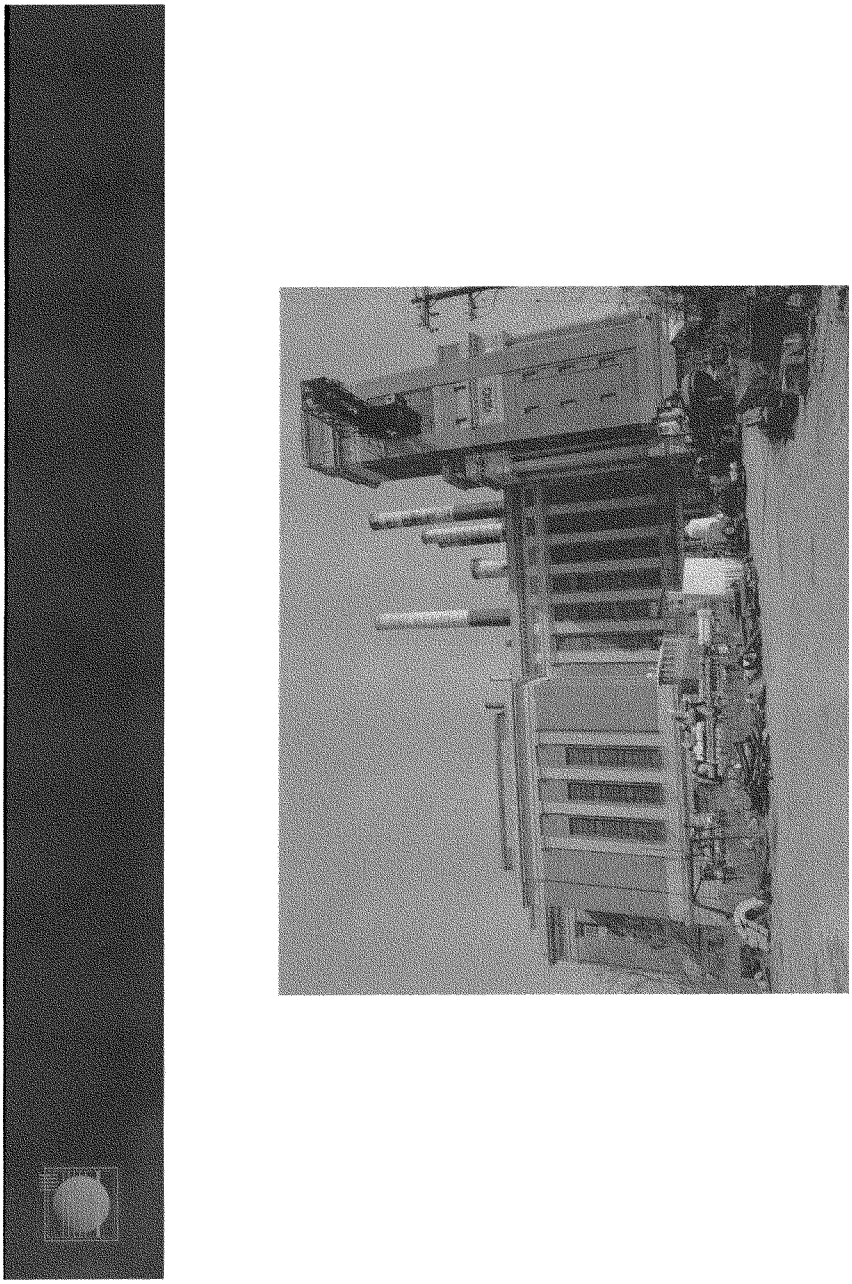
$200,000,000 / $47,000,000 370,000 SF - 154 Acres **Property Acquisition / Redevelopment** MERCK SIEMENS	$150,000,000 400,000 SF 90 Acres **Property Acquisition** from Exelon	$80,000,000 1,200,000 SF 300 Acres **Property Acquisition** from TEXAS INSTRUMENTS	$70,000,000 900,000 SF 380 Acres **Property Acquisition** from Ingersoll-Rand
$65,000,000 750,000 SF 100 Acres **Property Acquisition** from AMERICAN STANDARD COMPANIES	$60,000,000 419,000 SF 35 Acres **Property Acquisition** from P&G	$55,000,000 375,000 SF High Rise **Property Acquisition** from MAY	$35,000,000 250,000 SF 23 Acres **Joint Venture Development** with Quaker
$28,000,000 275,000 SF 30 Acres **Property Acquisition** from	$20,000,000 460,000 SF 108 Acres **Property Acquisition** from Wyeth	$15,000,000 76,000 SF 8 Acres **Property Acquisition** from hp	$12,000,000 550,000 SF 10 Buildings **Portfolio Acquisition** from CITIZENS FINANCIAL GROUP, INC

