

**THE CHALLENGE OF BROWNFIELDS: WHAT ARE
THE PROBLEMS AND SOLUTIONS IN REDEVEL-
OPING PENNSYLVANIA'S LEHIGH VALLEY COM-
MUNITIES?**

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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THE CHALLENGE OF BROWNFIELDS: WHAT ARE THE PROBLEMS AND SOLUTIONS IN REDEVELOPING PENNSYLVANIA'S LEHIGH VALLEY COMMUNITIES?

TUESDAY, OCTOBER 25, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON FEDERALISM AND THE CENSUS,
COMMITTEE ON GOVERNMENT REFORM,
Bethlehem, PA.

The subcommittee met, pursuant to notice, at 10 a.m., in rooms 291, 292, 293 of Lehigh University Rauch Business Center, Hon. Michael Turner (chairman of the subcommittee) presiding.

Members present: Representatives Dent and English.

Staff present: Shannon Weinberg, counsel; Juliana French, clerk; and Erin Maguire, Rep. Dent/LC.

Mr. TURNER. Good morning. We will call to order the hearing of the Government Reform Subcommittee on Federalism and the Census, and this hearing is entitled "The Challenge of Brownfields: What are the Problems and Solutions in Redeveloping Pennsylvania's Lehigh Valley Communities?" We have this morning William Michalerya to welcome us to Lehigh University and we want to thank him and Lehigh University for hosting us today.

STATEMENT OF WILLIAM MICHALERYA

Mr. MICHALERYA. Thank you very much. Congressman Dent, Congressman English and Chairman Turner: On behalf of President Greg Farrington and Lehigh University, I would like to welcome you to Lehigh University, Bethlehem and the Lehigh Valley.

You could hopefully pick up on the university's emphasis on partnerships, since it was mandatory to welcome you to the university, the city and the region, and for Congressman Turner from Ohio, to the Commonwealth.

At Lehigh, we consider ourselves a "medium-sized" university with approximately 4,700 undergraduate, 2,000 graduate students, 430 faculty members and 1,200 staff. Our campus is approximately 1,600 acres. Our annual operating budget is approximately \$330 million, with research expenditures of approximately \$45 million.

Lehigh University was founded and initially grew to support the railroad, steel and manufacturing industries. We are now playing a key role in developing the "knowledge economy" and transforming the economic landscape in the region and the Nation.

We have another strong commitment in our research and education mission and that is industry partnerships and economic de-

velopment. On our campus we host the Ben Franklin Technology Partners, the Manufacturers Resource Center and, in this building, the Small Business Development Center.

In addition, we have a tradition of developing major research centers, including the Center for Advanced Technology for Large Structural Systems, the Center for Optical Technologies and the Center for Advanced Materials and Nanotechnology. These centers are anchored by a strong industry partnership program. They also have assisted with the missions of many Federal agencies, including the National Science Foundation, the Department of Defense, Department of Transportation, and NASA.

We are also very committed to the revitalization of the former Bethlehem Steel property and the south side of Bethlehem, so your hearings on “brownfield sites” is especially appropriate to us today.

Finally, I just want to acknowledge the hard work and expertise of your staffs, especially Erin Maguire, Juliana French, and Shannon Weinberg. It was a pleasure to work with them to organize this hearing.

Again, welcome to Lehigh University and we are proud to help with the important work of this committee. Thank you.

[The prepared statement of Mr. Michalerya follows:]

UNITED STATES CONGRESS
COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON FEDERALISM AND THE CENSUS
FIELD HEARING - LEHIGH UNIVERSITY – October 25, 2005

WELCOMING COMMENTS – WILLAM MICHALERYA
ASSOCIATE VICE PRESIDENT FOR GOVERNMENT RELATIONS
LEHIGH UNIVERSITY

**CONGRESSMAN DENT, CONGRESSMAN ENGLISH, AND CHAIRMAN
TURNER:**

**ON BEHALF OF PRESIDENT GREG FARRINGTON AND LEHIGH
UNIVERSITY, I WOULD LIKE TO WELCOME YOU TO LEHIGH
UNIVERSITY, BETHLEHEM AND THE LEHIGH VALLEY.**

**YOU COULD HOPEFULLY PICK UP ON THE UNIVERSITY’S EMPHASIS ON
PARTNERSHIPS, SINCE IT WAS MANDATORY TO WELCOME YOU TO
THE UNIVERSITY, CITY AND REGION (AND FOR CONGRESSMAN
TURNER FROM OHIO, TO THE COMMONWEALTH).**

**AT LEHIGH, WE CONSIDER OURSELVES A “MEDIUM SIZED”
UNIVERSITY WITH APPROXIMATELY 4700 UNDERGRADUATE, 2000
GRADUATE STUDENTS, 430 FACULTY MEMBERS AND 1200 STAFF. OUR
CAMPUS IS APPROXIMATELY 1600 ACRES. OUR ANNUAL OPERATING
BUDGET IS APPROXIMATELY \$330 MILLION, WITH RESEARCH
EXPENDITURES OF APPROXIMATELY \$45 MILLION.**

**LEHIGH UNIVERSITY WAS FOUNDED AND INITIALLY GREW TO
SUPPORT THE RAILROAD, STEEL AND MANUFACTURING INDUSTRIES.
WE ARE NOW PLAYING A KEY ROLE IN DEVELOPING THE
“KNOWLEDGE ECONOMY” AND TRANSFORMING THE ECONOMIC
LANDSCAPE IN THE REGION AND THE NATION.**

**WE HAVE ANOTHER STRONG COMMITMENT IN OUR RESEARCH AND
EDUCATION MISSION – INDUSTRY PARTNERSHIPS AND ECONOMIC
DEVELOPMENT. ON OUR CAMPUS WE HOST THE *BEN FRANKLIN
TECHNOLOGY PARTNERS, THE MANUFACTURERS RESOURCE CENTER*
AND (IN THIS BUILDING) *THE SMALL BUSINESS DEVELOPMENT CENTER.***

IN ADDITION, WE HAVE A TRADITION OF DEVELOPING MAJOR RESEARCH CENTERS, INCLUDING THE CENTER FOR ADVANCED TECHNOLOGY FOR LARGE STRUCTURAL SYSTEMS, THE CENTER FOR OPTICAL TECHNOLOGIES AND THE CENTER FOR ADVANCED MATERIALS AND NANOTECHNOLOGY. THESE CENTERS ARE ANCHORED BY A STRONG INDUSTRY PARTNERSHIP PROGRAM. THEY ALSO HAVE ALSO ASSISTED WITH THE MISSIONS OF MANY FEDERAL AGENCIES, INCLUDING THE NATIONAL SCIENCE FOUNDATION, THE DEPARTMENT OF DEFENSE, DEPARTMENT OF TRANSPORTATION, AND NASA.

WE ARE ALSO VERY COMMITTED TO THE REVITALIZATION OF THE FORMER BETHLEHEM STEEL PROPERTY AND THE SOUTHSIDE OF BETHLEHEM – SO YOUR HEARINGS ON “BROWNFIELD SITES” IS ESPECIALLY APPROPRIATE TO US TODAY.

FINALLY, I JUST WANT TO ACKNOWLEDGE THE HARD WORK AND EXPERTISE OF YOUR STAFFS, ESPECIALLY ERIN MAGUIRE, JULIANA FRENCH, AND SHANNON WINEBERG. IT WAS A PLEASURE TO WORK WITH THEM TO ORGANIZE THIS HEARING.

AGAIN, WELCOME TO LEHIGH UNIVERSITY AND WE ARE PROUD TO HELP WITH THE IMPORTANT WORK OF THIS COMMITTEE.

Mr. TURNER. Thank you so much. Before we begin, I want to recognize the Members that we have on the panel today. With us we have Representative Phil English, who I know that you all know. He is from Erie, PA. We are very honored to have him here. He is a leader in the House on the Ways and Means Committee. He is also a member of the Speaker's Saving America's Cities Working Group where he has been recognized for his expertise in urban issues, the Speaker having turned to 24 Members of the House Republican Conference who have experience in local government and looking to them for ways in which an urban policy can assist in economic development in urban areas.

Representative English is also a leader in the issues of protecting our manufacturing base. He was kind enough to come to my district in Dayton, OH for a manufacturers' forum where we listened to manufacturers in my community and the challenges that they face and ways in which they can be assisted, and was the author and the lead on recent action by the House to encourage the floating of China's currency that has long been an issue of dispute for manufacturers with the fear of their undervalued currency providing them an edge in our economy. We are very excited to have him here today. He is also a cosponsor of my brownfields redevelopment bill, a tax credit bill, that when you look at these economic development opportunities in brownfields, could provide some Federal funding in an unprecedented level. We appreciate having you here today and I will recognize you soon for an opening statement.

And of course, we have Representative Charles Dent. I greatly appreciate being asked to bring the hearing to your district to look at the successes that are here. We had an opportunity to tour the Bethlehem Steel site this morning and what a great incredible opportunity and an example of a private/public partnership, a community that has a plan and is working diligently and has economic successes. It is great today to get on the record some of the elements that have caused that success, but also to look at the issues that I know are very close to Mr. Dent's heart as he works in the House. He has been recognized because of his leadership in Pennsylvania as Vice Chair of this committee.

It is very unusual for a freshman to be named vice chair to a subcommittee, but Mr. Dent was named Vice Chair of this subcommittee, which is again Federalism and the Census, looking at the interrelationship between State, local and Federal Governments, so he brings his expertise in the Pennsylvania government as we look to the issues of how the Federal Government can work more effectively for communities.

And with that, I would again like to welcome you all to our subcommittee on Federalism and the Census and this field hearing entitled, "The Challenge of Brownfields: What are the Problems and Solutions in Redeveloping Pennsylvania's Lehigh Valley Communities?" This is the fourth in a series of hearings held on the issue of brownfields and brownfield redevelopment. Our hearings in D.C. are informative and helpful, but all too often we get the inside-the-beltway view and these field hearings allow us to reach out to the public and interact with individual communities on a more personal basis and to learn firsthand of their concerns, their suggestions and their successes. We have had great response to this hear-

ing and I would like to again express my appreciation to the city of Bethlehem and to President Gregory Farrington of Lehigh University and his staff for sharing these facilities and for their accommodating efforts.

We have a great number of witnesses present and we are here to listen to you. In the interest of time, I will submit my complete comments for the record, a copy of which is available at the press table.

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

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INDEPENDENT

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



OVERSIGHT HEARING
STATEMENT BY MICHAEL R. TURNER, CHAIRMAN

Hearing topic: *"The Challenge of Brownfields: What are the Problems and Solutions in Redeveloping Pennsylvania's Lehigh Valley Communities?"*

Tuesday, October 25, 2005
10:00 a.m.
Lehigh University
Bethlehem, Pennsylvania

OPENING STATEMENT

Welcome to the Subcommittee on Federalism and the Census' field hearing entitled *"The Challenge of Brownfields: What are the Problems and Solutions in Redeveloping Pennsylvania's Lehigh Valley Communities?"* This is the fourth in a series of hearings held on the issue of brownfields and brownfield redevelopment. Our hearings in DC are informative and helpful, but all too often we only get the inside-the-beltway viewpoint. Field hearings allow us to reach out to the public and interact with individual communities on a more personal basis to learn first-hand of your concerns and suggestions. I am very pleased with the response to this hearing – both from our great number of witnesses and from the public in attendance here today.

Before we begin, I would like to express my appreciation to the City of Bethlehem for hosting us and to President Gregory Farrington of Lehigh University and his staff for sharing their facilities and for their accommodating efforts.

In every community across this nation there are abandoned parcels of property marring the faces of our cities and towns. Behind rusted chain link fences are broken windows and crumbling buildings. Beneath the surface there are substances contaminating the local environment, robbing the communities in which they exist of new jobs and other economic

opportunities. There are an estimated 450,000 to 1 million of these parcels, known as brownfields, across our nation, contributing to community blight and thus lowering property values and decreasing tax revenues. In the Commonwealth of Pennsylvania alone, there are an estimated 10,000 to 12,000 of these blighted properties, amounting to 100,000 to 120,000 acres of contaminated property. 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. 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 cannot leave brownfields and abandoned factories as monuments to their once productive pasts. The redevelopment of brownfields will create jobs, new living and shopping choices, and spur the improvement or development of transportation and infrastructure. If we make redevelopment of brownfields more attractive, we can also help reduce urban sprawl and save green space. In my hometown of the City of Dayton, Ohio, over 50 acres of land surrounding our downtown are brownfields that would attract jobs and spur economic expansion -- if the city had assistance in addressing the environmental contamination from past use of the parcels.

In 2002, the President signed the Small Business Liability Relief and Brownfields Revitalization Act of 2001. While the law codified and secured independent appropriations for the EPA's brownfields program, the shining accomplishment of the Act was providing some relief from the daunting amount of potential liability for acquiring and attempting to redevelop a brownfield site. Specifically, the Act limits liability for owners of land that is contaminated by adjoining property as well as for prospective purchasers of known contaminated property. The Act also clarified the CERCLA "innocent landowner" defense and created additional liability relief by forbidding the federal government from intervening at sites being cleaned up under a state program except in certain circumstances. The Act addressed funding and liability issues -- strong first steps in encouraging brownfields redevelopment. The Subcommittee looks forward to hearing from EPA on the effect the brownfields program and new liability relief has achieved in Region III and in Pennsylvania specifically.

Last year, I, along with Chairman Tom Davis, requested that the Government Accountability Office (GAO) study the status of brownfields redevelopment across the nation. GAO's report shows that stakeholders are generally positive about EPA's brownfields program 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." H.R. 4480 proposed a 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. H.R. 4480 also proposed additional liability relief by allowing potentially responsible parties that contribute at least 25 percent of remediation costs to receive liability release for 100 percent of the approved remediation plan and demolition costs.

The bill I plan to introduce in the near future will be revised to address some of the concerns of stakeholders. The new bill will clarify the liability relief provisions, making clear that the relief is limited to the approved remediation plan while liability for other types of claims, such as liability to adjacent property owners or for outstanding health complaints, is unaffected. The bill will also provide that an environmental remediation plan be approved by the state environmental agency.

The EPA's brownfields program has assisted a number of communities in brownfields assessment and cleanup. Stakeholders are appreciative of the EPA's brownfields program, especially with the easing of the regulatory regime.

However, when choosing between brownfields, grayfields, and greenfields for development projects, it still comes down to a cost-benefit analysis. Unless we significantly address the cost of redevelopment and clean up of these sites, the EPA brownfields program will continue to affect only a few thousand sites, leaving a major gap and burdening many communities with land that cannot be redeveloped and that remain a blighting influence.

We have two panels of witnesses before us to help us understand the state of brownfields redevelopment and the impact of the EPA's brownfields program across the Commonwealth of Pennsylvania. We also hope to hear your ideas for improving or complementing the EPA brownfields program in order to encourage more aggressive redevelopment.

On our first panel, we will hear from:

- Abraham Ferdas, Director of the Hazardous Site Cleanup Division with the U.S. Environmental Protection Agency's Region III office;
- Eugene DePasquale, Deputy Secretary for Community Revitalization and Local Government Support with the Pennsylvania Department of Environmental Protection;
- Jim Seif, Vice President of Corporate Relations with PPL Corporation. Mr. Seif was also Secretary of the Pennsylvania Department of Environmental Protection under Governor Tom Ridge;
- Paul Schoff of Feinberg and Schoff, LLP; and
- Robert Colangelo, Executive Director of the National Brownfield Association.

Our second panel of witnesses consists of representatives from the Pennsylvania stakeholder community.

- Kerry Wrobel, President of the Lehigh Valley Industrial Park;
- Chad Paul, Jr., Chief Executive Officer of the Ben Franklin Technology Partners;
- Ray Suhocki, President and Chief Executive Officer of the Lehigh Valley Economic Development Corporation;
- Stephen Donches, President of the National Museum of Industrial History.

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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Mr. TURNER. We have two panels of witnesses before us to help us understand the state of brownfield redevelopment and the impact of the EPA's Brownfield Program across the Commonwealth of Pennsylvania. We also hope to hear your ideas for improving or complementing the EPA Brownfields Program in order to encourage more aggressive redevelopment. And as I identify the members of the two panels, if I should slaughter anyone's name, please reintroduce yourself to us as you come to be recognized.

On our first panel we have Abraham Ferdas, Director of the Hazardous Site Cleanup Division with the U.S. Environmental Protection Agency's Region III office. We have Eugene DePasquale.

Mr. DEPASQUALE. Very good.

Mr. TURNER. They wrote it phonetically, that helps. Deputy Secretary for Community Revitalization and Local Support with the Pennsylvania DEP. Jim Seif, vice president of corporate relations with PPL Corp. Mr. Seif was also Secretary of the Pennsylvania DEP under Governor Tom Ridge. Paul Schoff, Feinberg and Schoff, LLP and Robert Colangelo is going to be on our second panel. He is currently stuck in traffic and he is the executive director of the National Brownfield Association.

Our second panel of witnesses consists of representatives from the Pennsylvania State core community. And we have Kerry Wrobel, President of the Lehigh Valley Industrial Park. Chad Paul, Chief Executive Officer of the Ben Franklin Technology Partners. Ray Suhocki, president and CEO of Lehigh Valley Economic Development Corp. And Stephen Donches, president of the National Museum of Industrial History.

I look forward to hearing all of your testimony. In addition to your testimony, we will have a series of questions. Everyone will be given 5 minutes for their presentation. I do want to tell you that we are going to attempt to end the hearing today by 12:30. We all have to return back to Washington today for votes in hearings and so we are going to try to catch an earlier train. And with that, I would like to recognize the vice chair of the subcommittee, the Representative for the 15th District of Pennsylvania, for his opening comments and remarks.

Mr. DENT. Thank you, Chairman Turner, for holding this important hearing and thank you, too, Congressman English for coming from the other end of the State to be with us today. I truly appreciate that. Thanks again to Bill Michalerya, Greg Farrington and the entire staff at Lehigh University for providing this wonderful facility for this hearing. This proceeding does provide us with a wonderful opportunity to address the issues surrounding brownfields clean-up as they exist around the country and more specifically, as we have to confront them within the Commonwealth of Pennsylvania.

Brownfields are both an important environmental and economic issue. How we decide to clean up and reuse brownfields across the country will be an important question to resolve as we go about the task of promoting industrial redevelopment, especially in those areas that were once dominated by traditional manufacturing concern, such as automaking, steel fabricating and ship building. These parcels of land typically contain hazardous substances, pollutants or contaminants and that is where the problem lies. The

presence of these foreign substances sometimes makes it more cost-effective to abandon the land rather than pay the bill to have the property properly cleaned up and remediated. There are many disincentives to remediating a contaminated property, the first and foremost of which is price. To this effect, sometimes the cost of clean-up may be more expensive than the value of the land itself.

Here on the south side of Bethlehem, right here in Pennsylvania, lies one of the largest brownfield sites in the country. It is the former manufacturing facility of the Bethlehem Steel Corp. This old plant contains railroad tracks, abandoned mills and left-over plant equipment on some 1,800 acres of land that run along the banks of the Lehigh River. Steelmaking began here in 1857 and expanded greatly during the early part of the 20th century. By the 1950's the company had become the Nation's second largest steel producer and much of that work was done on the Bethlehem site.

In fact, I was at a meeting last week of the Winston Churchill Society and it was brought up about Winston Churchill's deal with Charles Schwab in front of a very distinguished Washington group about the history of Winston Churchill and Charles Schwab and Bethlehem playing an important role in that discussion, just as a parenthetical. This area also played a vital role in the national defense. During the Second World War the steel that formed the basis of the 16-inch armor plating on battleships such as the Missouri and the Wisconsin was rolled at this site. For many years, it was the economic backbone of the Lehigh Valley.

By the 1990's, however, Bethlehem Steel Corp. found that it could no longer effectively compete against foreign steel products and in 1995 the plant closed its doors, leaving 375 tons of soil contaminated with arsenic and lead at the site. During the last years of its existence, the company operated the plant on what has been classified as a brownfield site under guidelines set up by the Federal Resource Conservation and Recovery Act [RCRA]. This act permitted operation of the plant only if the company could demonstrate that it was capable of managing and cleaning up the hazardous wastes that accompany steel production.

While the steel company is no longer with us, the environmental clean-up of this site has proceeded and the future of this piece of property appears bright. Local developers, several of whom will be testifying shortly, have put forth plans to build a conference center, technology center and retail shops. Further, there is a move afoot to commemorate the actions of the great employees who worked here by establishing the Smithsonian Institution's National Museum of Industrial History on the site.

These great accomplishments are the result of the Environmental Protection Agency and the Pennsylvania Department of Environmental Protection working together to establish State and Federal RCRA clean-up requirements with one plan. Pennsylvania was the first State to sign an MOA, a Memorandum of Agreement, with the EPA that included three Federal program areas: the Comprehensive Environmental Response, Compensation and Liability Act; the Resource Conservation and Recovery Act; and the Toxic Substance Control Act.

I think this type of State and Federal partnership should be encouraged throughout the country, an alliance that ideally would

bring together not only the EPA and a particular State's environmental agency, but other Federal agencies as well, all with a commitment to redevelopment.

Pennsylvania's Land Recycling Program has had an astounding turnaround effect on brownfields that has not only promoted environmental protections, but also created economic opportunities for thousands of families. It has also rejuvenated the tax bases of dozens of communities across Pennsylvania. I applaud the fact that Pennsylvania's Land Recycling Program has transformed abandoned, inactive pieces of land into places of economic revitalization. Over 30,000 jobs have been created or retained as a result of the many business opportunities engendered by the recovery of brownfields in Pennsylvania.

It is clear that we must continue to work at cleaning up and redeveloping America's brownfield sites. This is imperative in order to encourage job growth, promote the development of transportation and infrastructure on these inactive urban industrial areas while at the same time saving greenfields. While many strides have been made, there is still much to be done.

That said, it is important to acknowledge future legislative proposals that will move us toward our goal of complete brownfields remediation. Last Congress, Chairman Turner introduced the Brownfields Revitalization Act of 2004, H.R. 4480, which proposed a tax credit of up to 50 percent for qualified remediation expenses performed at brownfield sites in certain poverty-rated areas. Chairman Turner expects to reintroduce a similar piece of legislation this Congress. This bill will be similar to its predecessor, but it will also more explicitly define the roles and obligations of some of the major governmental entities or parties involved, including the State's development agency and the environmental protection organization.

It will also explicitly set out the requirements that need to be fulfilled in order for a developer to enjoy a tax credit in return for remediating a brownfields site. In addition, my colleague and fellow member of the Pennsylvania delegation, Representative Melissa Hart, has proposed the Pennsylvania, excuse me, the Brownfield Redevelopment Assistance Act, H.R. 1237. This bill would provide grant moneys earmarked through the Department of Commerce for promotion of economic projects on brownfields' sites. Specifically, the goal of this legislation is to provide funding that would target those projects that have the potential to both restore employment and bring new income and private investment to distressed communities.

Congresswoman Hart has also proposed the Financing of Brownfields Activities through Government Bonds Act, H.R. 3451, which would amend the Internal Revenue Code to allow the use of tax-exempt redevelopment bonds to finance the costs of environmental remediation at brownfield sites. Permitting the use of these bonds for the purpose of clean-up will provide much needed capital that will not only make for a healthier environment but will also promote needed economic redevelopment in areas that would clearly benefit from the same.

Again, thank you, Chairman Turner, for acknowledging the importance of this issue and I look forward to hearing the testimony

of our knowledgeable panelists, all of whom have a distinguished background, either at the State or National level or, later on, people at the local level who are just as experienced. So again, thank you, Chairman Turner and Mr. English for your presence.

[The prepared statement of Hon. Charles W. Dent follows:]

Representative Charles W. Dent
Pennsylvania- 15th District
Subcommittee on Federalism and the Census:
“The Challenge of Brownfields: What are the Problems and Solutions in Redeveloping
Pennsylvania’s Lehigh Valley Communities?”

I would like to thank Chairman Turner for holding this very important subcommittee hearing to discuss the problems inherent in and solutions available for the redevelopment of Pennsylvania’s and the Nation’s brownfield sites. I would also like to thank President Gregory Farrington and Bill Michalerya of Lehigh University for providing a facility for this hearing. This proceeding provides us a wonderful opportunity to address the issues surrounding brownfields clean-up as they exist

around the country and, more specifically, as we have to confront them within the Commonwealth of Pennsylvania.

Brownfields are both an important environmental and economic issue. How we decide to clean-up and reuse brownfields across the country will be an important question to resolve as we go about the task of promoting industrial redevelopment, especially in those areas that were once dominated by traditional manufacturing concerns, such as auto-making, steel fabrication, and ship-building.

These parcels of land typically contain hazardous substances, pollutants, or contaminants. And herein lies the problem: the presence of these foreign substances sometimes makes it more cost-effective to abandon the land, rather than to pay the bill to have the property properly cleaned up. There are many disincentives to remediating a contaminated property, the first and foremost of which is price: to this effect, sometimes the cost of the clean-up may be more expensive than the value of the land itself.

Here on the South Side of Bethlehem, Pennsylvania, lies one of the largest brownfield sites in the country. It is the former main manufacturing facility of the Bethlehem Steel Corporation. This old plant contains railroad tracks, abandoned mills, and left-over plant equipment on some 1800 acres of land that run along the banks of the Lehigh River. Steel making began here in 1857, and it expanded greatly during the early part of the 20th Century. By the 1950s the company had become the nation's second largest steel producer, and much

of that work was done at this Bethlehem site.

The area also played a vital role in national defense: During the Second World War the steel that formed the basis for the 16-inch armor plating on battleships such as the *Missouri* and *Wisconsin* was rolled at this site. For many years, it was the economic backbone of the Lehigh Valley.

By the 1990s, however, the Bethlehem Steel Corporation found that it could no longer effectively compete against foreign steel products, and in 1995 the plant closed its doors,

leaving 375 tons of soil contaminated with arsenic and lead at the site. During the last years of its existence the company operated the plant (on what has been classified as a brownfields site) under guidelines set up by the federal Resource Conservation and Recovery Act (RCRA). This Act permitted operation of the plant only if the company could demonstrate that it was capable of managing and cleaning up the hazardous wastes that accompany steel production.

While the steel company is no longer with us,

the environmental clean-up of this site has proceeded, and the future of this piece of property appears bright. Local developers, several of whom will be testifying shortly, have put forth plans to build a conference center, a technology center, and retail shops. Further, there is a move afoot to commemorate the actions of the great employees who worked here by establishing the Smithsonian Institution's National Museum of Industrial History on the site.

These great accomplishments are a result of the

Environmental Protection Agency (EPA) and the Pennsylvania Department of Environmental Protection (PADEP) *working together* to establish state and federal RCRA cleanup requirements with ONE plan. Pennsylvania was the first state to sign a Memorandum of Agreement (MOA) with the EPA that included three federal program areas: the Comprehensive Environmental Response, Compensation, and Liability Act (RCLA); the Resource Conservation and Recovery Act (RCRA); and the Toxic Substance Control Act (TSCA).

I think that this type of state and federal partnership should be encouraged throughout the country, an alliance that ideally would bring together not only the EPA and a particular state's environmental agency, but other federal agencies as well, all with a commitment to redevelopment.

Pennsylvania's Land Recycling Program has had an astounding turnaround effect on brownfields that has not only promoted environmental protections but also created economic opportunities for thousands of families. It has

also rejuvenated the tax bases of dozens of communities across the Commonwealth. I applaud the fact that Pennsylvania's Land Recycling Program has transformed abandoned, inactive pieces of land into places of economic revitalization. Over 30,000 jobs have been created or retained as a result of the many business opportunities engendered by the recovery of brownfields in Pennsylvania.

It is clear that we must continue to work at cleaning-up and redeveloping America's brownfield sites. This is imperative in order to

encourage job growth, promote the development of transportation and infrastructure on these inactive, urban industrial sites -- while at the same time saving greenfields. While many strides have been made, there is still much more to be done. That said, it is important to acknowledge future legislative proposals that will move us toward our goal of complete brownfields remediation. Last Congress, Chairman Turner introduced the “Brownfields Revitalization Act of 2004” (H.R. 4480), which proposed a tax credit of up to 50% for qualified remediation expenses performed at brownfields’

sites in certain poverty-rated areas. Chairman Turner expects to reintroduce a similar piece of legislation this Congress. This bill will be similar to its predecessor, but it will also more explicitly define the roles and obligations of some of the major governmental parties involved, including the state's development agency and environmental protection organization. It will also explicitly set out the requirements that need to be fulfilled in order for a developer to enjoy a tax credit in return for remediating a brownfields site. In addition, my colleague and fellow Member of the

Pennsylvania delegation, Representative Melissa Hart, has proposed “The Brownfield Redevelopment Assistance Act” (H.R. 1237).

This bill would provide grant monies (earmarked through the Department of Commerce) for the promotion of economic projects on brownfields’ sites. Specifically, the goal of this legislation is to provide funding that would target those projects that have the potential to both restore employment and bring new income and private investment to distressed communities. Congresswoman Hart has also proposed the “Financing of Brownfields

Activities through Government Bonds Act” (H.R. 3451), which would amend the Internal Revenue Code to allow the use of tax-exempt redevelopment bonds to finance the costs of environmental remediation at brownfields’ sites. Permitting the use of these bonds for the purpose of clean-up will provide much-needed capital that will not only make for a healthier environment but will also promote needed economic re-development in areas that would clearly benefit from same. .

Thank you, Chairman Turner for acknowledging

the importance of this issue. I look forward to hearing the testimony of our knowledgeable panelists, and I am anxious to continue working with this Subcommittee to further address the re-development of America's brownfields sites.

Mr. TURNER. Thank you. And I would like to recognize the Honorable Phil English.

Mr. ENGLISH. Mr. Chairman, I would like to submit my statement for the record. I am very enthusiastic to hear the testimony today of these two panels, which are truly extraordinary, but having submitted my formal statement for the record, I would like to thank you and Mr. Dent for bringing your subcommittee here to Lehigh and allowing me to sit in on it. The fact finding that you are doing today is particularly significant for our National policy. It is important, I think, that you are coming to Pennsylvania because, as Mr. Seif will attest, Pennsylvania has a long track record of programmatic commitments to economic development that I think can give us a perspective that would be useful for our National efforts to strengthen communities. At the same time, coming to this community, I think, is particularly important because I think looking at this from a Pennsylvania perspective, this community has done an extraordinary job making maximum use of its industrial space and reclaiming old sites for productive use.

The tour that we had this morning, for me, was a real eye opener. And finally, I would like to say that I think you and I agree on this—Jane Jacobs was right. I think the health of our National economy is ultimately tied to the health of our urban communities and one of the pillars of our effort to create opportunities in urban communities has to be an aggressive brownfields policy. I want to congratulate both of you, as a colleague, for the extraordinary groundbreaking effort you are doing to focus Congress on this issue and I just want to say we on the Ways and Means Committee, Representative Hart and myself, representing Pennsylvania, are strongly committed to joining with you on this effort. So I thank you for the opportunity to be part of this proceeding today.