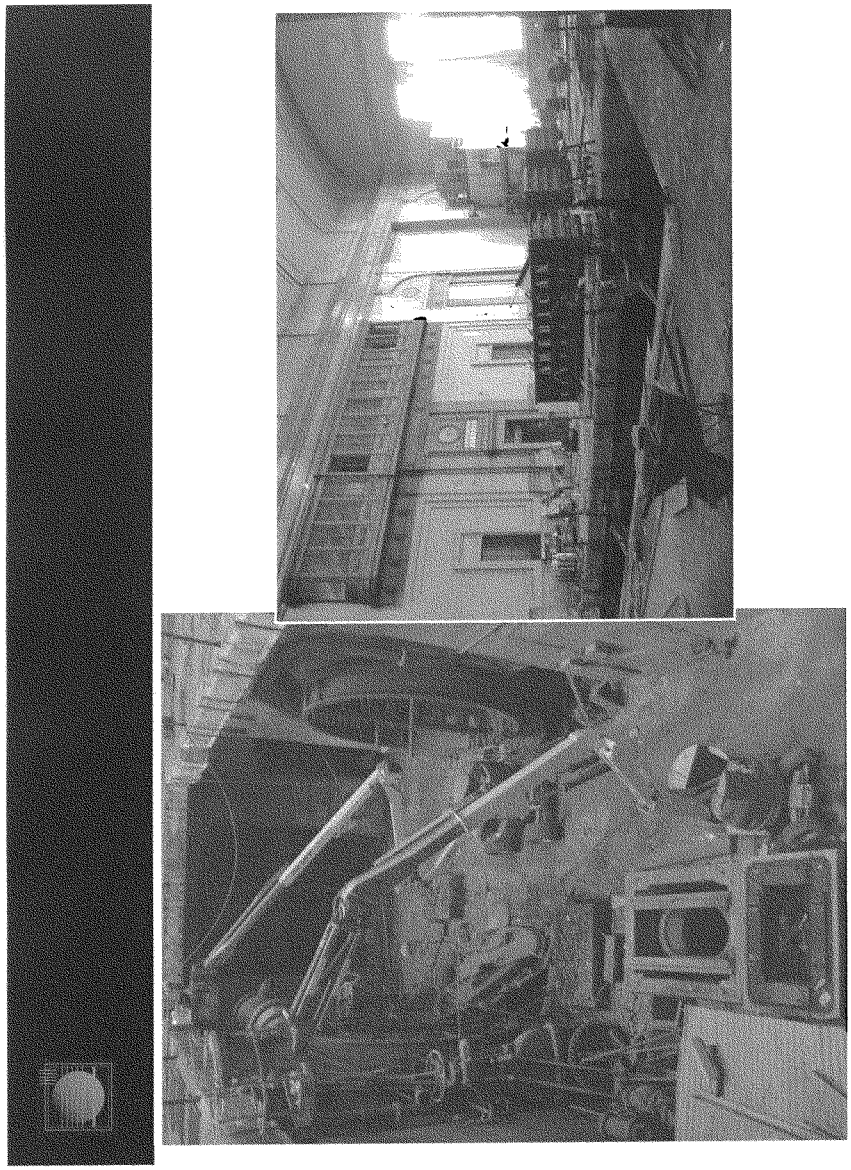
*Values represent total project costs

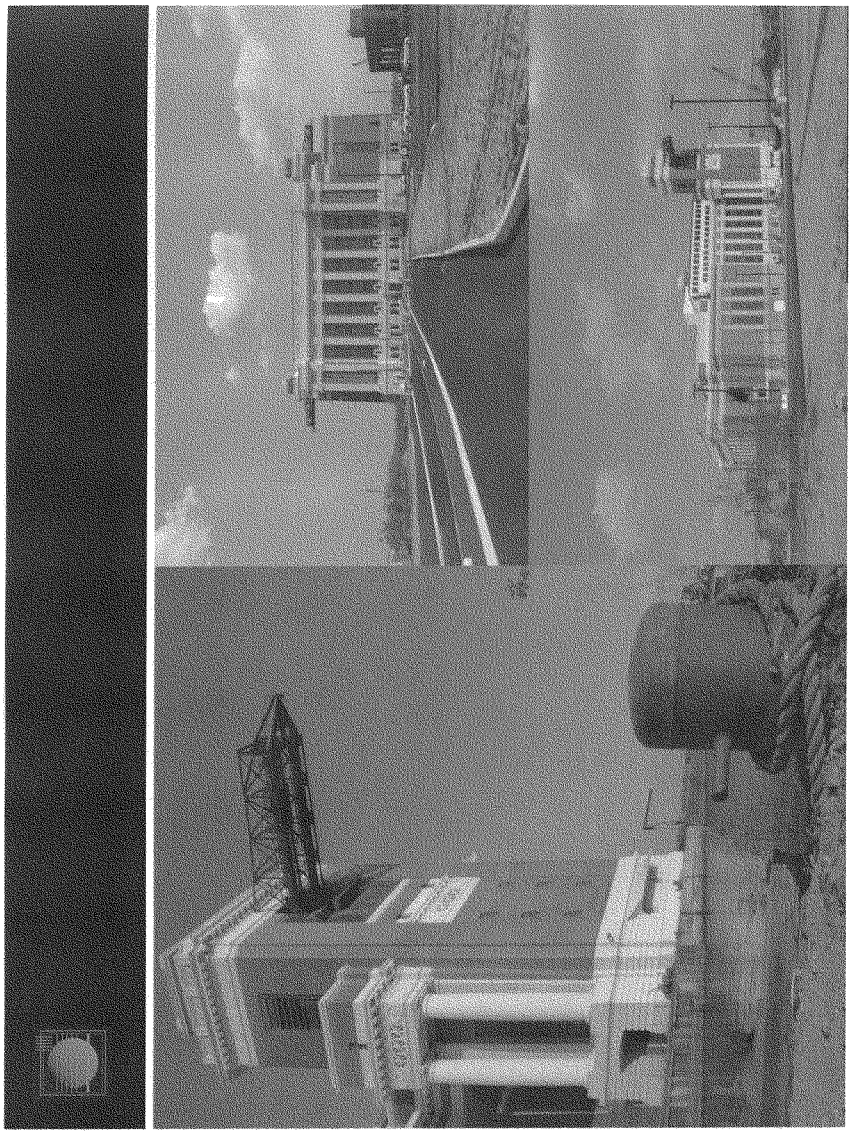
Former PECO Site

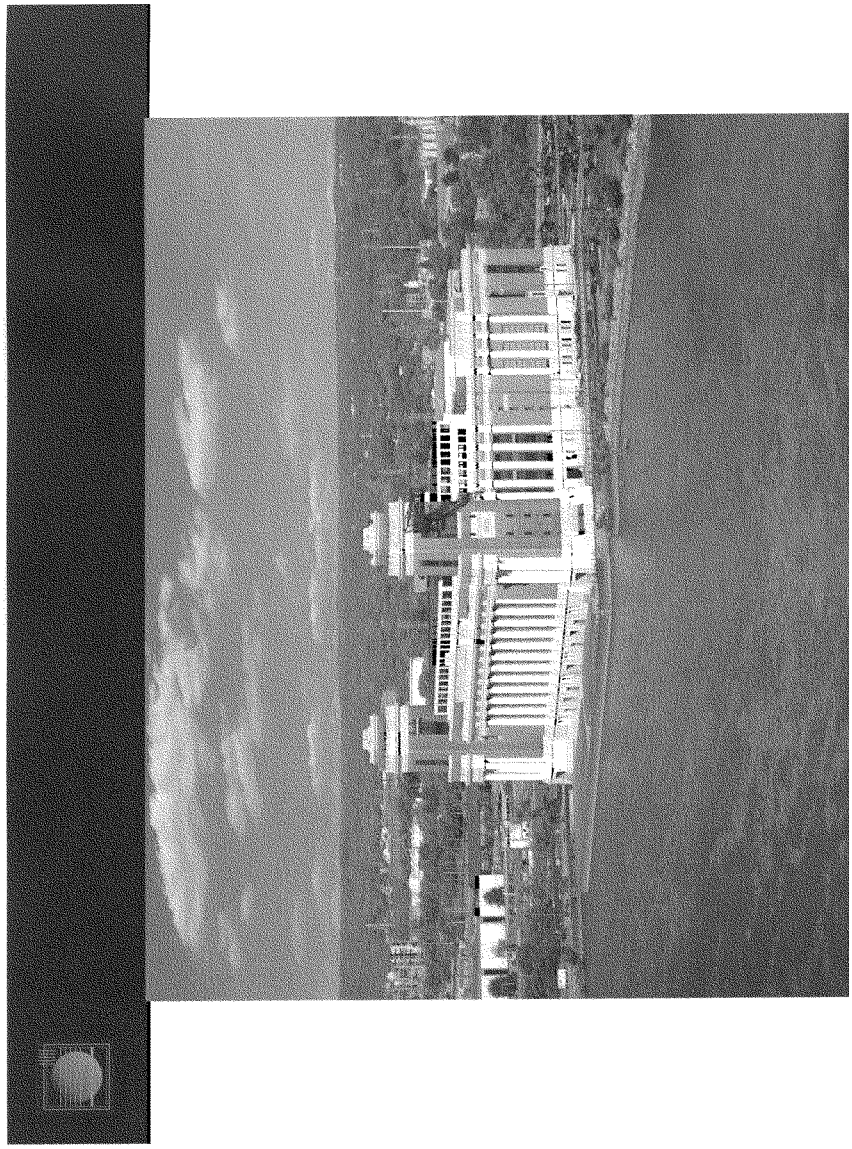


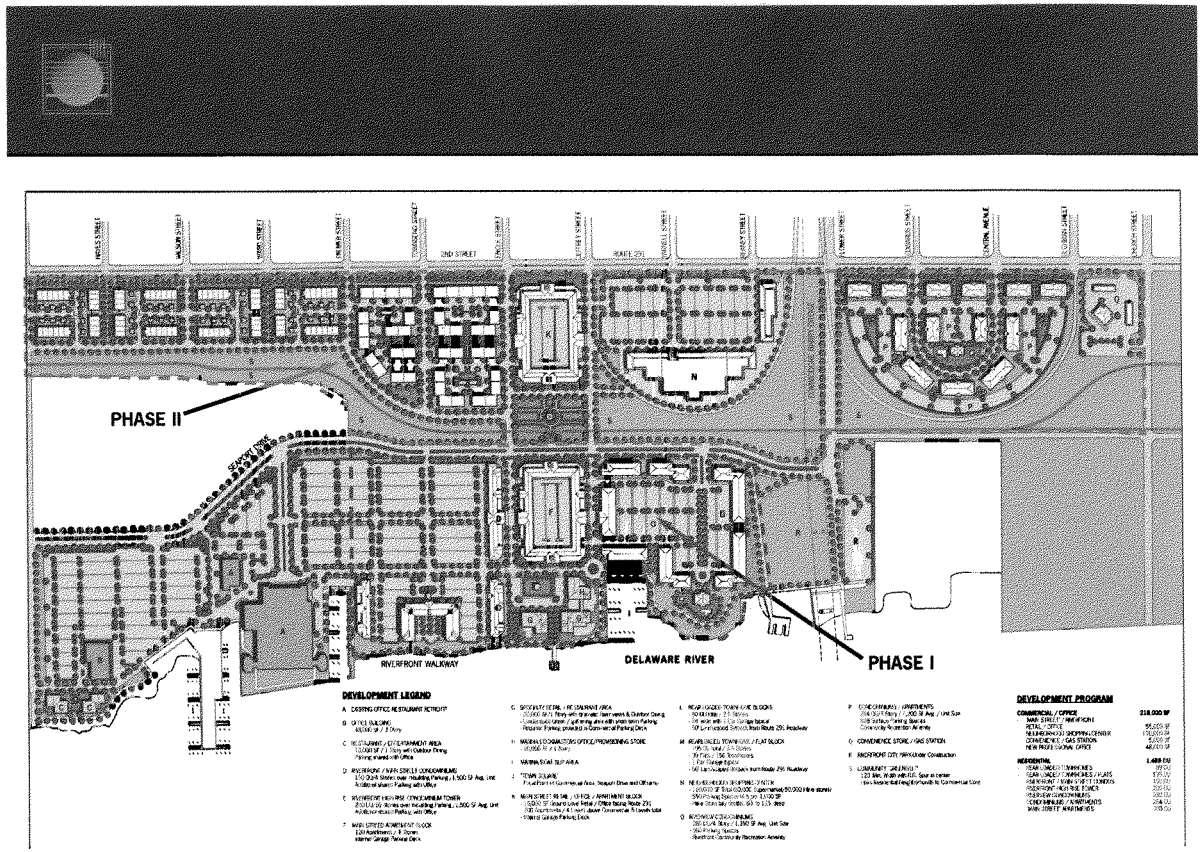


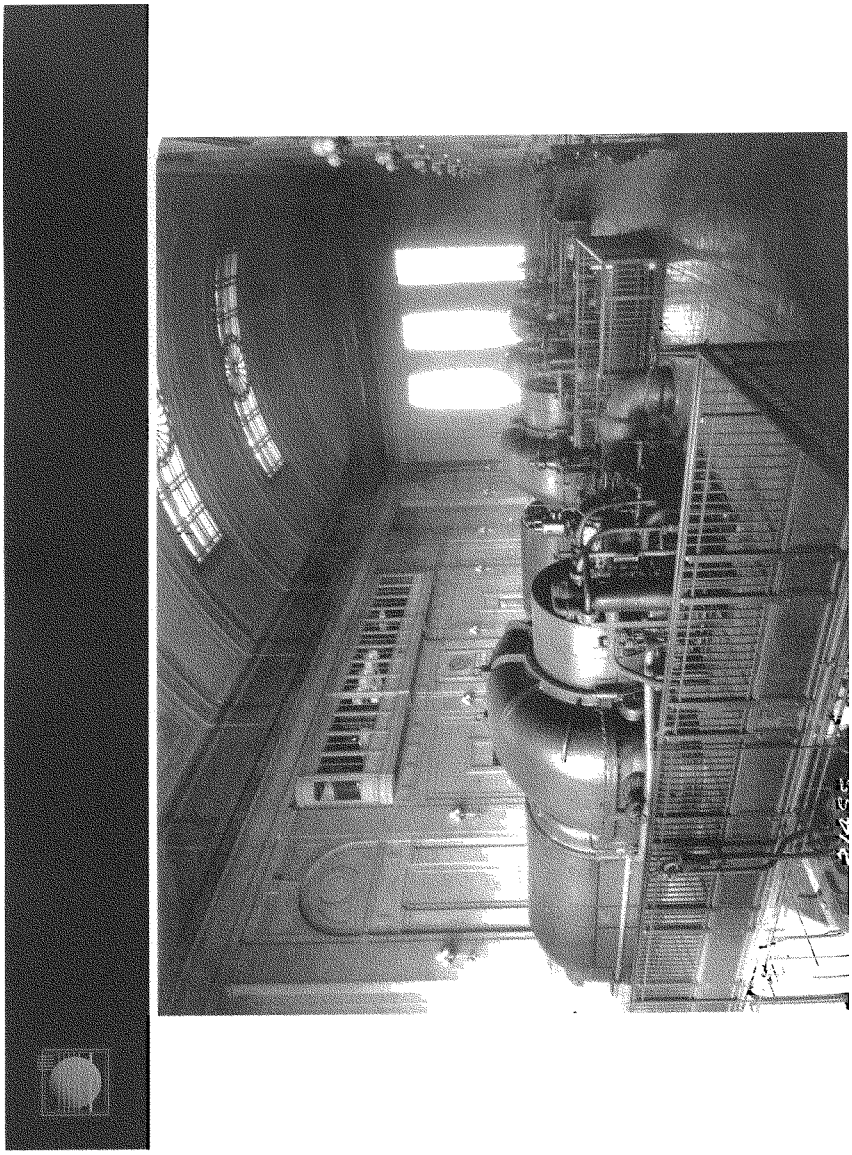


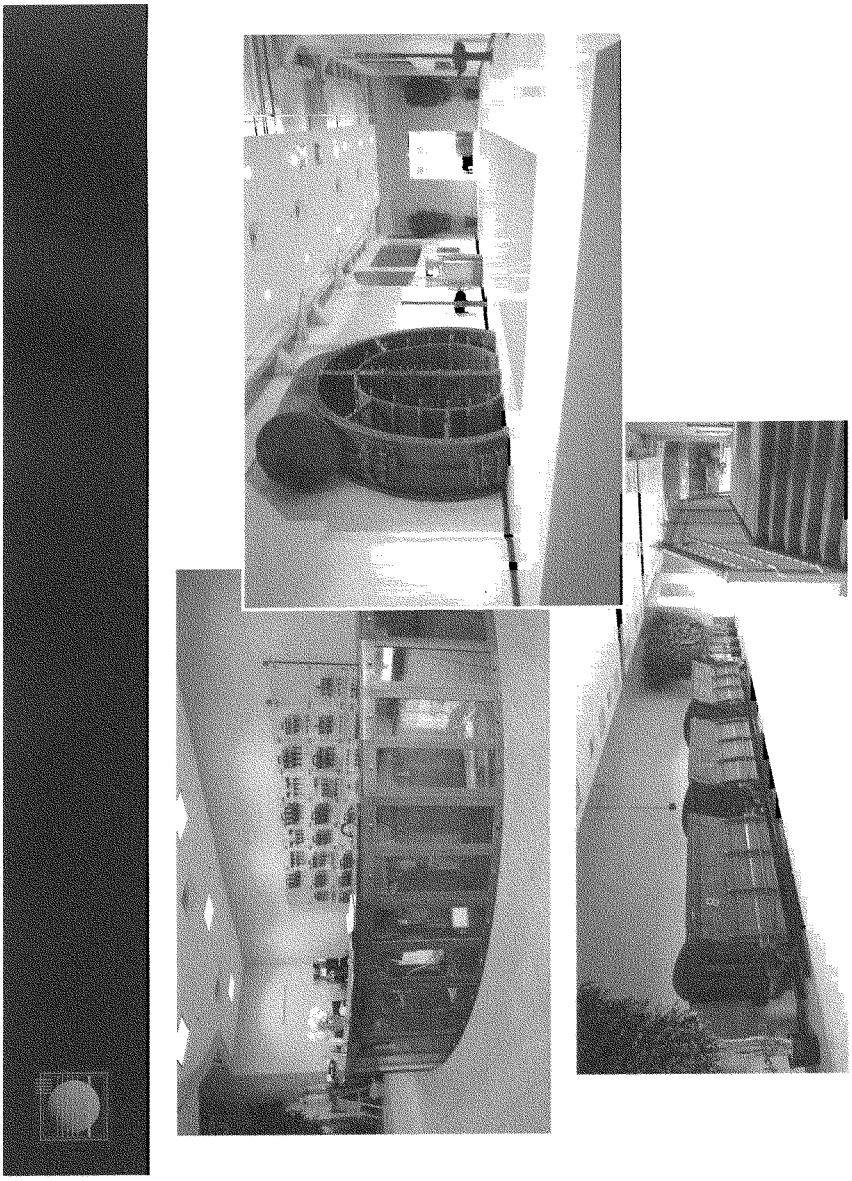







PHASE II
PHASE I
RIVERFRONT WALKWAY
DELAWARE RIVER
2ND STREET
ROUTE 291
CENTER AVENUE
DEVELOPMENT LEGEND
DEVELOPMENT PROGRAM





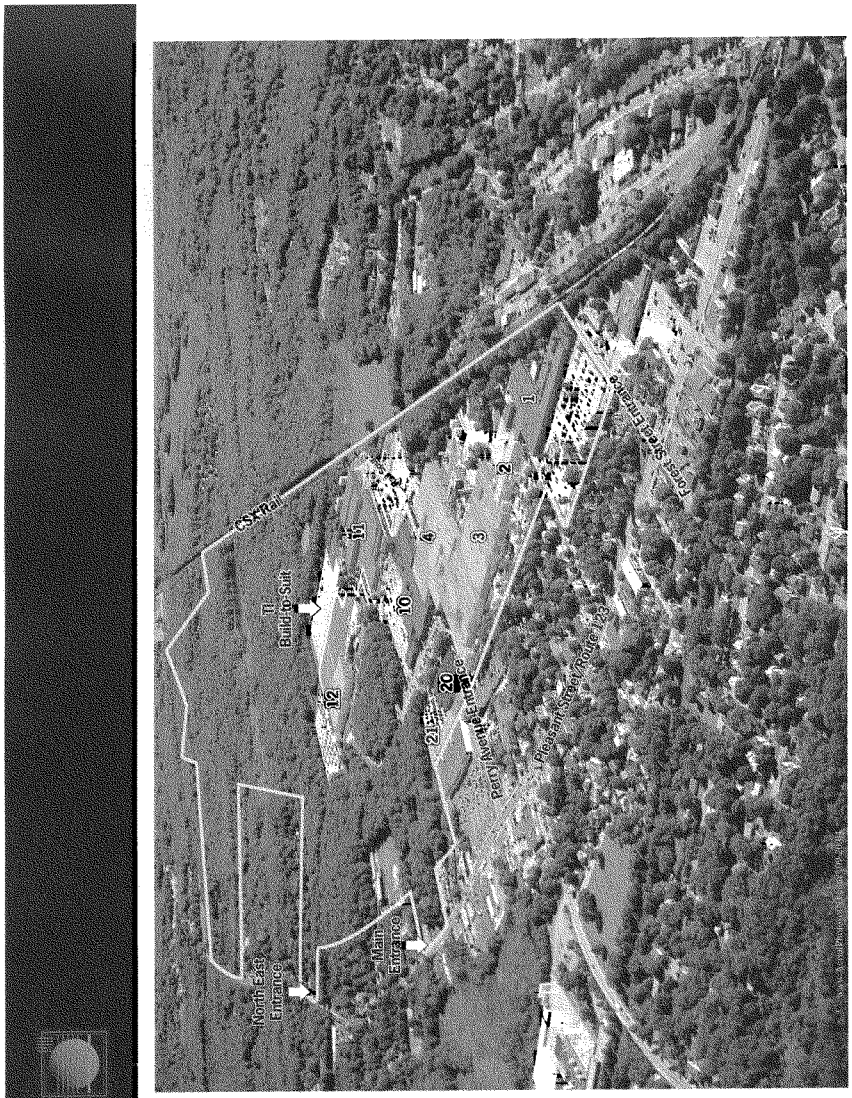
Former Budd Plant

BALA CYNWYD
ROXBOROUGH
MANAYUNK
EAST FALLS
QUEEN LANE RESERVOIR
SCHUYLKILL RIVER
CONRAIL

Former American Standard Plant

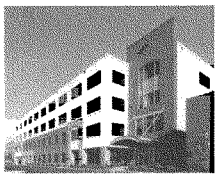
American Metro Center
Hamilton Stadium
Mixed Use Residential
Development Site
Hamilton
Park Station
Hillsborough River
Hillsborough Avenue
Cortez Ave
Dale Mabry Hwy
Dale Mabry Hwy

Former Texas Instruments Site


North East Entrance
Main Entrance
TL Build-To-Suit
CSX Rail
Pleasant Valley Elementary School
Pleasant Valley Road 123
Forest Hills Estates
1
2
3
4
10
12
20
21
W

Former Ingersoll Rand Site

Preferred Real Estate Investments, Inc. We take commercial real estate personally.