Mr. TURNER. Thank you. We will now start with the 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 which summarizes their written testimony. Witnesses will notice that there is a timer, a light on the witness table. The green light indicates that you should begin your remarks and the red light indicates the time has expired. In order to be sensitive to everyone's time schedule, we ask that witnesses cooperate with us in adhering to the 5-minute time allowance to their oral presentation. We will follow that with a question and answer period. It is the policy of this committee that all witnesses be sworn in before they testify, so we will now swear in panel one of the witnesses.

[Witnesses sworn]

Mr. TURNER. Please let the record show that all witnesses have responded in the affirmative and we will begin with you, Mr. Ferdas.

STATEMENTS OF ABRAHAM FERDAS, DIRECTOR, HAZARDOUS SITE CLEANUP DIVISIONS, U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION III; EUGENE DEPASQUALE, DEPUTY SECRETARY FOR COMMUNITY REVITALIZATION AND LOCAL GOVERNMENT SUPPORT, PENNSYLVANIA DEPARTMENT OF PROTECTION; JAMES M. SEIF, VICE PRESIDENT, CORPORATE RELATIONS, PPL CORP.; PAUL SCHOFF, ESQ., FEINBERG AND SCHOFF, LLP, CEO OF BROWNFIELD REALTY, LTD.; AND ROBERT COLANGELO, EXECUTIVE DIRECTOR, NATIONAL BROWNFIELD ASSOCIATION

STATEMENT OF ABRAHAM FERDAS

Mr. FERDAS. Good morning, Mr. Chairman, and members of the subcommittee. My name is Abraham Ferdas. The chairman pronounced it right. I am Director of the Environmental Protection Hazardous Site Cleanup Division in Region 3 and I am responsible for all brownfield, superfund, oil line and emergency response. More than a decade ago, EPA identified a large problem. We saw local communities who were having a hard time dealing with properties that were contaminated or potentially contaminated by hazardous wastes. The private and public sector were very hesitant to get involved in those sites which are now known as brownfields. So 10 years ago, EPA began providing seed money through grants to local communities to identify and assess contamination of brownfields properties. Over the years EPA added grants for revolving loan funds to clean up properties. The agency also provided job training grants to promote employment opportunities in brownfields communities.

Since EPA's earliest efforts, States, tribes, local governments and nonprofit organizations are now focusing on brownfields cleanup and development. The landmark 2002 brownfields legislation brought into EPA's program and provided liability protection to promote private sector participation in brownfields cleanup and development. Under the new law, EPA now awards direct cleanup grants to public sector and nonprofit property owners. The 2002 law also broadened the definition of what could be considered a brownfields property. EPA can now award its brownfields grants to petroleum contaminated properties, mine-scarred lands and sites contaminated by controlled substances.

The National brownfields effort has produced successful results. Since EPA awarded its first grant, EPA and its grants recipients have conducted more than 7,400 assessments. Brownfield grantees have leveraged \$7.2 billion in cleanup and redevelopment money, creating more than 33,000 jobs. Brownfields have proven to be a good public investment. For every public dollar spent in brownfields leveraging, for every public dollar the leverage is \$2.50 in private investment. Every acre of reused brownfields save 4.5 acres of green space. The brownfields initiative has become a National effort that links environmental protection and economic development with the ultimate goal of breathing new life in local communities.

The Commonwealth of Pennsylvania and some 61 communities and nonprofits so far have received \$19 million in EPA brownfields

funding. This represents one of the Nation's largest concentration of EPA brownfield resources.

Before the 2002 brownfields law, Pennsylvania was one of the first to receive an EPA brownfield grant to address contamination from mine-scarred lands. This paved the way to include the sites in the National Brownfields Program. Since passage of the Brownfields Law, all the Region 3 communities have received funding to address mine-scarred land projects. This includes the recent award of a second EPA cleanup grant to a nonprofit organization, Earth Conservancy, to clean up mine-scarred sites in the Nanticoke area.

Last year EPA and Pennsylvania Department of Environmental Protection signed the Nation's first One-Cleanup Memorandum Agreement, as Congressman Dent described better than me. This agreement provides a one-stop shop approach where contaminated communities, builders, lenders and businesses can get what they need from the coordination of an EPA-DEP program to ensure they are satisfying the State requirements in ways that are consistent with EPA cleanup programs. And that is very important. I mean, we want to be one-shop. The developer has to only see Pennsylvania. It doesn't have to see EPA, if we can help it.

So in conclusion, EPA Brownfields Program provides valuable tools needed to protect and clean our environment, reduce neighborhood blight, generate tax revenues and create jobs. Our continued success will require even more interaction and teamwork in all levels of government, the private sector and non-government organizations. EPA is committed to reach out to our partners and the administration is committed to continue to strong funding for the program. Thank you very much.

[The prepared statement of Mr. Ferdas follows:]

**STATEMENT OF ABRAHAM FERDAS
DIVISION DIRECTOR, HAZARDOUS SITE CLEANUP DIVISION
U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 3
BEFORE THE SUBCOMMITTEE ON
FEDERALISM AND THE CENSUS
COMMITTEE ON GOVERNMENT REFORM
UNITED STATES HOUSE OF REPRESENTATIVES**

OCTOBER 25, 2005

INTRODUCTION

Good morning, Mr. Chairman, and members of the Subcommittee. My name is Abraham Ferdas, and I direct the Environmental Protection Agency's Hazardous Site Cleanup Division in Region 3. I am appearing today to discuss EPA's Brownfields Program and our efforts in the Commonwealth of Pennsylvania, which is located in Region 3.

Brownfields are all around us, in the smallest towns and largest cities -- empty warehouses, decrepit factories, vacant corner gas stations, and junk-strewn lots. Brownfields are defined by statute 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." In other words, properties where environmental concerns are a barrier to reuse. Estimates of the number of brownfields across the country range from 450,000 to more than a million properties.

EPA's Brownfield program began over a decade ago. Nationwide, EPA initially provided seed money to communities for inventorying brownfields and assessing contamination. In response to community requests, additional tools were added to the brownfields' effort. Grants were made to capitalize revolving loan funds for cleanup. Brownfields job training grants were developed to promote employment in brownfields communities. A tax incentive was enacted to

encourage private sector investment. States, Tribes, local governments and non-governmental organizations began to focus on brownfields, creating local and regional approaches to revitalizing properties.

The national brownfields effort has produced successful results. Since the first grants were awarded, EPA and its grant recipients have performed more than 7,400 assessments. Brownfields grantees have leveraged \$7.2 billion in cleanup and redevelopment dollars, leveraging more than 33,000 jobs. Brownfields have proven to be a good public investment, with every public dollar spent on brownfields leveraging about \$2.50 in private investment. Brownfields revitalization also produces long-term sustainability benefits, with every acre of brownfields reused saving 4.5 acres of greenspace. The brownfields initiative has become a national effort, linking environmental protection, economic development and community revitalization.

Strong support by President Bush and Congress for brownfields cleanup and redevelopment culminated in the passage of the Small Business Liability Relief and Brownfields Revitalization Act, also known as the Brownfields Law. Signed by President Bush on January 11, 2002 in Conshohocken, Pennsylvania, the Brownfields Law provided EPA with a clear Congressional mandate on brownfields. The Brownfields Law expanded EPA's Brownfields Program, boosted funding levels, expanded the entities, properties and activities eligible for EPA funding, clarified and strengthened liability protection for certain property owners and provided increased support to state and tribal response programs.

EPA has taken great efforts to implement the new law. EPA developed and published guidelines for the many new grant programs for assessment, revolving loan fund and cleanup

grants; state and tribal response program grants; and, research, training and technical assistance grants. These new programs required application guidelines, funding competitions and selection processes – and they were completed and grants awarded in the first fiscal year following the passage of the new law. EPA has awarded more than 540 brownfields grants in both FY2004 and FY2005 that totaled in excess of \$142 million. More specifically, since the start of EPA's brownfields program, \$31 million of competitive EPA brownfield grants have been awarded to, and continue to help revitalize numerous communities throughout the mid-Atlantic states. In Pennsylvania alone, EPA awards approximately \$1 million annually to the Pennsylvania Department of Environmental Protection (DEP) to further advance their brownfield redevelopment program.

EPA'S BROWNFIELDS PROGRAM

Brownfields Grants

I would like to describe the Brownfields Program components in greater detail. Assessment grants provide funding to inventory, characterize, and assess properties; develop cleanup plans; and conduct community involvement activities related to brownfields. Environmental site assessments provide the information that communities and property owners need to move forward with reuse. In fact, up to one third of the sites assessed show little or no contamination, freeing the site for redevelopment through a relatively small public investment. Over the years, EPA has awarded hundreds of assessment grants, generally \$200,000 each, to communities large and small. The Brownfields Law expanded the eligibility to new entities such as redevelopment authorities and allowed additional assessment-related activities such as

planning to be done by grant recipients. Over the past three years under the new law, EPA has awarded 446 assessment grants for \$102.3 million.

Using EPA Brownfields grant funding, the Lehigh Valley Economic Development Corporation (LVEDC), in partnership with Lehigh and Northampton Counties, has conducted environmental assessment work at nearly a dozen properties in three major municipalities across the Lehigh Valley. In many cases, the environmental uncertainties associated with these properties have been alleviated, clearing the way for meaningful reuse of these former brownfields.

Luzerne County has used its \$200,000 Brownfields assessment grant to complete assessments at six properties and is presently developing a Geographic Information System (GIS) database of all existing unreclaimed abandoned mine lands in Luzerne and Lackawanna Counties.

In addition, EPA has the authority to conduct Targeted Brownfields Assessments. These single-property assessments are designed to help communities on a more direct basis, especially those lacking EPA assessment grants. EPA allocated \$6.6 million for Targeted Brownfields Assessment support in fiscal years 2003 and 2004.

Under its new authority, EPA may now provide direct cleanup grants of up to \$200,000 per site to public sector and non-profit property owners to carry out cleanup activities at brownfield sites. In the past three years, EPA has awarded 249 cleanup grants for \$44.8 million. In Johnstown, the Redevelopment Authority has used three EPA cleanup grants totaling \$600,000 to support the city's ongoing and dynamic revitalization efforts. Thanks to one of these cleanup grants, for example, a portion of the Cambria Ironworks property has been cleaned up,

resulting in the expansion of a local tenant's pre-existing business and thereby increasing the local tax base, while also using existing industrial infrastructure to ultimately preserve greenspace.

Most recently, EPA awarded a cleanup grant to help facilitate the redevelopment of the Riverfront South property in Bensalem that was contaminated with volatile organic compounds, PCBs and heavy metals. The site will be transformed into a mixed-use complex that houses residential, commercial, and greenspace along a well-located site next to the Delaware River.

The Brownfields Program also supports property cleanup by providing grants to capitalize cleanup revolving loan funds. The Brownfields Revolving Loan Fund (RLF) grants provide state and local governments with capital to make sub-grants or low or no-interest loans to finance brownfields cleanup. The 2002 Brownfields Law was pivotal in the continued success of the RLF program. It provided new flexibility to the program because it expanded properties and activities that are eligible for funding, provided the capability to make sub-grants as well as loans for cleanup, and streamlined technical requirements while still ensuring health and the environment are protected. Over the past three years, EPA has awarded 58 revolving loan fund grants for \$68.1 million and looks forward to even greater momentum in making loans against these grants in the coming years.

The Bucks County Redevelopment Authority (BCRDA) recently awarded a \$1 million loan from an EPA Revolving Loan Fund grant to further address the Riverfront South property's strategic redevelopment plans. Working closely with EPA Region 3 and the Commonwealth of Pennsylvania, BCRDA continues to leverage not only these valuable federal resources, but also state and local resources throughout the area to ensure greater benefit to local communities.

Under EPA's brownfields authority, sites contaminated with petroleum are now also eligible for assessment and cleanup grants. The Brownfields Law requires 25% of assessment and cleanup grant funding be directed to sites with petroleum contamination. Indeed, since passage of the Brownfields Law, EPA has awarded 313 assessment, cleanup and revolving loan fund grants totaling \$67.5 million for petroleum contaminated brownfields.

The Brownfields Law also broadened the definition of what could be considered a brownfield, thus making mine-scarred lands and sites contaminated by controlled substances (often these sites are drug labs found in residential areas) eligible for grants. We have seen an increased number of proposals from states, tribes and communities working on these kinds of sites.

Region 3 has helped pave the way to include mine-scarred land sites in the national Brownfields program. Prior to passage of the Brownfield Law, for example, Central City received one of the country's first brownfield grants ever awarded to address contamination from mine-scarred lands. Since passage of the Brownfields Law, several other Region 3 communities have received funding to address mine-scarred land projects. This includes the recent award of a second EPA cleanup grant to the non-profit organization Earth Conservancy to clean up mine-scarred sites in the Nanticoke area.

EPA is also working with six other Federal agencies on the Federal Brownfields Mine Scarred Land Initiative to provide unified Federal support to local communities. Three of the six demonstration projects that were selected nationally to help clean up and reuse mine-scarred lands are located in Region 3. In the Hazleton area, a combination of mine-scarred land properties owned by the Community Area New Development Organization, or "CAN

DO”, the Cranberry Creek Corridor, and the Harwood Innovations site, was collectively named as one of the nation’s first-ever demonstration projects for this initiative.

In reviewing proposals and awarding grants, EPA has found that brownfields come in a range of sizes and types. Brownfields are often stereotyped as large industrial sites in urban areas. The reality is that the majority of brownfields are small properties like dry cleaners, vacant lots and gas stations. More than half of the grants have gone to communities of less than 100,000 people.

In addition to assessment and cleanup funding, EPA also funds brownfields training, research and technical assistance. As communities engage in cleaning up of brownfields, EPA recognizes the need for a workforce with environmental cleanup skills. To date, EPA has awarded 93 job training grants, including 37 grants since passage of the law, resulting in the placement of more than 1400 individuals with an average wage of \$13.00 an hour.

State and Tribal Programs

The high demand for brownfields cleanup and redevelopment in communities throughout the country, coupled with increasingly limited state and tribal resources, makes access to federal funding critical. The development of successful state and tribal programs is essential to insuring the successful implementation of the brownfields program because they are the environmental regulators of brownfields cleanups.

Under section 128(a) of the Brownfields Law, EPA provides financial assistance to establish or enhance state and tribal programs so they can meet the challenges of brownfields cleanup and redevelopment. In fiscal year 2005, EPA provided \$49.5 million to 49 states, 50

tribes, the District of Columbia, and 3 territories (Guam, U.S. Virgin Island, and the Northern Mariana Islands). This funding is helping states and tribes to develop or enhance their response programs' infrastructure and capabilities.

For some recipients, the funding provides an opportunity to create new response programs to address contaminated properties. States and tribes also can use the funds to capitalize a revolving fund for cleanup, purchase environmental insurance, or develop other insurance mechanisms to provide financing for cleanup activities. In addition, the funds can be used to establish or maintain the statutorily required public record, to oversee cleanups, and to conduct limited site-specific activities. Providing financial assistance to states and tribes increases their capacity to meet brownfields cleanup and redevelopment challenges. It also helps to ensure that brownfield cleanups are protective in accordance with Federal, state and tribal standards.

EPA also partners with states to develop Memoranda of Agreement (MOAs) that clarify program roles and responsibilities. EPA has signed 22 MOAs and is working on additional new and expanded MOAs. Here in Region 3, we have MOAs with four states, including Pennsylvania, and have maintained close partnerships with them since the inception of the Brownfield Program. These partnerships are an integral part of our success.

Pennsylvania Program

As a whole, the Commonwealth of Pennsylvania, and its 61 communities and non-profits who have received \$19 million in EPA Brownfield's funding, represent one of the nation's largest concentrations of Brownfield resources.