		
Quaker Chemical Corporation Conshohocken, PA - 200,000 SF	Rohm & Haas Bristol, PA – 480,000 SF	FMC Corporation Marcus Hook. PA – 350,000 SF
Situation Quaker Chemical Corp (NYSE: KWR) had operated out of its headquarters location in Conshohocken, PA since the early 1900's. Over the years, many of the former manufacturing buildings had become obsolete and were no longer utilized by the company. The company wanted to sell the property to a group with extensive environmental expertise and the financial capacity to successfully complete the transaction. Moreover, given that the company was going to lease approximately 50% of the project after undertaking the sale, they also wanted to work with a purchaser with proven redevelopment expertise. **Environmental Work Performed** Preferred implemented a program to manage volatile impacted ground water and oversaw chemical process decommissioning, including tank removal. **Development** Approximately 100,000 square feet of historic former chemical manufacturing facilities were redeveloped as the new world headquarters for Quaker Chemical Corp., who leased the facility for a 15 year term. Preferred Real Estate Investments, Inc. developed an additional 100,000 square feet of new Class "A" office space which is now 100% leased to multiple tenants.	**Situation** Rohm & Haas (NYSE: ROH) no longer fully utilized their former chemical manufacturing plant located in Bristol, PA. They decided to dispose of the property, yet wanted to remain as a tenant in approximately 33% of the property for a 10 year term. **Environmental Work Performed** A complete decommissioning of existing chemical manufacturing equipment was performed including asbestos and PCB abatement. PREI will also oversee ongoing ground water monitoring and the separation of waste water treatment systems. **Development** Preferred is redeveloping approximately 300,000 square feet, in addition to the 180,000 square feet that Rohm & Haas is leasing back. This redevelopment will include new base building work, tenant improvement work, partial demolition of existing buildings to improve parking count, as well as, the development of new build-to-suit opportunities.	**Situation** The site was originally owned by the American Viscous Company, which was subsequently acquired by FMC Corporation (NYSE: FMC). After several changes in ownership, Preferred acquired the site and commenced redeveloping the existing 452,000 square feet. **Environmental Work Performed** The primary environmental focus was asbestos containing soil management. PREI is also staging a coordinated development with FMC and the State Department of Environmental Protection to manage FMC's ongoing liabilities. **Development** Preferred is in the process of redeveloping the existing site into a 350,000 square foot office building and demolishing approximately 100,000 square feet to improve the available parking ratio. Additional flex buildings will be developed on the balance of the site to meet market demand.

Mr. TURNER. In listening to the various State programs, one of the things that I think is interesting about their assistance is that there are some programs that provide recapturing grants, revolving loan funds, etc.; others provide direct subsidy, it is not recoverable. It seems to me that in many of these sites that the gap—the subsidy is needed in a manner that is not recoverable. That means that these sites are not going to be, even when they're remediated—that the process of acquiring the property and remediating the property when compared to the cleaned value prior to complete redevelopment is still going to be a negative proposition. In other words, you're still going to have a negative value when you add in the cost of acquisition and remediation prior to the redevelopment.

And you have, each of you, experience in a number of different redevelopment projects. In the tax credit bill that I have brought forward, it is a straight subsidy. We're not seeking to recover the funds. Do you think that is an essential element, as we look to a broader scheme, to redevelop the brownfields? Mr. Colangelo.

Mr. COLANGELO. Mr. Chairman, yes, I do. I think one of the most difficult things to secure is your debt financing on a project, and through this tax credit bill, I think it would bring additional comfort to banks and the lending community so that you would have lesser lines on equity. So I think that a tax credit bill could clearly be a catalyst to encourage some more of the banking industry to get involved with these brownfield sites.

Mr. PHILIPS. Mr. Chairman, I would echo Mr. Colangelo's comment as well, and also point out that a number of people, not just on this panel, but previously on the first panel, had suggested that smaller sites were more problematic perhaps because they received less attention and they were lower-profile sites. And if you think about a tax credit, that can be—again, as I mentioned in my oral testimony, it could be a forward sale situation where you can create equity, and that chunk of equity could then be leveraged to either attract more equity or to attract debt capital, and that is critical to everybody, but clearly to a smaller entity because what it does is it doesn't start the clock of the return investment until—or at least a portion of it until you deploy that capital later in the project. So that is critical.

And I just wanted also to point out similarly the recapture issue and sort of providing a subsidy versus providing something that has to be returned or recaptured, such as the BDI program—the Economic Development Industry program, I should say—is it worked before. It has worked in the historic preservation tax credit.

I was speaking to a developer just recently who has purchased a site, purchased a site in Durham, NC. We're headquartered in Raleigh, NC, and we're apparently right down the street, and the site was purchased for $14 million. The site would have never been touched. It was an old tobacco warehouse; it would never have been touched had it not been for the historic tax credit. The entity rehabilitated the site, sold the site for—when you think about all the soft costs and the hard costs and everything combined and the interest payments, the debt service—for less than $14 million, but, because of the credit, was able to make it a viable project.

Those are the kind—when I talk about above-water versus underwater sites in my testimony, this is what I'm talking about.

There is a gap where there is huge public benefit, but for the developer, to the investor they still are viewed as under water because they can't monetize or commodify those public benefit externalities. And I would encourage you to continue on your mission to pursue the tax credit for that reason as well.

Mr. MATTHEWS. In our experience with several States that have environmental insurance programs, there are those who do credits and those who do subsidies. The subsidies are far more successful. As a matter of fact, you can directly see it in Massachusetts. When they first opened the program, they offered a 50 percent subsidy toward the premium of environmental insurance. Due to budget cutbacks, they had to reduce that subsidy to 25 percent at one point in time. The number of sites coming into the program dropped by 50 percent when they cut the subsidy by that amount, so it is directly corollary.

In States where there is just a tax credit available, we see much, much smaller activity, I mean substantially less activity in that market.

Mr. TURNER. Mr. Cartmell.

Mr. CARTMELL. Our success has been, in taking the State subsidy, which we have through a renaissance program, doing the project ourselves and then selling it to a developer. So certainly even for us the subsidy was the defining factor for us to complete the project.

Mr. TURNER. Mr. Houder.

Mr. HOUDER. I think, as was mentioned by the former panel, typically when it comes to incentives, the size of the incentives that can be offered by the Federal or State government, at least in our experience with the size of the sites that we basically develop, are typically not the difference maker in us deciding whether a site works or doesn't work, with the exception of tax credits. Tax credits, certainly the historical tax credit program has been a difference maker. That is probably the single incentive program that has the ability to tip the scale in undertaking a development project.

Mr. TURNER. Mr. Kanjorski.

Mr. KANJORSKI. Well, it has certainly been worthwhile to hear your experiences. I'm glad to see there is a very sophisticated insurance program out there. I'm certainly going to take it back to my district and see that we utilize it. So we're going to get you more business.

Mayor, it is always great to see local leadership like yours come forward and tackle these tough problems. Unfortunately, the experience of many people that are in public life doesn't lend them to your facility to do that, so it is great to see you here. And Kentucky has to be better off. I've gone through major parts of Kentucky; I know you have the same problems we have in Pennsylvania.

On your reconstruction, I'm going to get your card; I have a couple of sites.

And, Mr. Philips, you obviously are one of the sophisticated industries now that we have grown up in this field, so it would be very helpful for you to be very close to Mr. Turner in structuring this to see how we can tailor it in the best financial way to attract the private market.

Mr. PHILIPS. Not part of any Beltway industry, I promise.

Mr. KANJORSKI. If you do that, I will kill you.

And, Mr. Colangelo, you obviously come with a developer's experience, and now the national perspective of what is happening.

I'm going to walk away from this hearing more optimistic than I thought I would when I came to it, so I just want to congratulate you all, thank you for coming in. And then, again, thank Mr. Turner for a real enlightened presentation here and some real thought on his side to get something done creatively in Congress. It doesn't call for great national headlines, but Mr. Turner's actions here are the type of things that really spell well for the Congress, because over the long run it accomplishes far more than longshots.

Mr. MATTHEWS. Mr. Kanjorski, if I might add, specifically in Pennsylvania, Representative—Senator Erickson and Representative Frankel from the State legislature have both introduced legislation to establish a program similar to Massachusetts; and it is currently moving through the house and senate at this point in time.

Mr. KANJORSKI. If you would get me that thing, I would be happy to write a letter to the members of the legislature to support it.

Mr. MATTHEWS. Thank you.

Mr. COLANGELO. And, Mr. Kanjorski, I also wanted to mention that Pennsylvania was one of the founding members of the National Brownfield Association, and we are happy to announce that we are just launching our Pennsylvania chapter this month, and we would like to invite you to our inaugural reception in Harrisburg. And Pennsylvania has long been a leader in this, and I do encourage you to be optimistic. There's members like this from the public and private sector all along the country that are really dedicated to responsibly—and I mean responsibly—cleaning these up right, but making sure they provide economic benefit. And we've had the privilege of working with Congressman Turner on this issue, and I again encourage you that there is a good group of people that are very dedicated.

Mr. KANJORSKI. I'm impressed.

Mr. TURNER. Well, Mr. Kanjorski, I look forward to working with you on this. We've had discussions before about the brownfield spill, and also your mining and reclamation efforts, and your bill and the funding mechanism that you use with respect to bonding. I look forward to working with you on that because this is obviously something that is important to both our States, and it is important to have a bipartisan effort to address this.

And, Mayor, I also want to congratulate you. It is interesting, I think, these days that when people run for local government, they think in terms of services and police and fire, and not the need to become local developers. But with these issues of brownfields, really the future of our communities, what they're going to look like, really require people to step up like you have with the expertise to take on projects that are a little bit more complex to make them happen, because the private sector really at this point does not have the tools yet to do it. So I commend you for that.

And I want to ask you all the last question, which was the same question that I asked the first panel with respect to the voluntary cleanup programs on the State level. As I discussed with the brownfields bill, the tax credit bill that I have been working on, the

liability release provisions within it, we are looking now to hook that into the voluntary cleanup program rather than have language in the bill that would provide a separate release and some angst to individuals as to how that might be applied.

We heard from the representatives from the States as to how the volunteer cleanup program liability or bar of enforcement from the Federal EPA has worked effectively for them with some caveats of RCRA and TSCA as an area where it would need to be expanded or nailed down between their State and U.S. EPA.

Each of you having experience in the area of the remediation, I would like your thoughts as to a tax credit program that requires the recipients to participate through the volunteer cleanup program and its effectiveness.

Robert.

Mr. COLANGELO. Thank you.

First of all, I would like to state that brownfields are really a balance, and it's a balance between four stakeholder groups, property owners, developers and investors, service professionals and government. And I'd really like to commend government both at the legislative level as well as the Federal agencies, U.S. EPA, and the State and local government, who really come together to work together to try to make the process quicker, because that's the big hindrance to the private sector; it's time. It's also a balance between buyers and sellers.

What you see right now in many State voluntary cleanup programs is that you have two levels of liability relief. The buyer can get out of—or has very defined liability relief, but the original contaminator can't get out of that liability relief. What you propose, I think, starts to address that issue, and what I think it would do, personally, is it is going to allow companies to be more apt to clean up these sites, and you're going to put a larger supply of developable properties onto the marketplace.

The NBA, in our last leadership summit, wrote a white paper on what we can do to bring more corporate brownfield properties to market, and we found that corporate America owns more than 43 percent of these industrial commercial properties, and the No. 1 concern they have is getting out of the liability relief.

So I commend these States on these voluntarily cleanup programs that have come a long way, and I think what you are proposing takes it the next step further. And again, making sure that they're responsibly cleaned up, I think, puts the controls to keep the balance in the system that we've created.

Mr. TURNER. John.

Mr. PHILIPS. Thank you.

Just a couple of comments on indemnification. We offer that as part of our program. We indemnify our sellers, and we do that not just because of our funds, but we do that with backstopping it with companies like AIG Insurance. We are one of the largest buyers of environmental insurance perhaps in the world, and we think that it's very important to provide this kind of comfort to sellers or even potentially responsible parties. And we think it's important that you're thinking about this issue in the bill. It could have easily have just been a tax credit piece of legislation without the liability component, and this is very important.

Second, in our experience at Cherokee, we do take many of our sites through the voluntary cleanup program anyway, and we think that as time has gone on, and more have been adopted throughout the States, and the 50 States, we have seen that it has become a more popular route. And it seems to me to be an intriguing option to help integrate States into the process of the Federal tax credit to sort of provide a requirement that one goes through the State voluntary cleanup program. I think it has many attractive elements.

Mr. MATTHEWS. We encourage all of our States to go through the voluntary cleanup programs. We are familiar enough with them now, and each individual State that we do it, the best way to go, makes it more predictable, better for us to underwrite.

In terms of the environmental liability, you have opened the Pandora's box to where a lot of people either consider environmental liability to either be religion or business. We consider it to be business. We think there are ways to actively structure different approaches to put the environmental liability back in a box and deal with it. We've done it at the most complicated Superfund site in the United States where the U.S. EPA gave a full release of liability to the single responsible party at that site because they designed the appropriate structure to move forward with. Cherokee, Preferred, a lot of other companies, that's how they do it now. Environmental liability is just simply a business; you structure a program and you move forward.

Having other people see it that way is very difficult, but as more and more of them see the examples put before us—and that's why we're glad you have us here so we can say, we've done it here, we've done it here, we've done it here, this is routine business, you can move this forward. The NBA's white paper is an excellent source of information about why this is a problem, why not moving environmental liability to business practice and keeping it as something that—you know, if you look back to CERCLA, CERCLA was a liability statute, but it was really passed to a lot of extent to punish companies who contaminated property. Well, we are kind of beyond that now; now is a chance to move forward and put sites back into reuse that are part of the unintended consequences of CERCLA. And so the more we can do that, the more opportunities you give us—and that is why we are willing to work with you on your bill to say here is a way to design this so that those environmental liabilities are covered and addressed and are backstopped by all types of financial instruments that are out there.

Mr. CARTMELL. I would just like to echo what Mr. Matthews said, that anything that will let industry see the—hastens the process and lets them see the light at the end of the tunnel, I think, is beneficial.

Mr. TURNER. Charles.

Mr. HOUDER. I echo the comments made earlier. I think making the tax credits part of a voluntary cleanup program makes perfect logical sense, and responsible developers are going to be doing that anyway. So I think it makes sense to do that.

And to echo what Robert said, I think the other critical piece is to provide some path for the corporate seller, to not leave them out of the equation—or the seller, corporate or otherwise—simply be-

cause that so often is the last stumbling block that cannot be overcome.

And then with respect to what Mr. Matthews was saying, I think that part of this, you know, certainty and, I guess, legislative certainty to take this out of the realm of religion and to make it firmly on a business footing. I think the more expedited these things can be as, and as people see that environmentally contaminated sites are put quickly back into productive use helps, I think, sort of tone down some of the emotion that sometimes goes along with these sites.

Mr. TURNER. I want to give you an opportunity for any closing comment for things that have not been raised.