Last year, EPA and Pennsylvania's DEP entered into the nation's first One-Cleanup Memorandum of Agreement to create a single, coordinated EPA-DEP cleanup program to streamline the redevelopment process. The agreement will minimize duplication of efforts, and ultimately reach the largest number of communities possible. The MOA provides a "one-stop" approach that allows communities, builders, lenders and businesses get much of what they need from a coordinated EPA-DEP program to ensure they are satisfying state requirements in ways that are also consistent and complementary to EPA's cleanup programs.

Liability Protection

A final element of the Brownfields Program focuses on providing important liability protections and clarifications for certain landowners who are not responsible for site contamination. These protections increase comfort and certainty regarding the purchase and redevelopment of brownfields. EPA has worked to clarify federal liability, particularly under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). EPA has streamlined administrative practice and issued guidance and enforcement discretion policies to encourage brownfields cleanup and redevelopment. In fact, many of the protections in the Brownfields Law are essentially statutory codifications of existing EPA enforcement discretion policies.

The Brownfields Law also clarifies the landowner liability protections of bona fide prospective purchasers, innocent landowners and contiguous property owners under CERCLA. To qualify for liability protection, these property owners must satisfy certain statutory requirements. For example, prior to acquiring a property, purchasers must meet environmental

due diligence requirements by undertaking “all appropriate inquiries” into the condition of the property. EPA is developing a regulation establishing standards for conducting “all appropriate inquiries.” The Agency did this through a collaborative stakeholder negotiated rulemaking. The proposed rule was published in August 2004 and we plan to issue the final rule in November of this year.

The Brownfields Law also provides federal CERCLA liability protection for parties who conduct a cleanup of certain brownfields properties under state response programs. EPA issued guidance that explained which properties currently in the CERCLA system would be eligible for federal liability protection.

CONCLUSION

EPA’s Brownfields Program serves as an innovative approach to environmental protection, spurring environmental cleanup, reducing neighborhood blight, generating tax revenues, and creating jobs. Continuing our success will require ever more interaction and collaboration among all levels of government, the private sector and non-governmental organizations. EPA is dedicated to continuing our efforts to reach out to our partners and the Administration is committed to continuing strong funding for the program.

EPA will continue to implement the program to protect human health and the environment, enhance public participation in local decision-making, build safe and sustainable communities through public and private partnerships, and recognize that environmental protection can be the engine that drives economic redevelopment.

Mr. TURNER. Mr. DePasquale.

STATEMENT OF EUGENE DEPASQUALE

Mr. DEPASQUALE. DePasquale. Thank you, Mr. Chairman. First of all, I want to thank you for highlighting this issue for brownfields. I went to college at the College of Western Ohio, which is about an hour to the east of Dayton and I am sure one of the reasons why you are highlighting this is Dayton, Wooster and cities all across Pennsylvania, if we are truly going to get our cities moving forward, brownfields has to be considered a critical piece of that, of the tools to make that happen. Congressman English and Congressman Dent, thank you for being here, as well. Special thank you to Congressman Dent for when we passed the Land Recycling Program in Pennsylvania, the Congressman was then a member of the General Assembly and was a critical leader in that effort and also Congressman English, from the local effort in Erie for the International Paper site and the Erie Gunitite site, those are critical excellent brownfield projects and we respect all of your leadership on those issues.

Abe, who preceded me, we have the role that most environmental regulators are jealous of and that is we get to create jobs and clean up the environment, sort of one of the few jobs that people get jealous when you are an environmental regulator. And to my left is Jim Seif. Mr. Seif was the secretary that preceded this administration and the reason why, one of the key reasons why, the grid work is happening in this district in brownfields is his leadership on the issue. The Pennsylvania Land Recycling Program is a model for the Nation and without that, you would literally have thousands of people that would not have jobs today, you would have hundreds and thousands of acres that have not been cleaned up and you would have jobs that would not have been brought into Pennsylvania. Mr. Seif deserves a huge amount of credit for that, so I thank him for his efforts, as well.

Before we go—or before I go—into recommendations, it might be good to talk about a little bit of how we got here today. Pennsylvania, prior to 1995, was, because of several brownfields, it would be the steel mills in this district to where I grew up in Pittsburgh, you are talking about hundreds and hundreds of acres of sites and thousands of jobs that were lost and in many ways businesses were prepared to give up on those sites. Pennsylvania passed through the first, or Act II of 1995 that Governor Ridge signed into law, the Land Recycling Program that offered the liability relief and also the cleanup standards that would be site specific to the sites, depending on what you wanted to use, whether it be housing, which would have very strict standards, to whether it be a parking lot, which would have lower standards, without compromising public health. That bill has helped spearhead the brownfield movement across the country.

Moving forward, when Governor Rendell took office, one of the first things he did as Governor, was put together a stimulus package. A critical piece of that stimulus package was a \$300 million investment called Business in Our Sites and that money was used to help local economic development corporations acquire sites, mainly brownfields, clean them up and also revitalize the infra-

structure. That program has been put in place across the State now and they have now invested close to \$200 million in revitalizing old industrial sites to prepare them to be pad-ready so Pennsylvania can bring jobs into them.

Another issue that we have done is the Brownfield Action Team program. The Brownfield Action Team program has been a critical addition to the Pennsylvania brownfield arsenal. In fact, the Bethlehem site was the first Brownfield Action Team site in Pennsylvania. What we aim to do with the Brownfield Action Team is to equal the playing field between brownfields and greenfields by streamlining our permits so that we cut the permitting time in half and when communities designate a site as a priority site, we move those sites through the permitting process as fast as the law will allow.

We also have a Memorandum of Agreement with EPA so that we become a one-stop shop. Pennsylvania is right now the only State in the country and while we are happy about that, because it has given us a competitive advantage, the reality is that we think every State in the country should at some point have that agreement with EPA so that we can move projects forward across the country on brownfields.

What the Federal Government can do—and obviously we have talked about some legislation that is in before you, whether it be from the tax credit side or from bonding from Congresswoman Hart—the big picture is keeping in mind that we have to level the playing field, so whether it be from the permitting side—maybe EPA and DEP could look at how we can bring our model of an MOA to the rest of the country—providing, perhaps, a streamlined permitting process for priority brownfield districts at the Federal level, or, also, perhaps some more flexibility on our EPA funding for the brownfields. I will commend Region 3 because they have been very cooperative with us on those programs, but we need to continue to work at ways to equalize that playing field from the funding side and the permitting side, because if the sites are not, if people that are investing feel that they are going to have too long a time of getting their permitting up or the funding will be too difficult to achieve, they will simply not invest in those sites, so we all have to work together to come to that common ground.

[The prepared statement of Mr. DePasquale follows:]

**Eugene A. DePasquale, Deputy Secretary
Department of Environmental Protection (“DEP”)
On
“Brownfields and Pennsylvania Incentives for Redevelopment”
Before the
U.S. House Committee on Government Reform,
Subcommittee on Federalism and the Census
October 25, 2005
Lehigh University, Bethlehem, PA**

Mr. Chairman and members of the Subcommittee, thank you for inviting me to testify today in Bethlehem. 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.

As the Deputy Secretary that oversees the Land Recycling Program, I would like to thank Mr. Seif who served as Secretary of Environmental protection when the program was enacted into law -- and Congressman Dent who served in the Legislature and was instrumental in passage. We are also appreciative of Congressman Kanjorski’s -- especially in the area of greyfield development.

I also wish to offer my thanks to Chairman Turner for taking on the issue of brownfields. Through your hearings, and proposed legislation that would allow an income tax credit for brownfield remediation costs, you bring needed attention to this critical community revitalization issue.

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 consensus among Pennsylvania businesses was to abandon so-called “brownfields”. Pennsylvania’s Land Recycling Program helped to reverse this trend. The trend reversal has led to tens of thousands of jobs created or retained, and the state is closing in on its 2,000th approved cleanup, including 700 in the last three years alone. The success of the program rests on several key components -- scientifically sound and reasonable cleanup standards, liability relief from future cleanup requirements under state law, 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 Ed Rendell has expanded these efforts, working aggressively to provide new incentives and put in place enhanced approaches that speed up brownfield redevelopment.

The Governor’s Business in Our Sites Fund provides \$300 million for local redevelopment efforts to make brownfield sites “pad ready.” The money helps to pay for acquisition, remediation and preparation, enabling these local entities to market ready sites to businesses that seek to build or expand immediately. This 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 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 barrier 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.

Under Governor Rendell's leadership, the Pennsylvania Infrastructure Investment Authority ("PENNVEST") has created a brownfield redevelopment funding mechanism as well. PENNVEST now issues low-interest loans for the remediation of sites that have been contaminated by past industrial or commercial activity and pose a threat to local groundwater or surface water sources.

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, DEP's 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 brownfield development more attractive.

Governor Rendell also put in place policies that make government more efficient and saves 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 permits 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 and BAT cuts permitting time in half.

Two major projects have been approved right here in this region alone. 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.

Just last week, DEP approved the West Sand Island project in Bethlehem, Lehigh County. This BAT project will expand the existing park, preserve green space, improve access to the riverfront and enhance the overall recreational value of Sand Island. The redevelopment plan, being run by the city, includes walking/biking trails, fishing piers, a nonmotorized boat dock, a pavilion with restroom facilities, a picnic area, a parking area and green space. This is all located on a former manufacturing site. There are four total BAT projects in this region and a fifth pending.

Other projects have been approved and are moving ahead as well 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 receiving 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. EPA 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 is also moving ahead to allow mine-scarred lands, commonly referred to as "greyfields," to be eligible for benefits similar to those enjoyed by brownfield projects. This issue is critical in Pennsylvania because 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. EPA'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 a huge difference in rebuilding communities.

The 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 resolution of legal liabilities, controlling remediation costs and access to investment capital. Without liability protection, developers, local redevelopment authorities and businesses are hesitant to consider any form of 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 exceed 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 away. Congresswoman Hart has introduced two pieces of legislation designed to support redevelopment of old industrial sites common to western Pennsylvania. One bill would give tax-exempt status on bonds 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 permitting to favor redevelopment of brownfields. 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 brownfield sites through the regulatory process, the quicker we reclaim these sites and clean up communities.

Besides the normal economic development, the Pennsylvania Brownfields Program is helping to clean up the waterways by removing rusting old factories and replacing them with vibrant new communities, opening up riverfront development where former mills stood and providing access to the water, helping to redevelop communities that are trying to rebound and help communities take advantage of their particular opportunity. Brownfields are also critical in our land development efforts because revitalization of these areas serves to enhance communities, foster economic development, and minimize land consumption. Furthermore, brownfield sites are not a Right or Left issue. They are located in urban, suburban and rural areas and across the economic spectrum.

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. Thank you. Mr. Seif.

STATEMENT OF JAMES M. SEIF

Mr. SEIF. Mr. Chairman, welcome to Pennsylvania and Mr. English, welcome to the Lehigh Valley and Charlie Dent, welcome home. It is good to have you. I will correct the record at the risk of not being gracious of the nice things that have been said. It was Tom Ridge that was responsible for the brownfields program in Pennsylvania, not Jim Seif.

Mr. DEPASQUALE. But you are sitting to my left.

Mr. SEIF. Tom Ridge was occasionally to my left, as well, but that is another—let me talk about what, I am going to depart from my testimony. It has that little anecdote about representing National Cash Register, which was an unfortunate event, where the adversarial system was used in a totally inappropriate place, which was to try to solve an environmental problem. That says it all about Superfund.

Let me talk about what I think a successful recipe for brownfield statutes would be. First, you have to start with the recipe itself, a piece of paper and that piece of paper needs two things. They are mentioned in the bullets at page three of my testimony. You have to have a real cleanup, an actual, transparent-to-the-community, safe cleanup. This is not just paving stuff over and wishing for jobs. It has to be, the community has to agree to it. The risk standards have to be set sometimes State by State. I would not favor a Federal approbation of risk standards.

Second, you need a piece of paper from the State or other authority that says you have done what you are supposed to do. That is what puts the property back in the stream of commerce. It has been prevented from being there by so many things, the long dissertation I have done about Superfund's failings as the principle example. It became legally toxic and people just let it go and that can't happen.

The next thing you have to do is clear out the kitchen. There is some stuff in there that shouldn't be there. One, you have to administer the laws that are in place that are not toxic waste laws so that you create no more Superfund sites. To stop creating brownfields we have to conduct ourselves economically and environmentally the way the public wants us to, whether we are a company or whether we are administering statutes.

And then you have to clean out Superfund. I think that has been done. I am among, you know, EPA has done a great job, like any reform center does and I was among the sinners. I was talking with Abe this morning when we worked together on Superfund. We did have to chase around a lot of people and with all the dysfunctions in the Superfund statute and the incentives to fight instead of get the job done, it didn't work. And I think the Federal Government got off to a wrong start administratively. It also got off to a start at a time when we didn't know what the dimensions of the problem were. There were thousands of these, not 128, which is what Jimmy Carter once thought. Thousands of them. We also didn't have ways to clean up stuff, technologies or money or administrative techniques and they had to be invented and since the Superfund program used litigation to invent, it took awhile.

Looking more positively on what it takes, then you have to have not just the piece of paper and a clean kitchen, but a lot of stuff, a lot of ingredients, lots of cooks—lots of people like the second panel who get it about there is economic opportunity in land, that it is a commodity and it has value and it is not just something to stay away from. You have to have new technology and these people are good at inventing it. I think Mr. Colangelo will talk about his group which consists of hundreds of people in Pennsylvania, alone, who have an incentive economically and from the community point of view to make this thing work. Contrast that to Superfund, who had hundreds of lawyers whose career depended on making it not work. And this is a far more important bunch of people in terms of getting things done.

You would have to have a sensitivity to land use. I think the sprawl debate has helped prevent some greenfields from being used and tipped the balance a little bit toward using land in Erie or Dayton or Bethlehem or Allentown. That has been helpful. You have to advertise like hell. Frankly, I have used the Henry Ford analogy. He didn't make better or more cars than anybody else, but he sure got out and sold a lot of cars. And people are concerned about these toxic sites. I think that concern has been considerably less over the last few years, but you have to do what we have heard Gene DePasquale talking about: get out and tell people about it. Use the Business on Our Sites program that Rendell has used or the Site Finding program that we instituted and just get out and make it happen, just as you would push any other asset in a State—good land, close in.

You have to have good quality control. The sites have to be really cleaned up. You have to have KOZ kinds of items available. You have to have flexibility. You can put a playground where an old factory was if you do it right. You have to have a deal where you can get it wholesale, like our multi-site agreements. You have to have State variation. Not every State deals with risk the same way, deals with economic incentives the same way and if the 10th amendment is as strong as we have recently learned that it is, that will be a good thing.

And into the mix comes tax policy, for which I commend the committee for looking at. There will be revenue consequences and there will be difficulties over how do we simplify the code and still do all these things and I will let Congressman English worry about that in his other committee. The fact is that it is not only Federal taxes, but local taxes that are a problem or an opportunity with brownfields. KOZ has solved, in some respects, the local problem, Keystone Opportunity Zone, which is a tax-free zone. But more could be done in those areas. I would be happy to talk about more war stories or more parts of the recipe if there is interest.

[The prepared statement of Mr. Seif follows:]

Statement of James M. Seif
Vice President-Corporate Relations
PPL Corporation
on
Brownfields and the Fifty States: Are State Incentive Programs Capable of Solving
America's Brownfield Problem?
before the
U.S. House Committee on Government Reform,
Subcommittee on Federalism and the Census
October 25, 2005
Lehigh University
Bethlehem, PA

Good Morning, Mr. Chairman and Members of the Subcommittee.