Mr. COLANGELO. Again, I want to commend you. What Congress may not realize that they have done is they have created an industry. It is called the brownfield industry and 10 years ago it was a collection of a bunch of crazy people thinking they could buy these contaminated properties. And now, by our best estimates, there are between 5,000 to 10,000 people that make their livelihood redeveloping brownfields, and these jobs aren't going to go offshore. These jobs are jobs that are going to stay in the country. This is a very highly specialized field where you need experts like this from both the public and private sector to take these old factories that house jobs that stayed here to redevelop these and put those back to use.

And so I think anything the government can do to provide any type of seed funding in the form of incentives to attract the large amount of private sector dollars will just help the brownfield industry grow and create a work force that is going to stay here. So thank you.

Mr. PHILIPS. Thank you very much for having us. I really appreciate you giving this hearing, and I wanted to thank the staff as well for doing such an excellent job in coordinating all of us and our testimonies.

I would just leave you with a final thought, which is to consider the real estate market that we find ourselves in around the country. I mean, a lot of people have expressed different opinions on how many brownfields are out there and how many brownfields—what is the subset of brownfields that are still attractive; are they minimally contaminated; are they considerably contaminated? In today's real estate market, the hottest, perhaps, that it has been certainly in our lifetimes, the sites that are not being developed now, I would venture to say that they're not going to be developed for a long time. They need help. The low-hanging fruit is not there, it's gone, and these efforts, the consideration especially now of innovative solutions like you're proposing, Chairman Turner, are very well appreciated, and we want to thank you very much for that.

Mr. MATTHEWS. Thank you for the opportunity to be here. I think the one thing to always keep in mind is flexibility. Every brownfield is a little different, and being overly prescriptive only leads to problems down the road. But allowing the public sector and the private sector to work together within a framework that allows them to get creative where they need to be creative is critical to moving forward with a variety of brownfields that are still out there today.

Mr. CARTMELL. The majority of brownfields being—numberwise—being located in the city, I just want to thank you for the opportunity to listen to us, for hearing us. Thank you.

Mr. HOUDER. And I thank you, too, for the opportunity. You know, if you think about brownfields, it definitely has the potential or I think is one of the silver bullet issues, economic issues in the United States; because if you think in terms of other crises, energy crises, infrastructure crises, the rejuvenation and rehabilitation of these key infill urban and suburban sites has the potential to greatly reduce those other problems.

And so I commend you for your efforts on this, and thank you, because I think this is one of probably the greatest examples of the best work government can do is taking on things that are under most people's radar screens that are relatively complicated, but at the end of the day have the greatest impact on people's day-to-day lives. So thank you.

Mr. TURNER. We have a statement from the American Society of Civil Engineers which will be entered into the record.

[The information referred to follows:]

Statement Of
THE AMERICAN SOCIETY OF CIVIL ENGINEERS
Before The
Subcommittee on Federalism and the Census
Of The House Committee on Government Reform
On
"Brownfields and the Fifty States:
Are State Incentive Programs Capable of Solving America's Brownfields Problem?"
September 13, 2005

Mr. Chairman and Members of the Subcommittee:

The American Society of Civil Engineers (ASCE) is pleased to offer this statement for the record of the hearing on "Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving America's Brownfields Problem?"*

ASCE's Brownfields Principles
The American Society of Civil Engineers (ASCE) supports existing federal programs to finance the revitalization of America's brownfields. ASCE also supports a new Brownfields Redevelopment Action Grant (BRAG) program within the Environmental Protection Agency (EPA) to provide investment funds for cities and municipalities to leverage private investment in brownfields and help preserve farmland and open spaces.

Community growth planning based on the principles of sustainable development should give consideration to the public needs, to private initiatives and to local, state and regional planning objectives.

Revitalized brownfields would reduce the demand for undeveloped land. Full provision for public infrastructure and facilities redevelopment must be included in all growth initiatives. These programs should be made at the lowest appropriate level of government. We believe that a targeted brownfields restoration program should take into account the variety of site-specific environmental exposure factors and risks present at every site based on a reasonable assessment of the future use of the property.

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* ASCE was founded in 1852 and is the country's oldest national civil engineering organization. It represents more than 137,000 civil engineers individually in private practice, government, industry and academia who are dedicated to the advancement of the science and profession of civil engineering. ASCE is a non-profit educational and professional society organized under Part 1.501(c) (3) of the Internal Revenue Service rules.

The states must be encouraged to investigate new approaches to brownfields remediation under clear federal oversight. Often the states have not been able to manage the complexities of the brownfields cleanup effort in the face of conflicting local goals and an absence of clear national priorities, which must work in tandem with local social, industrial redevelopment, and economic needs for the good of the affected communities.

Brownfield Cleanups

Brownfield sites are underutilized commercial and industrial properties. They often are associated with distressed urban areas, particularly in America's inner cities where the very poorest among us live and where industry once flourished.

Abandoned gas stations, dry cleaners, former industrial facilities, and warehouses are prime examples. Hundreds of thousands of brownfields exist throughout the United States. Wholly reliable estimates of their precise number vary; different federal and state agencies reckon their total at anywhere from 150,000 to 500,000 sites.[1]

The original brownfields redevelopment program was established by the U.S. Environmental Protection Agency (EPA) in 1993 owing to its general authority under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). "CERCLA is a 'sweeping' federal remedial statute, enacted in 1980 to ensure that '*everyone* who is potentially responsible for hazardous-waste contamination may be forced to contribute to the costs of [hazardous waste] cleanup.'"[2]

The EPA brownfields program, which ultimately expanded to include the delivery of more than 300 brownfields assessment grants (most for $200,000 over two years), was placed on a statutory footing nine years later in order to ensure its continued progress.[3]

In 1996, the EPA already had begun to provide the states a larger role in the brownfields process through an administrative mechanism that allowed the Agency and the states to enter into ''partnerships'' to encourage the cleanup of sites that are not contaminated enough to warrant cleanup under Superfund itself. The policy set out six ''baseline criteria'' for the Agency to allow states to carry out voluntary cleanups at brownfield sites under a memorandum of agreement.

Voluntary state cleanup programs were to provide opportunities for meaningful community involvement; ensure that voluntary response actions are protective of human health and the environment; have adequate staff and financial resources to ensure that voluntary response actions are conducted in an appropriate and timely manner, and that both technical assistance and streamlined procedures, where appropriate, are available from the state agency responsible for the voluntary cleanup program; provide mechanisms for the written approval of response action plans and a certification or similar documentation indicating that the response actions are complete; provide adequate oversight to ensure that voluntary response actions are conducted in such a manner to assure protection of human health and the environment; and show the capability, through enforcement or other authorities, of ensuring completion of response actions if the volunteering party carrying out the response action fails to complete the

necessary response actions, including operation and maintenance or long-term monitoring activities.

The EPA brownfields initiative was highly dependent on the states to carry out the program.

> EPA really believes in working in partnerships with the [s]tates. And we don't try to take action at any site under any program, really, that the [s]tate is active at without working—without first trying to work very constructively with them [sic]. And particularly in those programs such as brownfields where they have the lead we do everything we can to defer to them. And we will continue to have that policy.[4]

Moreover, the Agency offered a great deal of latitude to the states to work out the kinks in many brownfields areas. As then-Deputy Administrator Fisher told Congress four years ago, senior EPA officials already had decided that "we don't want to get in the situation of having to approve all of the different programs some of the [s]tates run."[5] Critics have argued, however, that this trust in the states to conduct voluntary site work under local cleanup authority and direction may be misplaced.[6]

The 2002 Act codified EPA practice and expanded the brownfields program dramatically.