I thank you for asking me to join you today as you visit the Lehigh Valley. PPL is a Fortune 500 electric energy company and has been in the Valley since its founding in 1920. PPL is proud of both its environmental and economic development achievements. Like many others, we have benefited from, and provided benefits to, the successful Pennsylvania Brownfields Program, and as Governor Tom Ridge's Secretary of the Department of Environmental Protection (DEP) at the time it was started, I am happy to be here to provide whatever perspective that it has given me.

PPL and I especially thank Congressman Charlie Dent, who as a State Representative and later a State Senator, had a hand in our success.

SETTING THE STAGE – SUPERFUND

When President Jimmy Carter signed the Comprehensive Environmental Response Compensation Liability Act (Superfund) in December 1980, he declared that the law, and its \$1.6 billion appropriation, would finally solve the problem of abandoned, polluted industrial sites in America.

It was not about to "finally solve" the problem of such sites, and indeed it caused a few problems of its own. The sheer number of sites, their scientific and technical complexity, the enormous costs of many individual sites, plus a rocky start at EPA on setting up the administrative machinery, were just the beginning of a twenty-five year saga.

Even if the underlying environmental situation had been correctly estimated by the Congress and President Carter in those early days, problems with the Act itself began to get in the way. At the outset, its exclusion of contamination caused by petroleum products created a much resented unfairness in listing sites and fixing responsibility on the polluters. Moreover, the strict joint and several liability approach meant that a very

small contributor to a given site's problems would be assessed the lion's share of the cleanup cost if it had the deepest pocket, or was the only party still viable. Court decisions upheld the EPA's right to fix the problem on its own, and then send the bill. An order to a company to do the cleanup, or take other measures, could not be appealed to a court until after the action was taken. Disputes over the cleanup standard at a given site ("How clean is clean?") covered new ground in medicine, chemistry and geology, and we all know now how slowly that ground was covered. And risk management, sometimes inaccurately called a science, is really a societal decision, and one that can also take a while to sort out.

During this first decade of Superfund's operation, the states were not significant players. They lacked the administrative machinery and the budgets to tackle even one of the hundreds of huge sites that were getting listed as Superfund sites. In any case, the states were involved in their own mostly successful efforts to gain delegation from EPA of their large and complicated responsibilities under the federal Clean Air Act and the Clean Water Act. Some of them, including Pennsylvania, did pass cleanup laws that had Superfund-like provisions, but it was their emergency response tools that got the most use.

These circumstances surrounding Superfund produced several results: A whole generation of litigators and consultants cut their teeth on fighting Potentially Responsible Party (PRP) designations and cleanup orders on sites with hundreds of parties, and they got pretty good at it. Legal costs soared, but given the stakes, fighting was a rational approach by the companies, municipalities, federal agencies and even individuals that came under Superfund's purview. Some anomalous situations — orders to parties to clean up waste sites to which they had actually been ordered by a state, decades ago, to send the wastes — were not uncommon. High school auditoriums were rented for meetings of the parties pulled in by EPA, joined by many other parties pulled in by original parties, ad nauseam.

I remember one low point in my own legal career. In 1993 I represented a very fine client, National Cash Register of Dayton, Ohio, in a Superfund site — essentially an old town dump, in York, PA. I spent a whole day, with two EPA lawyers and several other lawyers to other parties, interviewing retirees about how many empty cans of printing ink they might have loaded on trucks in the seventies. This was a lot of expensive talent in search of needles in haystacks, and debating about whether red ink or blue ink had any of the chemicals later found in the dump. Meanwhile of course, the site festered.

The worst problem of Superfund, of course, was the small number of completed cleanups and the enormous administrative, litigation and cleanup costs at those sites both to parties and taxpayers. Moreover, sites that might not have "scored" high enough for Superfund designation nonetheless became "legally toxic;" no party would attempt a cleanup, or become a tenant, let alone purchase, any site that had any possibility of environmental issues. Capital fled, because it cannot take unquantifiable risks, or wait unknown amounts of time, to realize on its investments. Capital will not even invest in new cleanup technology if it takes courts years to define the very meaning of the word

"cleanup," especially when some in the community argued that cleanup had to mean every last molecule. There was even a court case — inevitably brought on by EPA's and the PRP's relentless search for others to share cleanup costs — that held some lenders and financial institutions were responsible for sites as "operators." Add all of this to the underlying problems of many urban communities that were escalating in those years — crime and educational underperformance, for example — and little wonder that greenfield development was the clear choice. Especially in states with a strong industrial heritage, the barbed wire that ringed old dumps and industrial parcels was reinforced by Superfund, not removed; the parcel turned into a blight, and the pollutants stayed put.

ANOTHER PATH

Some other approach had to be tried, and in Pennsylvania, it was. In 1993 and 1994, the Pennsylvania Senate Environment Resources and Energy Committee, led by Senator Chip Brightbill of Lebanon County, and Senator Ray Musto of Luzerne County, its Republican and Democratic Chairmen, began a series of hearings to see why the cleanup pipeline was so jammed. They eventually drafted three bills which became Pennsylvania's Land Recycling Programs. (Act 2 was the clean up procedure; Act 3 protected lenders, and Act 4 provided funds.) They were signed by Governor Tom Ridge in the summer of 1995 at an abandoned steel mill in McKeesport, PA — a site whose last assignment had been to make bomb casings for the Vietnam War. Later, this land came under the new law's provisions, and it now houses 1200 jobs in light manufacturing and service work for a satellite television dish manufacturer.

Current Pennsylvania DEP Secretary Katie McGinty has described for this Committee the current operation of the law in PA, and Deputy Secretary Gene DePasquale joins us today for an update, so I need not do that now. I would alert the Committee, however, that behind all the amazing statistics about two thousand cleaned up sites, many, many thousands of jobs and millions of dollars of investment, lie two powerful "enablers" for all the action:

- There was a way to define and achieve realistic cleanup standards, and
- There was a piece of paper at the end which you could take to the bank.

If you know what the cleanup will cost, (even if it is more than the value of the land,) and if you know when it will end, a property once untouchable can once again have the economic value that its location, its owners, its investors and its community are willing to give it. It is once again in the market as a commercial asset, not a black hole of pollutants, scientific puzzles and litigation. We learned from Superfund that it's awfully hard to "enforce" cleanups, and from the PA approach that it's a lot more productive to invite and incent them.

We also had lot of help. Contrast the corps of superfund litigators, working hard to slow down the operation of that law, with the current group of lawyers, developers, accountants, engineers, redevelopment authorities, and community activists who are doing their best to make brownfield laws work even better.

Needless to say, Secretary McGinty can be proud of the law's continuing vitality, and Secretary David Hess, her predecessor and the man who wrote the law as staff to the Senate Committee, and then implemented it as my Deputy Secretary at DEP, and I, are all very proud of the way it works today. An environmental regulatory agency like DEP must always have a hammer when it needs one, but it can also be transformed into a genuine, full service environmental department, with a lot more tools available, if it learns how to make partners and enlist community entrepreneurial spirit in the service of its mission. The men and women at the PA DEP have proven that, and their work was recognized in 1997 by the Ford Foundation and Harvard University's award for one of the ten most innovative government programs of that year. Perhaps an even better indicator – if imitation is a measure of success – is that Pennsylvania's recipe has now been copied by over forty other states and countries.

A NEW TOOL BOX

Some of the new tools came from outside the Land Recycling Program, in the form of broader trends. A growing realization that the economy and the environment were not in conflict – the sustainability paradigm – was taking hold, and people could see that a cleaned up site was "green" in both senses of the word. Growing recognition that open space, clean air and water, and historical context have real economic value also began to constrain some greenfield development, and that put extra value on brownfields closer to the community center. Some cities began, ever so slowly, to gain population and that in turn fostered new development. Political leaders, for example Mayor Tom Murphy in Pittsburgh and then-Mayor Ed Rendell in Philadelphia, saw immediately the possibilities and got to work with their own programs. Mayor Murphy even bought two major sites while the regulations were still in draft, and they are now residential and business developments — the first in that city, my home town, for quite a while. Cleanup technology and techniques also began to get standardized and sanctioned in enforcement agreements and contracts. And a good economy in the nineties boosted all of these trends.

But beyond these external developments, the program itself was responsible for much of its own success. At the outset, we recognized that the specific elements of the law, the regulations and the administrative techniques, were not all that new or complicated. Each of them had antecedents in other commercial, economic development and environmental laws. Like Henry Ford — who is incorrectly called the inventor of the automobile — all we did was to use existing techniques in new combinations, and then we standardized them and went to the public to sell the product. We advertised, we did training, we gave countless speeches, we touted the early sites, praised the initiatives that brought them back to the community, and put real money behind them. We performed our administrative tasks and rulemaking on time, and even issued a "money back guarantee" on timely issuance of related permit applications. We were careful about quality assurance and quality control, because we were, after all, dealing in some cases with genuinely toxic pollutants. The state Department of Community and Economic Development wedded the program to many of its own initiatives, and began to actually sell sites to developers around the state and nation. It still is.

We also have a tool called the Keystone Opportunity Zone in Pennsylvania. It is a tax free zone in an urban area that spurs much needed redevelopment. Our own new headquarters building is on one in Allentown, and we once again thank Representative Dent for developing that idea in the State Senate, and for helping us with that site.

We worked hard with the EPA regional office (and they with us) to see that Superfund actions did not interfere with our program, and so that other federal programs, like the Resource Conservation and Recovery Act, did not "chill" any cleanups.

LESSONS AND SOME CURRENT DEVELOPMENTS

We learned a lot. We learned again the power of private capital, the accuracy of private risk assessments, the strength of community spirit once awakened, and a few history lessons as well. Superfund and some environmental scare-mongering had created a popular perception that under every old site was a toxic soup of chemical and poisons. In fact, once cleanups became a realistic prospect, and owners and other interested parties began to find it worthwhile to actually learn about what was there, we found, in many cases — not much! The contamination was manageable. Maybe our hardworking industrial forebears were more fastidious than we had thought. Demystifying the cleanup process brings out some good old "can do" spirit, and some cash, and it works. We also got away from the pristine, "clean it up to background" mantra. Some sites can in fact be capped and the risk is well below any acceptable level and the benefits are substantial. I know of one cap that is 18 inches of triple reinforced concrete; pretty expensive as an environmental cap, but then it also serves as the commuter plane runway at the Philadelphia International Airport.

We also learned that old factories don't have to become new factories. They can be factories, warehouses, homes, stores, offices, or parks. It is especially nice to see some great Pennsylvania architecture restored for new uses. The Bethlehem Steel site, which I understand is one of the largest brownfield sites in America, will have a Smithsonian museum, a hockey rink, and many other attractions.

We did hear an occasional complaint from those fighting a rearguard action in favor of punitive approaches. They said that some sites had not been adequately cleaned up in Pennsylvania. My response each time was to ask which sites, and promise to go back and do it right. I am still waiting to hear.

One recent reinforcing development for cleanups has been a new accounting standard. A March 2005 rule by the Federal Accounting Standards Board (Interpretation Number 47,) requires the accurate characterization of all assets on the books. Property suspected of contamination cannot just be listed for its book value, while its owners play "see-no-evil." You have to go get the facts, and share them with your investors. This is simply a good rule of transparency and disclosure, and it calls to mind an interesting development in Pennsylvania's brownfield experience.

This important innovation under our law came early. A large Pennsylvania utility approached DEP and said it had quite a few sites, and wanted to do a package deal. DEP and the utility negotiated a schedule for assessing the sites, addressing the important ones first, adding new ones, and setting schedules. It then began work on 134 identified sites. We recently celebrated the ten-year anniversary of that agreement, which now encompasses hundreds more sites. I say “we” because the company was PPL. Even more interesting, the Penn Fuel Gas Company later approached us for a multi-site agreement, and a few weeks after it was signed, PPL acquired Penn Fuel. In other words, once the environmental issues had been rendered both quantifiable and transparent, under a law that could solve them, it triggered an acquisition that might never have taken place. Since then, there have been others – BP Oil, the US Defense Department and most recently a 92 site agreement with Jiffy Lube, Pennzoil and others. The old approach, as it was put by Superfund lawyers, was “Let’s hide in the weeds.” The new approach may be, “Git’er done!”

FUTURE STEPS

It is tempting for current and former state officials to say the federal government should “just get out of the way,” but I can tell you as a former federal official – EPA Regional Administrator in Philadelphia – that’s simply not fair. For all its problems, Superfund must stand ready for emergency response and for the really huge sites that may be out of reach of private capital and state powers. The 2002 Amendments (promised by Candidate Bush in Alliquippa, PA in July 2000 and signed by President Bush in Conshohocken, PA, at Pennsylvania’s 1000th clean up in 2002) have also strengthened the EPA’s capacity to be a partner and not the occasional bully it had become. Its assistance to Pennsylvania under those amendments has been a great help. Of course, Superfund must be managed to minimize interference with successful state programs, and to not scare capital from potential cleanup investments. One idea might be to permit the state to veto the listing of a site on the Superfund list, if it wished to tackle the site itself. States can act more quickly.

The federal government can also invest in cleanup technology, including cleaner fuels, and it can assure that its own house is in order. Some of the last two decades’ biggest state federal disputes have been where the federal government, or one of its contractors, has been a responsible party at a Superfund site. And the Resource Conservation and Recovery Act, which was written to prevent future Superfund sites, must be consistently and thoughtfully enforced.

As time goes on, and if the trends in Federalism for which the late Chief Justice Rehnquist is given credit continue, the capacity, willingness and legal authority of states to go their own way will increase. And in deciding important risk management questions, and community planning and infrastructure needs, I think this is as it should be. Large multinationals, PPL among them, do not necessarily welcome this development, but the states’ right to declare that one size does not fit all is not automatically wrong, and the occasional Congressional reflex to solve all problems at a national level may not be always the best approach.

It would also be good idea to work harder on sites that have environmental impairments but whose location or other attributes may not attract enough private cleanup capital. Property that can have good public use as recreational space, a transit center, and so on, should be helped with different incentives than just the standard economic development ones. Perhaps Federal Economic Development Administration funds would be appropriate for these cases.

It would also be wonderful for Pennsylvania to see more action of the sort that Congressman Kanjorski has triggered in Northeast Pennsylvania thorough the Earth Conservancy which he helped found. That is clean up of what we might call grayfields – old coal mining sites. Other laws may need tweaking for that, and a different set of incentives devised, but it's certainly worth looking at, especially in Pennsylvania. We are proud of the work we have done in using river dredge spoil and power plant fly ash to reclaim dangerous old mines. We also look forward, in nearby Schuylkill County, to producing sulfur-free diesel fuel from waste coal piles.

PPL and I thank you again for this opportunity, and I hope I can answer some of your questions.

STATEMENT OF PAUL SCHOFF

Mr. SCHOFF. Thank you. My name is Paul Schoff and I know that I am definitely to the left of Mr. Seif. It is my pleasure to address the members of the Subcommittee on Federalism and the Census and in particular, I am pleased and privileged that you would send an invitation to me to talk about brownfields here in the Commonwealth of Pennsylvania. My company, Brownfield Realty, LTD handled the first brownfield transaction under Pennsylvania's then new voluntary cleanup program [VCP], the Land Recycling Act, known colloquially as "Act 2." Pennsylvania's VCP or brownfield law has provided a tremendous boost to the Pennsylvania economy by allowing a common sense approach to the handling of environmentally challenged properties.

That first site, the Delta Truck Body site, if you take a look at exhibit A to my materials, had been on the list maintained by the Pennsylvania Hazardous Sites Cleanup Act [HSCA], for more than 3 years when we negotiated that first Consent Order and Agreement, with Pennsylvania's DEP Office of Chief Counsel. That order, which was dated October 31, 1995 was the first step in getting this property back into productive use and generating tax revenue and providing employment for the local community.

Since that first site, Pennsylvania's DEP has approved the cleanup reuse of hundreds of sites and now 10 years later, it is clear that the Pennsylvania VCP is not only an unqualified success, but a model for other States to follow.

As noted in my article written for "Business Law Today" in May 1997, at the time of the Delta Truck Body site transaction there was no Federal law allowing for risk-based cleanups. There was no Federal VCP. Since that time, Congress has passed legislation which provides for no Federal involvement, a process commonly called "overfiling," on a State brownfield site, which is being remediated under a State brownfields program unless the State requests EPA action or the EPA determines that a continuing release presents an imminent and substantial endangerment to human health or the environment or where certain new information regarding the extent of contamination is perceived by the EPA as requiring further remediation. Notably, however, this law only limits EPA overfiling under CERCLA, the Federal Superfund law, while the EPA is free to pursue claims and enforcement under Federal environmental laws such as RCRA, TSCA and the like. Fortunately, in April of last year, Pennsylvania and the EPA executed a Memorandum of Agreement, or Memorandum of Understanding, which covers Federal involvement where CERCLA, RCRA and TSCA legislation is implicated and clarifies how sites remediated under Act 2 may also satisfy requirements for these three key Federal environmental laws.

Since inception, Pennsylvania's Act 2 has allowed the cleanup and reuse of at least 1,712 sites. In addition to the enviable record which Pennsylvania has behind it, DEP has not rested on its laurels. The formation of the Brownfield Action Team, the Low-risk Sites Process, the Clean Fill Policy are all outgrowths of the original VCP program. Together with the Pennsylvania SiteFinder which has listed 485 properties since its creation in 2001, DEP has awarded 50 Brownfield Inventory Grants. These grants, together

with the grants and low interest loans under the Industrial Sites Reuse Program, have all contributed to making Pennsylvania an extremely hospitable venue for new and existing businesses.

It is also important to mention the use of environmental insurance products, such as stop-loss coverage, environmental impairment liability protection and cap cost policies, which have allowed questionable transactions to proceed with the assurance that financial resources will be available in the event unexpected contamination is found at a later date or if remediation costs end up exceeding preliminary estimates. These policies, together with the Pennsylvania brownfield initiative have permitted transactions to proceed in situations where uncertainty and speculation abounded regarding a particular site.

It should also be noted that Act 3, which was part of the original package—Acts 2, 3 and 4—under Pennsylvania's VCP legislation adopted in 1995 provides protection for economic development agencies, lenders and fiduciaries. In my written materials I have gone into an analysis of exactly what that protection is for economic development agencies, lenders and fiduciaries. I don't know that it is necessary for me to go into that at great detail at this time, but suffice to say that a lot of the economic development agencies which Mr. DePasquale had referenced in his remarks would not have taken title to these properties, or acted as conduits, if this legislation had not been passed. Act 3 provides that protection. Act 3, as well as Act 2, is a model for other States.

These protections for economic development agencies, lenders and fiduciaries, they all add up to providing key relief to an area which was fraught with danger. To that end, I believe Act 3 has been an unqualified success in providing the comfort required by these third parties in order to maintain reasonable control over their respective situations.

If there is one bugaboo in the system, it is the increasingly popular policy of State environmental agencies seeking compensation for natural resource damages. While Pennsylvania has taken a common sense approach and has not proceeded to follow this path. Our sister State, New Jersey, has embarked upon an aggressive campaign to obtain financial recompense for responsible parties for the overall damage done to the State's natural resources as a result of migrating pollution.

While the policy has surface appeal, if you take the argument to its logical conclusion, each one of us could and should be prosecuted for driving vehicles which contribute to the deteriorating condition of the air we breathe. My question becomes where does it end? In my humble opinion, while the States are free to govern their own affairs, U.S. Congress could require, by statute or regulation, that any existing or future MOUs or MOAs with States require prohibition on the recovery of NRDs except in the case of willful or malicious intentional acts.

Notwithstanding the controversy of NRD recovery, my opinion is that the Pennsylvania program Acts 2 and 3 and 4 has been one of the finest legislative products produced by the Commonwealth and the fact that we are holding these hearings in the city containing this country's largest brownfield site, serves as further testimony as to the viability and vitality of the Pennsylvania program

and the cooperation between the Commonwealth and the Federal Government. Thank you for extending the invitation to speak before your subcommittee. I thank you for offering me the opportunity to share my views with the members of the subcommittee. I look forward to any questions you may have.

[The prepared statement of Mr. Schoff follows:]

**TESTIMONY BEFORE CONGRESSIONAL
SUBCOMMITTEE ON FEDERALISM AND THE CENSUS
OCTOBER 25, 2005
BETHLEHEM, PENNSYLVANIA**

**BY
PAUL J. SCHOFF, CEO
BROWNFIELD REALTY, LTD.**

TO THE HONORABLE MEMBERS OF THE HOUSE GOVERNMENT REFORM
SUBCOMMITTEE ON FEDERALISM AND THE CENSUS:

It is my pleasure to address the Honorable Members of the Subcommittee on Federalism and the Census and in particular, I am pleased and privileged that you have extended an invitation to me to talk about brownfields here in the Commonwealth of Pennsylvania. My company, Brownfield Realty, Ltd., handled the first brownfield transaction under Pennsylvania's then-new voluntary cleanup program (VCP), the Land Recycling Act, known colloquially as Act 2. Pennsylvania's VCP or Brownfield law, has provided a tremendous boost to the Pennsylvania economy by allowing a common sense approach to the handling of environmentally challenged properties.

That first site, the Delta Truck Body site (see Exhibit A to these remarks) had been on the list maintained by the Pennsylvania Hazardous Sites Cleanup Act (HSCA) for more than three years when we negotiated the first Consent Order and Agreement with Pennsylvania's Department of Environmental Protection (DEP). That Order which was dated October 31, 1995, was the first step in getting this property back into productive use and generating tax revenue and providing employment for the local community.

Since that first site, Pennsylvania's DEP has approved the cleanup reuse of hundreds of sites and now 10 years later, it is clear that the Pennsylvania VCP is not only an unqualified success but a model for other states to follow.

As noted in my article written for Business Law Today in May of 1997 (see Exhibit B) at the time of the Delta Truck Body transaction there was no federal law allowing for risk-based remediation. There was no federal VCP. Since that time Congress has passed legislation¹ which provides for no federal involvement (a process commonly called "overfiling") on a state brownfield site which is being remediated under a state brownfields program unless: a) a state requests EPA action; b) where the EPA

¹ On January 11, 2002, President Bush signed into law the Small Business Liability Relief and Brownfields Revitalization Act.

determines that continuing releases present an imminent and substantial endangerment to human health or the environment; c) or where certain new information regarding the extent of contamination is perceived by the EPA as requiring further remediation. Notably however, this law only limits EPA overfiling under CERCLA, the federal Superfund law, while the EPA is free to pursue claims and enforcement under other federal environmental laws such as RCRA, TSCA and the like. Fortunately, in April of 2004, Pennsylvania and the EPA have executed a Memorandum of Understanding (MOU) which covers federal involvement where CERCLA, RCRA and TSCA legislation is implicated and clarifies how sites remediated under Act 2 may also satisfy requirements for these three (3) key federal environmental laws.

Since inception, Pennsylvania's Act 2 has allowed the cleanup and reuse of at least 1,712 sites.² In addition to the enviable record which Pennsylvania has behind it DEP has not rested on its laurels. The formation of the Brownfield Action Team, the Low-risk Sites Process and the Clean Fill Policy are outgrowths of the original VCP program. Together with PA SiteFinder which has listed 485 properties since its creation in 2001, DEP has awarded 50 Brownfield Inventory Grants. These grants together with the grants and low interest loans under the Industrial Sites Reuse Program have all contributed to making Pennsylvania an extremely hospitable venue for new and existing businesses.

It is also important to mention the use of environmental insurance products such as stop-loss coverage, environmental impairment liability protection and cap cost policies which have allowed questionable transactions to proceed with the assurance that financial resources will be available in the event unexpected contamination is found at a later date or if remediation costs exceed preliminary estimates. These policies together with the Pennsylvania brownfield initiative, have permitted transactions to proceed in situations where uncertainty and speculation abounded regarding a particular site.

It should also be noted that Act 3 which was adopted as part of the Pa. VCP legislation in 1995, also provides significant protection for economic development agencies, lenders and fiduciaries in the event they should come into the chain of title of brownfield properties or are suddenly faced with overseeing the maintenance of such sites. Act 3, the Economic Development Agency, Fiduciary and Lender Environmental Liability Act, provides a tremendous amount of comfort to innumerable financial institutions, economic development agencies, trustees and other key stakeholders who fear that state environmental laws might be used to force liability upon them.

This legislation provides that in the case of economic development agencies they will incur no liability unless the authority or agency directly causes an immediate release, or directly exacerbates a release of a regulated substance on or from the property—a reasonable threshold to be sure. Similarly, lenders will not be tagged with liability if they are engaged in the routine practice of commercial lending and: (1) the lender does not

² As per the FY 2003-2004 Annual Report issued by DEP dated 3/2005, the last date for which figures are available.

directly cause an immediate release or directly exacerbate a release of a regulated substance on or from the property; and (2) the lender does not knowingly and willfully compel a borrower to (i) do an action which causes an immediate release of a regulated substance; or (ii) violate an environmental act. Moreover, if there is liability, it is limited to the cost of the response action directly attributable to the lender's activities and only if the lender's actions were the proximate and efficient cause of the release or violation. A key point to remember is that there will be no liability just because the lender has decided to foreclose nor will liability arise for any release which occurs prior to foreclosure even if it continues after the foreclosure. Any release discovered in the course of performing due diligence is presumed to be a prior or continuing release.

Finally for trustees and other fiduciaries there will be no liability if during the time the fiduciary actively provided services a release occurred; the fiduciary had the express power and authority to control property which was the cause of or the site of such release as part of those actively provided services; **and** the release was caused by an act or omission which constituted gross negligence or willful misconduct. Similar to the protection extended to lenders, any liability is limited to the cost of the response action directly attributable to the fiduciary's activities. Also, there will be no liability for any release which occurs prior to the active provision of services by the fiduciary and any release discovered in the course of performing due diligence is **presumed** to be a prior or continuing release.

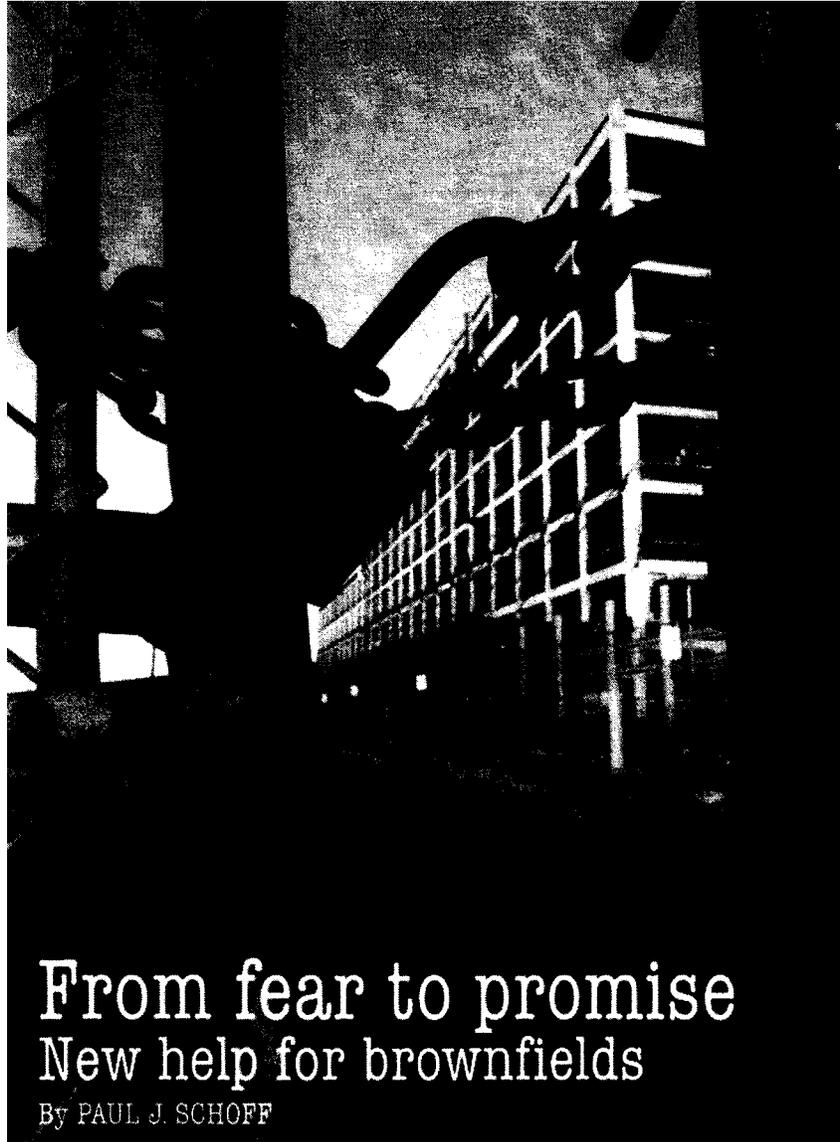
These protections afforded to economic development agencies, lenders and fiduciaries all add up to providing key relief to an area which was fraught with danger. To that end, I believe Act 3 has been an unqualified success in providing the comfort required by these third parties in order to maintain reasonable control over their respective situations where uncertainty and fear had previously reigned.

If there is one "bug-a-boo" in the system it is the increasingly popular policy of state environmental agencies seeking compensation for natural resource damages (NRD). While Pennsylvania has taken a common sense approach and not proceeded to follow this path, our sister state, New Jersey, has embarked upon an aggressive campaign to obtain financial recompense from "responsible parties" for the overall damage done to the state's natural resources as a result of migrating pollution. While the policy has surface appeal if you take the argument to its logical conclusion each one of us could and should be prosecuted for driving vehicles which contribute to the deteriorating condition of the air we breathe and the question becomes where does it end? In my humble opinion, while the states are free to govern their own affairs the U.S. Congress could require, by statute or regulation, that any existing or future MOU's with states require a prohibition on the recovery of NRDs except in the case of willful, malicious or intentional acts. This would be a significant step in stemming the tide of this pernicious policy which has attracted the attention of other states as well.

Notwithstanding the controversy of NRD recovery, my opinion is that the Pennsylvania program consisting of Acts 2, 3 & 4 of the 1995 legislative session, has been one of the finest legislative products produced by the Commonwealth and the fact

that we are holding these hearings in the city containing this country's largest brownfield site, serves as further testimony as to the viability and vitality of the Pennsylvania program and the cooperation between the Commonwealth and the federal government.

Thank you extending the invitation to speak before your Subcommittee and thank you for offering me the opportunity to share my views with the Members of the Subcommittee. I look forward to any questions you may concerning my testimony.



From fear to promise New help for brownfields

By PAUL J. SCHOFF

Business Law Today May/June 1997

Your best corporate client wants to buy a vacant industrial site for his new wholesale textile operation.

The site was used in the '60s and '70s to assemble tractor trailers. An old paint booth stands alone in the cavernous 70,000-square foot facility. A collection of 55-gallon drums has been piled up next to the rear loading dock for the past eight years and two underground storage tanks haven't been tested since they were installed in the late '60s. The owner is clearly insolvent and the delinquent real estate taxes on the site now hover in the hundreds of thousands of dollars.

How quickly can you tell your client to run, don't walk, away from the site?