> Grants are awarded primarily to municipalities to assess brownfields sites and to test cleanup and redevelopment models. The grants are typically up to $200,000, but up to $350,000 may be requested. The two-year projects are to identify creative and cost-effective means to clean up contaminated properties and restore them to productive use. Since the inception of the program, the EPA has awarded approximately 554 assessment grants for a total of over $150 million. Cleanup grants of up to $200,000 are also available to eligible local governmental authorities seeking to clean up Brownfield sites. So far, EPA has awarded 66 cleanup grants totaling $11.4 million. In 2004, approximately $75 million were awarded for a variety of grants and loans authorized by the 2002 . . . Act. Grants were provided to 42 states and included 155 assessment grants worth $37.6 million; 92 cleanup grants worth $12 million; and 18 revolving loan fund grants worth $20.9 million.[7]

For property owners and responsible parties, these state voluntary cleanups are more than a chance to display simple good citizenship. Following upon earlier EPA policy, the 2002 law requires that, where requested by a state, EPA is to generally refrain from adding a property to the National Priorities List in those instances where a party is carrying out a site cleanup under a state voluntary cleanup program.[8]

Because sites on the NPL are subject to Draconian liability standards, rigorous federal cleanup requirements, the expenditure of many years and millions of dollars to clean up, and lengthy and costly post-cleanup oversight, the ability to remain outside of the formal

Superfund process is an extremely valuable incentive.

State Incentives
Since 1996, the states have responded with a variety of inducements to spur voluntary cleanups of brownfields.

Rhode Island now offers tax credits for renovation of historic mill buildings. Massachusetts is one of several states with a "brownfields redevelopment fund" that offers low- or no-interest loans for site assessment and cleanup. Massachusetts and Wisconsin have established insurance programs to offer site owners access to volume discounted policies. Owners of petroleum contaminated sites in Maine can tap the state's Ground Water Fund for help with investigation and cleanup; the Fund is capitalized with fees on each barrel of oil entering the state.

New Jersey site owners can enter into redevelopment agreements that offer state tax rebates to cover up to one hundred percent of cleanup costs. Indiana has a new $9 million Brownfields Petroleum Remediation Grant Incentive program. New Mexico is one of a handful of states to make a direct link between brownfields financing needs and Clean Water State Revolving Fund resources.

Florida links tax incentives to job creation on brownfields sites, and reserves 30 percent of its Quick Response Training program funding for employees of businesses that locate in locally-designated brownfields areas. Texas is one of several states that have adopted property re-valuation tax abatements, allowing re-deployed brownfields sites some breathing time before taxing them at their new, increased value.[9]

In addition, states may have other tools to provide cleanup incentives for brownfields. In 2003, the National Conference of Commissioners on Uniform State Laws adopted the Uniform Environmental Covenants Act (UECA). The Act would require uniform procedures for the creation, amendment, termination, and enforcement of environmental covenants, which are legal instruments widely used to limit exposure to contamination left on site in partial cleanups of contaminated properties.[10] To date, only three states—Iowa, South Dakota, and West Virginia—have adopted the UECA.

Conclusion
The programs outlined above show great promise in promoting the return of brownfields to productive use while removing an economic deadweight from state and regional markets. Congress must be sure that these efforts continue, while at the same time ensuring that the cleanups are carried out under rigorous standards designed to protect human health and the environment from further blight.

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ENDNOTES

[1] Andrea Ruiz-Esquide, *The Uniform Environmental Covenants Act -- An Environmental Justice Perspective*, 31 ECOLOGY L.Q. 1007, *1009 (2004)[hereinafter Ruiz-Esquide, *Uniform Environmental Covenants*].

[2] *U.S. v. General Battery Corp.*, --- F.3d ----, 2005 WL 2124540 (3rd Cir. 2005) (quoting *U.S. v. Best Foods,* 524 U.S. 51, 56, n.1 (1998)) (emphasis in original).

[3] The Small Business Liability Relief and Brownfields Revitalization Act of 2002, Pub.L. 107-118, Jan. 11, 2002, 115 Stat. 2356 [hereinafter Brownfields Revitalization Act].

[4] *Brownfields Legislation: "The Brownfields Revitalization and Environmental Restoration Act of 2001," and "Gillmor Discussion Draft," and "Democratic Discussion Draft": Hearing Before the House Subcomm. on Env't and Hazardous Materials*, 107th Cong. 21 (2001) (statement of Linda Fisher, Deputy Administrator, Environmental Protection Agency).

[5] *Id.* at 33.

[6] "When the brownfields remediation process begins, developers have already calculated project benefits and costs. States are not usually required to second-guess these assessments, confining their involvement with developers' applications to a completeness review. Often, there is also little meaningful review during the remediation process itself. Some states require developers to enter into enforceable consent agreements; others involve the state extensively in approving work plans and supervising the cleanup process. These states are in the minority. Most allow the developer to operate more or less independently with little or no state oversight beyond a review of documentation submitted at the end of remediation activities." Joel B. Eisen, *Brownfields Policies for Sustainable Cities,* 9 DUKE ENVTL. L. & POL'Y F. 187, *207-208 (1999)(footnotes omitted).

[7] David B. Farer, *The Impact of Environmental Law on Real Estate Transactions: Brownfields and Beyond*, SK029 ALI-ABA *541, *544 (2004).

[8] "At the request of a State and subject to paragraphs (2) and (3), the President generally shall defer final listing of an eligible response site on the National Priorities List if the President determines that--

"(A) the State, or another party under an agreement with or order from the State, is conducting a response action at the eligible response site--

"(i) in compliance with a State program that specifically governs response actions for the protection of public health and the environment; and

"(ii) that will provide long-term protection of human health and the environment; or

"(B) the State is actively pursuing an agreement to perform a response action described in subparagraph (A) at the site with a person that the State has reason to believe is capable of conducting a response action that meets the requirements of subparagraph (A)."

Brownfields Revitalization Act, 115 Stat. *2379-80 (codified at 42 U.S.C. 9605(h) (1) (A-B)).

[9] ENVIRONMENTAL PROTECTION AGENCY, STATE BROWNFIELDS AND VOLUNTARY RESPONSE PROGRAMS 5 (2005) *at* http://www.epa.gov/swerosps/bf/pubs/st_res_prog_report.htm (last visited Sep. 9, 2005).

[10] Ruiz-Esquide, *Uniform Environmental Covenants, at* *1008.

Mr. TURNER. And before we adjourn, I would like to thank our distinguished witnesses for their participation today, and I appreciate your willingness to share your knowledge, experiences, and thoughts.

I would also like to thank my colleagues for their participation today. We had numerous State-created solutions to the issues of brownfields remediation and redevelopment highlighted today. These programs have successfully incentivized redevelopment efforts across the Nation; however, we also heard State programs, while helpful, also have limitations. According to landowners and developers. The two largest impediments to redevelopment of brownfields are liability and the high cost of redevelopment. As we have heard from numerous stakeholders, a tax credit for remediation costs would go a long way toward encouraging more aggressive redevelopment of these blighted properties.

Again, I want to thank our witnesses for their time today, and in the event that there are any additional questions that we did not have time for today, the record will remain open for a period of 2 weeks for submission of additional questions and answers.

I thank you, and we stand adjourned.

[Whereupon, at 12:23 p.m., the subcommittee was adjourned.]