Not so fast. The above hypothetical has been played out in thousands of variations in the last 15 years and everyone has heard the horror stories of innocent purchasers being tagged with liability for environmental remediation that far exceeds the cost of the property. The quicksand of CERCLA and RCRA have gobbled up their fair share of enterprising business clients.

The pendulum has finally swung back and the "brownfields" concept is gathering more and more momentum. The reuse of commercial and industrial sites without remediation to "background" standards is an idea whose time has arrived. Of the states, 38 now have some sort of brownfield legislation in place—36 became law in the last five years. President Clinton announced \$2 billion in tax incentives for brownfield projects in March of last year and

in the 104th Congress, no less than 22 separate brownfields bills have been introduced. So far, five bills have been introduced in the current congressional session.

But first, what are "brownfields"? *The Hoffman Report*, an online Internet brownfields resource, defines them as "vacant,

**Downside?
No current
federal law.**

abandoned or under-utilized commercial and industrial properties where the fear of unknown environmental liability is a serious obstacle to their successful redevelopment or improvement."

Just as business lawyers and real estate lawyers made the uncomfortable stretch into environmental law during the last five to 10 years, these same lawyers need to be cognizant of the white knight named "brownfield," which has appeared on the horizon. While each state that has passed brownfield legislation has a different version, there are common elements.

Pennsylvania's Land Recycling Act is typical. Passed into law in July of 1995, the Pennsylvania act provides for a statutory covenant not to sue those persons who can show that the property has met one of three standards for remediation: background, state-wide health or site specific. The act provides protection from state environmental enforcement

action as well as third party contribution suits. Current and future owners of the site, tenants, prospective purchasers, developers and public utilities are all eligible. Moreover, the liability protection is fully transferable to successors in title.

The act contains certain "re-opener" provisions where previously undetected contamination is later discovered, new contamination is present or the site conditions cause an "unacceptable" increase in the level of risk—such as converting the use of the property from commercial or industrial to residential—and, of course, fraud. All in all, the protection afforded is extensive and transferable—two key ingredients in getting clients excited about the concept.

The downside is that despite the plethora of bills pending before Congress, there is no current federal brownfields law. Thus, in situations where the Environmental Protection Agency has taken an active role, a "prospective purchaser agreement" (see the accompanying glossary) is still the preferred method of obtaining safe harbor protection from the agency. The process can be long and difficult but is certainly preferable to dealing with the EPA after the fact. The only other method of achieving EPA comfort is if a memorandum of understanding has been signed between your jurisdiction and the agency. The good news is that 27,000 sites were recently delisted from CERCLIS. CERCLIS is the EPA maintained database of properties where some environmental information is known, but where the conditions on the property do not rise to the level of concern generated by those sites on the National Priority

Schaff is president and general counsel of Brownfield Realty Ltd., in Allentown, PA.

List (NPL), where Superfund action is clearly indicated.

This delisting of CERCLIS sites shows that the agency judges these sites to pose a low risk. In fact, all of the delisted sites have been designated as "no further remedial action planned."

Politically, the agency has talked about, and to a large extent, demonstrated, that they will take a hands-off approach to brownfield situations in non-NPL sites if the state agency is overseeing the clean-up. Almost as evidence of this new persona, the EPA issued two position papers relating to prospective purchaser agreements and land-use controls aimed at brownfields development. This approach, coupled with the EPA's brownfield pilot project—which has funded 50 geographical areas with \$200,000 each over two years to study redevelopment methods and remove regulatory barriers—have changed many clients' thoughts about dealing with the agency.

True federal brownfield protection will not arrive until Congress passes one of the pending pieces of legislation. One of the simplest ways of coordinating federal and state brownfield efforts is contained in a bill sponsored by Reps. Jack Quinn, R-N.Y., and Paul McHale, D-Penn., introduced in January of last year and reintroduced in this session. H.R. 2919 provides for the EPA to certify state brownfield cleanup programs with recertification every two years.

You say your client isn't a manufacturer, but rather a lender whose collateral has recently become environmentally "questionable." You quickly envision a replay of the 11th Circuit's 1990 decision, *United States v. Fleet Factors* (901 F.2d 1550 (11th Cir.

1990)), that completely eviscerated the secured-party exemption under CERCLA and held that a lender can be held responsible for remediation costs "if its involvement with the management of the facility is sufficiently broad to support the inference that it could affect hazardous waste disposal decisions if it so chose." (emphasis added)

The shock wave generated by the *Fleet Factors* decision reverberated throughout the banking community and even the EPA felt the need to clarify the secured-lender exemption under CERCLA by issuing what has become known as the "Final Rule" (57 Fed. Reg. 63517 (April 29, 1992)). While the Final Rule did clarify the exemption, the D.C. Circuit Court of Appeals in *Kelly v. EPA* (15 F.3d 1100 (D.C. Cir. 1994)), declared the Final Rule invalid, holding that the EPA lacked the authority to promulgate such a directive.

Fortunately, on Sept. 30, 1996, President Clinton signed the Asset Conservation, Lender Liability and Deposit Insurance Protection Act of 1996, that legislatively overruled the 1994 D.C. Circuit's decision in *Kelly*. The new law also expands the protection afforded by the EPA's Final Rule by providing additional clarification of the secured-party exemption and removing a 12-month presumptive time period for disposing of property acquired through foreclosure.

The fear that *Fleet Factors* had engendered has already been addressed at the state level by many of the 38 jurisdictions that have passed brownfield laws. Indeed, Pennsylvania's Economic Development Agency, Fiduciary and Lender Environmental

Liability Protection Act provides protection to lenders unless they directly caused or directly exacerbated a release of regulated substances from the property, or knowingly and willfully compelled their borrower to cause an immediate release of such substances or violate an environmental act. Moreover, liability only extends to the cost of remediation that is directly attributable to the lender's actions and only if the lender's actions were the proximate and efficient cause of the release or violation. Ownership or control of the property after foreclosure, by itself, will not trigger liability.

Numerous tax and financing incentives frequently accompany brownfield legislation and provide even greater impetus to redevelopment. Low-interest loans, grant money and environmental due diligence funding is now being made available by state commerce agencies to lure back industries driven out by overzealous environmental enforcement frequently seen in the last decade.

Some states, such as Illinois, provide prospective purchasers who have neither the time, the money nor the inclination to obtain a state environmental sign-off, with the ability to still obtain liability protection by way of an "innocent purchaser defense." That permits a purchaser to create a record that he or she had no reason to know of environmental contamination. Obviously the wisdom of relying on this defense in a situation involving federal involvement is still highly questionable because of the strict liability provisions of the federal statutes.

One must still tread carefully since other jurisdictions have

notable exclusions to liability protection. Rhode Island's Industrial Property Remediation and Reuse Act specifically excludes most petroleum contamination as does the recently enacted Maryland brownfield law.

Moreover, when negotiating a specific prospective purchaser agreement or consent order with either the EPA or a state environmental agency, be sure to have the benefit of environmental counsel, since many of the agreements require careful wording and frequently terms and conditions that were previously nonnegotiable have become ripe for discussion.

Other incentives for participating in state brownfield programs include the availability of insurance coverage as stop-loss protection for contamination that was previously undiscovered. AIG's "cost cap" coverage is typical—coverage is provided for unanticipated remediation expenses above the deductible threshold. Reopener liability coverage is also available under the AIG Select program that allows a client to choose menu-style which reopener coverages are needed. Be aware however, that these coverages are not inexpensive. On substantial projects, however, the cost can be well worth the premium.

An added bonus that is also frequently available when purchasing brownfield sites is negotiation with local taxing authorities on past-due real estate taxes and reassessment of the property giving due credit to the diminution in value as a result of the contamination. In some cases, such as Ohio's Voluntary Action Program, a 10-year tax abatement for an increase in a site's value can be obtained.

Business clients can achieve even greater benefits if the site is located in a federal empowerment zone, thus freeing up those elusive investment-tax credits. Dave B. Levy, Baltimore's brownfields project coordinator, believes that when all of the incentives are in alignment, developers and municipalities can join together to gain a "win-win" result. This was the case in Baltimore's Fairfield Ecological Industrial Park—which lies within a federal empowerment zone, a state enterprise zone and also has the benefit of a state brownfield law as well as a memorandum of understanding. "These opportunities for brownfield projects help to spark the rebirth of the very communities that often created the brownfield landscape," Levy notes.

The brownfields concept has attracted a following in the legal, business, banking and real estate communities. A national "Brownfields Conference," co-sponsored by the EPA, the ABA and the International City/County Management Association, was held in Pittsburgh last year. Those

involved in brownfields redevelopment were able to trade ideas, services and new information. This year's program will be held in Kansas City, Mo., in the first week of September.

Not surprisingly, the CEOs of many of America's Fortune 500 companies are behind the push for federal brownfields legislation. Properties that have been listed on the books of these companies as contingent liabilities or deserving of a footnote in the annual report may now turn out to be hidden assets. The politically popular support for brownfields initiatives is sure to provide the boost needed to move federal legislation to the next level. In the meantime, sites not on the National Priority List continue to be developed by those willing to invest the time and energy in complying with current state brownfield laws.

Your client may be among them.

Brownfield Web Sites

- EPA brownfields homepage:
<http://www.epa.gov/swerosps/bf>
- Brownfields newsletter:
<http://www.ktc.com/brownfields>
- Pennsylvania brownfields program:
<http://www.dep.state.pa.us/dep/deputate/airwaste/wm/landrecy/default>
- Listing of federal brownfields legislation pending:
<http://www.nemw.org/brownleg.htm>
- Northeast-Midwest Institute brownfields information — contains links to many state brownfield programs:
<http://www.nemw.org/envqual.htm>

Glossary of brownfield terms

ACBM — Asbestos-containing building materials

AST — Above-ground storage tank

Baseline report — A report performed to determine the nature, quality and extent of contamination present at a site. To be used as a reference for contamination that may occur in the future.

Brownfield or voluntary cleanup program — A program designed to provide a comfort level to owners or purchasers of actual or potentially contaminated real estate that requires a testing of the site and an abatement, remediation or confinement of the contamination so that the property does not present a threat to persons, property or the environment. The program takes into consideration the former, current and future uses of the site.

BTEX — Benzene, toluene, ethylbenzene and xylene. A reference to the presence of petroleum-related contaminants. This is frequently used in Phase II Audit Reports (see Phase II, below) to refer to the degree of petroleum and petroleum byproduct contamination.

CERCLA — The Comprehensive Environmental Response, Compensation and Liability Act. 42 U.S.C. § 9601 *et seq.* Also known as the "Superfund" law. It is one of the most potent of the myriad of federal laws imposing joint and several strict liability on "owners," "operators," "generators" and "transporters" of hazardous substances. Civil and criminal penalties are available to the EPA when enforcing the terms. It also provides for private causes of action and contribution rights between and among those found liable.

CERCLIS — Comprehensive Environmental Response, Compensation and Liability Information System. This is a tracking system maintained by the EPA that serves as the repository of information concerning sites of known or suspected contamination that could be eligible for placement on the National Priority List.

Hazardous substance — A broadly defined term under CERCLA that incorporates substances listed in other federal statutes and includes toxic pollutants, hazardous waste and "any imminently hazardous chemical substance or mixture." It does not include petroleum or petroleum byproducts (although petroleum is covered under RCRA, see below).

LUST — Leaking underground storage tank

MOU — Memorandum of understanding. An agreement between the EPA and another agency, state or other entity that governs the relationship of the EPA region and the entity executing the agreement. It typically will provide for an agreement by the EPA not to interfere with state or other agency enforcement actions unless certain criteria exist.

NFA — No further action. A letter from the EPA or a state environmental enforcement authority stating that based on the information received by the agency, no further enforcement action is anticipated at a particular site. Also known as NFRAP—"no further remedial action planned."

NPL — National Priority List. A listing of the most heavily contaminated sites in the country—also known as the Superfund list. Creation and maintenance of the NPL follows procedures set forth in the National Contingency Plan (42 U.S.C. § 9605; 40 C.F.R. Part 300).

PCBs — Polychlorinated biphenyls. A hazardous substance frequently found in electrical equipment, such as transformers, due to their remarkable electrical conductivity properties.

Phase I — The definitions of Phase I and Phase II environmental site audits have become increasingly blurred. However, a Phase I audit generally refers to a noninvasive review of a site by a qualified environmental consultant. State and federal environmental records are checked, a site visit occurs where potential environmental issues can be raised, and a history of the prior and current use of the facility is

examined. Existing underground and above-ground storage tanks will be noted and areas of concern will be highlighted.

Phase II — A Phase II audit is designed to either confirm or deny the existence of an environmental condition and will typically involve sampling of environmental conditions at the site. This may include soil sampling, groundwater tests, checking for the presence of asbestos, lead paint or PCBs. The consultant will perform investigations into all of those conditions identified in the Phase I report in order to quantify the extent of contamination and the degree of remediation or containment required.

Plume — A graphic depiction of location and quantity of contamination in soil or some other nonmigratory medium at a given location.

Pollution exclusion — An exclusion inserted into most comprehensive and general liability policies by insurance companies that excludes coverage for acts of pollution. The earliest form started to appear in policies around 1970 and dealt mainly with intentional acts of pollution. A more comprehensive version became popular in 1985 and has been refined since that time into an "absolute pollution exclusion."

PPA — Prospective purchaser agreement. An agreement negotiated with the EPA that limits the liability of a prospective purchaser when acquiring title to a site. Only available for sites on the NPL or CERCLIS.

PRP — A potentially responsible party. This is CERCLA parlance for those persons identified as being within one of the four classifications of persons capable of being held liable under CERCLA.

RCRA — The Resource Conservation and Recovery Act. 42 U.S.C. § 6901 *et seq.* This is federal legislation that was a precursor to CERCLA and noted for its requirement of "cradle-to-grave" tracking of hazardous waste. Subtitle D of RCRA also covers nonhazardous waste. RCRA does cover petroleum products but does not provide for a private right of recovery although citizen suits to enforce RCRA are authorized after prior notice is given to the EPA.

Release — A CERCLA euphemism that refers to any "spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing into the environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any hazardous substance or pollutant or contaminant)..."

Reopener — Those conditions or occurrences that would give rise to an environmental enforcement agency's ability to impose liability on the recipient of a covenant not to sue under a brownfields program. Examples would include fraud in the obtaining the covenant, new contamination and new conditions at a site that would pose an unacceptable risk to persons, property or the environment.

TPH — Total petroleum hydrocarbons. A measurement of the petroleum hydrocarbons present in the medium being analyzed. A frequently used measurement of the extent of petroleum contamination.

UST — Underground storage tank

VCP — Voluntary cleanup program, or brownfield law

—Paul J. Schoff

But most companies still turn to undeveloped property when seeking a site for their new facility.

For three years the former Delta Truck Body Co. site in Pennsylvania's Perry Township remained on the Pennsylvania Hazardous Sites Cleanup Act list.

The former industrial property had been vacant for eight years. But no one wanted to purchase the site for fear of assuming the liabilities for the contamination caused by the previous owners. The township had even filed a lawsuit against the owner, which

span of less than 90 days."

Initiatives such as these are giving companies more choices when it comes to finding the right site for their new facility.

Though brownfield developments are gaining popularity in some areas of the country, they still must battle a perception problem with businesses considering a site for a new building.

Initiatives Make old Industrial Sites More Attractive

By KAREN E. THUERMER

required him to clean up the property.

Today, however, the site is home to Keystone Environmental Services, thanks to efforts by Brownfield Realty, Ltd., an Allentown, Pa., real estate investment company that specializes in brownfield (another term for older industrial) sites.

To make the site desirable again, Brownfield Realty partnered with the Pennsylvania Department of Environmental Protection, the prior owner, and three taxing authorities.

Together, they took advantage of the state's Land Recycling Act — legislation enacted in 1995 — and made the site the first Special Industrial Area under Pennsylvania's Brownfields Law (Act 2).

Today, 36 other states have similar laws that encourage the cleanup and reuse of vacant, abandoned or underutilized commercial and industrial land.

"Because of our legal and technical expertise, we were able to eliminate all immediate, direct and imminent threats to public health and the environment," says Paul Schoff, president of Brownfield Realty.

"In addition to the removal of two 5,000-gallon underground tanks, 300-plus 55-gallon drums, 666 tons of soiled textile products and ongoing monitoring of groundwater, we were able to do all of this in the

"The biggest advantage of a brownfield is they are usually strategically located," said consultant Dave Kolzow of Lockwood Greene in Greenville, S.C.

"They are close to centers of transportation. There is also usually a high population density around brown-

fields so the work force is close by."

Kolzow agreed that one of the long-running obstacles to brownfield development has been environmental restrictions and penalties.

In the past, the buyer of a property has been responsible for any environmental penalties or improvements that had to be done to the property, even if the buyer didn't know about the problem at the time of purchase.

"The trend now is that the buyer of the property does not have to assume responsibility for problems that were there without their knowledge," Kolzow said. "This has for a long time been one of the greatest barriers to brownfields."

The rules governing environmental issues in brownfield areas vary from state to state, so potential buyers should check into laws before obtaining property.

Generally, Kolzow said, greenfield (undeveloped) areas are cheaper to acquire and develop. Land may



Delta Truck Body Company's former facility in Pennsylvania's Perry Township sat vacant and on a state hazardous cleanup list until Brownfield Realty partnered with the state, the prior owner and three local governments. Using provisions of the state's Land Recycling Act, they put the property back into use by having it classified as a Special Industrial Area.

PHOTO BY BROWNFIELD REALTY LTD.

be cheaper, and the lots may be larger. But Kolzow warned that long-term costs can sometimes favor brownfield areas.

"One issue to consider is if the greenfield area continues the trend of urban sprawl," Kolzow said. "If utilities and other infrastructure have to be extended out to the area, the ultimate cost to the community can be higher than in a brownfield area."

"Usually in a brownfield, the roads and utilities are already in place, so that can be a more attractive place down the road and for the community."

Redevelopment initiatives

Many locations across the United States that were once used for industrial and commercial purposes are now being considered for redevelopment thanks to an economic redevelopment initiative of the U.S. Environmental Protection Agency.

This initiative is designed to empower states and communities to work together in a timely manner to prevent, assess, safely clean up, and reuse brownfields.

As of July 15, 1998, the federal government had awarded 228 brownfield sites with funds through cooperative agreements of up to \$200,000 each for a two-year period. These grants have leveraged nearly \$1 billion for redevelopment and created over 2,000 jobs.

Brownfields vs. new sites

Although environmental issues are important when considering a brownfield site, real estate value is still the pre-eminent issue.

"New Jersey, in particular, is so hot that developers are even raising the roofs on existing buildings to create more room."

— Paul Schoff, president, Brownfield Realty Ltd.

"We have dealt with a number of brownfield sites that involved anything from windows containing lead-base paint to those that contain dioxin," Schoff says. "When we first look at a brownfield property, we concern ourselves with whether or not the site has real estate value."

Part of that assessment includes the site's potential room for expansion, access, and the top criteria in all real estate: location, location and location.

Brownfield markets

For the time being, the markets on both the East and West Coast appear to be the most active for brownfield investment.

"New Jersey, in particular, is so hot that developers are even raising the roofs on existing buildings to create more room," says Schoff.

Driving the need for rehabilitated brownfield sites in these markets are the growing economy in these regions and the increased need for space to accom-



COURTESY OF BROWNFIELD REALTY LTD.

moderate high-tech industries such as biotech, pharmaceuticals, and computers/ software.

"Most of these sites need to be located in areas with access to transportation infrastructure," he says.

Brownfield Realty Ltd. is marketing a 256,000 square foot brownfield site it purchased in Cranford, N.J., next to the Garden State Parkway.

"The site was contaminated, but we bought it because the demand in that area is very strong for office, research and industrial space," Schoff says. The company has done the same with Kettle Point, a 50-acre site in East Providence, R.I.

Schoff emphasizes, however, that the trend toward purchasing and cleaning up contaminated brownfield sites is primarily regional.

"If you go elsewhere where available land in key locations is more ample this may not be the case," he says.

Another point Schoff stresses is the need to know who the seller or — in the case of leased space — the buyer is, and that this company has experience in cleaning up contaminated sites.

"There are a lot of environmental companies out there that do brownfield work such as remediation and testing," he says. "But they have no real estate experience." ■

Metal Source, a metal recycling company, occupies a former brownfield site in Perry Township, Pa. The site sat vacant for three years until state and local government and the property's previous owner worked together, using the state's Land Recycling Act, to put it back into industrial use.

Mr. TURNER. Mr. Colangelo.

STATEMENT OF ROBERT COLANGELO

Mr. COLANGELO. Thank you. Good morning, Mr. Chairman and members of the subcommittee. Thank you for inviting me here today and I really commend each of you for tackling this brownfield issue and looking at alternative financial incentives to attract private sector investment. Government can't do it alone. It has to be a public/private partnership and now a lot of the easy brownfield sites have been done and in order to attract the private sector, we need more innovative financial solutions.

The National Brownfield Association is a nonprofit educational organization and we have more than 900 members, property owners, developers, investors, service professionals and representative governments who are all dedicated to the responsible redevelopment of brownfields. And one of my pleasures is that I get to travel the country working with a lot of States on their brownfield programs, so I think I can offer you a unique perspective on what is happening in the brownfield market.

The NBA has a longstanding relationship with the State of Pennsylvania. Pennsylvania DEP was one of our founding members under Governor Ridge and Secretary Seif, and you know, we learned firsthand just the quality of people that are involved in the agency and the innovativeness that has come out of the agency and its programs. And also, just recently, we launched our NBA Pennsylvania chapter working with Secretary McGinty and Deputy Secretary DePasquale. And that has been a great success. That chapter started out with 100 people. There is a very strong interest here in Pennsylvania and you have a very sophisticated market with a number of highly skilled specialists.

I can attest that the Land Recycling Program, through Act 2, 3 and 4 is innovative and it is innovative because owners can secure liability relief. The program is unique because it has flexibility. The applicant can choose the type and level of cleanup based on end use. And it also requires the Department have timely response so that they can move at the speed of business, which is very important in the development community. And then last, it provides an array of financial incentives and technical insistence.

Additional program innovations under the current administration include the MOU that Deputy Secretary DePasquale mentioned and it is so important that you can offer a broad range of brownfield sites, such as RCRA, CERCLA and TSCA to be included under the brownfield program. And so this MOU, I think, is a model that other States will start to emulate. And then last, the formation of a department of revitalization, local government support, which really gives an emphasis to making brownfields a redevelopment issue is very important and we strongly support this and we hope that hits a trend that other States will soon follow.

The act program incubated under Governor Ridge and Secretary Seif was nationally recognized for its innovative solutions, but probably one of the most important things that happened under that time was that they marketed that program very aggressively and not only did that raise public awareness in Pennsylvania, but it really raised public awareness of the whole brownfield issue.

They were the tide that floated all brownfield boats and it really increased the level of interest out in the National marketplace and now I could say that there is 5,000 to 10,000 people that make their livelihood in brownfields. And so again, I really commend Congress. I am not sure if they knew they were creating an industry, but there is a whole industry out there of people that make their livelihood out of redeveloping these sites and a lot of that stemmed, you know, through the Pennsylvania Department of Environmental Protection's aggressive efforts to market their program and it had National repercussions. And that effort has been continued now under this administration. But the State can't, you know, tackle brownfields alone. It requires a partnership with the private sector. And the government's role, I think, is best as a facilitator and the administrator of programs that reduce risk and attract private investment.

For government incentives to be meaningful to the private sector, they need to be predictable and consistent, be easy to understand and administer, applied to a wide type of projects, allow flexibility in the use of funds and provide meaningful funding amounts. And I think Pennsylvania has many of those elements. As time goes on, fewer easy-to-develop brownfield sites are available, and so cities are going to be left with the harder, more complicated sites and these have to have financial incentives to attract private sector investment.

Chairman Turner, I personally commend your efforts to look for a financial solution and support the legislation similar to H.R. 4480, which allows a Federal tax credit program to deduct demolition and remediation expenses. As you draft language for the bill, I encourage you to consider allowing for these credits to be traded on a secondary market. I think this would further enhance their value and would stimulate more private sector investment. And again, thank you very much for asking me to present my comments. Also, the NBA has recently created an analysis of State voluntary cleanup programs and recognizing that no State has the best program, but many States have great elements, we put that forth in our analysis and I encourage you to look at that as a resource. Thank you.

[The prepared statement of Mr. Colangelo follows:]



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

It is a pleasure to address the Honorable Members of the House Government Reform Subcommittee on Federalism and the Census, who are interested 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 a million square feet of brownfield property in the Chicago area; and the other as the Executive Director of the National Brownfield Association, a non profit international organization of more than 900 members from the public and private sector that are dedicated to promoting the responsible redevelopment of brownfields.

As a private sector developer my experience is that state brownfield programs provide 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, one of the strongest is that provided through the Commonwealth of Pennsylvania. Comfort letters provide a defined level of liability relief to developers who have responsibly remediated sites, giving them the ability to secure debt financing.

Technical assistance and financial incentives, while great ideas, are often impractical for most private developments. The Commonwealth of Pennsylvania has been innovative in the creation of a Community Revitalization and Local Government Support Division within the Department of Environmental Protection. This focus on economic development sends a message that brownfields are redevelopment driven issues. The limited amount of program funds available to the private sector often requires an intense investment of time and the use of expensive consultants to help navigate through 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 secured.

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 interest. The challenge to every government agency is to strike a balance and 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
- Allow for unused funds to be transferable or refunded

Chairman Turner, I personally commend your efforts to look for a financial incentive solution and support legislation similar to H.R. 4480, which would create a federal brownfield tax credit program that would allow for demolition and remediation expenses. As you draft language for this bill, I encourage you to consider allowing for these credits to be traded on a secondary market, which would further enhance their values and would stimulate more private sector investment.

As Executive Director of the NBA, I would like to introduce our recently completed analysis of state brownfield and voluntary cleanup programs (VCPs) as a possible resource to the committee. 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:

- 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 has developed the best program many 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.

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.

Mr. TURNER. Excellent. Thank you so much. We will go to Mr. Dent for the first questions.

Mr. DENT. OK. Thank you, Mr. Chairman. Thank you all for your testimonies. It is very helpful. Secretary DePasquale, you talked a bit about the allocation of Federal moneys and how they are too restrictive and that States with established programs should be afforded greater flexibility with those Federal dollars. Explain how this increased flexibility would assist in a greater efficiency in rebuilding communities and you know, what we should do, you know, legislatively to help you get that flexibility?

Mr. DEPASQUALE. Here is, I mean, the simplest answer is that, you know, some of the money that we are allocated needs to go into marketing of brownfields or even of the program, and that is money that we think, at this point, we have significantly marketed the brownfields program. I mean, people that are doing economic development in Pennsylvania know about the tools that we have and we certainly can go out to forums like this and use those efforts to market what we have. We think that, for States that have established programs and people already have a familiarity with what we do, that money would be more effective going straight into remediation. So if you have an economic development deal you are trying to put together and you already know about our brownfields program, but one of the pieces is you need \$250,000 of remediation money to make the project go and so again, when we talk about leveling the playing field between greenfield and brownfield sites, and this is one that Region 3 has been working with us to increase the flexibility of what we can do in Pennsylvania, but we do know that is something that if we could use all of our money for remediation and that would be very helpful.

Mr. DENT. So OK, you would just like to be able to use all that money for remediation?

Mr. DEPASQUALE. To have the ability to use it.

Mr. DENT. OK.

Mr. DEPASQUALE. There may be some instances where we would need to use it for marketing, but I can tell you that if we were able to use all of our money for remediation, that would be something that we would likely do.

Mr. DENT. Do you think that would require an administrative change or a legislative change?

Mr. DEPASQUALE. I think it would be more, my sense is it would be more administrative. That would be my sense.

Mr. DENT. And my second question, final question for you, Mr. DePasquale, deals with liability relief. What can the State and Federal Government do to get on the same page with respect to liability relief?

Mr. DEPASQUALE. Again, with the MOA, between EPA Region 3 in Pennsylvania, I think we are getting pretty close to nailing this, you know, threading that needle. But I do, possibly what we could do, you could even have, whether it be Abe and myself taking a little road show out to other States or simply using this forum with your committee to inform other States as to what, and other regions, as to what is happening. And you know, I don't know if that is taking place on from a larger level, from EPA headquarters, but I do know that is, that I think sometimes at some level, it is just

letting people know what we are doing, because when you talk about a one-stop shop, we were in a situation where we were trying to, you know, nail down an economic development deal in the north central part of our State and we were in the process of losing it and then during the conference call, I informed them that we had an MOA with EPA for the brownfield program and the tenor of the discussion immediately changed. They didn't realize how quickly you can go through the EPA and DEP process on a brownfield site and so that enabled us to secure it.

Now, there is somebody at a pay grade higher than me that will announce that project in the near future, so I don't want to be taking away any of their gusto, but I do, I can tell you, without the project's name, that is something that happened within the last week in a conference call. And so that is a project that easily could have gone and they would have just bought 50 acres of a greenfield site and gone there as opposed to reusing an old industrial site.

Mr. DENT. And quickly, to Jim Seif, in your testimony you almost go as far as to say that Superfund should not have been passed. You didn't quite go that far, but what led you to such a conclusion and just tell us again what your thoughts are with respect to the distinctions between what we have done here in Pennsylvania, what you did, largely, in Pennsylvania with brownfields and contrast that to the Superfund experience.

Mr. SEIF. I think Superfund is one of the least successful Federal environmental statutes of my professional lifetime, which goes back to the founding of the agency. And it simply took the wrong premises about the nature of the problem and about the sub-decisions you would have to make to get it to work right, you know, how clean is clean and so on and miscalculated what, how large the task was. Like prohibition, there were certain wrong premises about the public response to the prohibition that was settled upon. But we sort of had to do it that way to learn what the right way was. We had to go down some wrong paths to decide, wait a minute, how can we make this faster, you know, time is money, when they learn that you can get a State and Federal judgment at the same time. That took 25 years after the passage of Superfund. How can we decide how clean is clean, can it vary by site? We concluded that it could. Can we just cap stuff? We concluded that we can. But those were big fights.

And I guess we had to have those fights to learn that the answer should have been we didn't have to have those fights. That is the way policy gets made, I guess, in a democracy, disjointed incrementalism it has been called. But I think the Superfund taught us a lot of lessons. It gave us a lot of expertise as physical, chemical, medical risk expertise that is now part of the tools that go together to make a good brownfield program. Yes, I would have passed it. I guess I would have. It might have been that we could have made it worse so that it would have taught us faster, but we didn't and here we are. I think all is well that ends well.

Mr. DENT. And one more.

Mr. TURNER. Sure.

Mr. DENT. And finally, Jim, same question that I gave to Mr. DePasquale. What do you think we should be doing at the Federal level to give you greater flexibility or funding? What, specifically,

do you think we ought to do to make the efforts we have seen in Pennsylvania even better on brownfields?

Mr. SEIF. In Pennsylvania, not very much. I think that with tax relief, Federal or property tax, which we know is a huge debate in our Commonwealth right now, there might be a few more dollars added. And when you are dealing with a decision between this piece of land or that piece, \$12.50 can swing a deal. It can be the lubrication that is needed to make a decision go faster and the tax element is always part of a deal. I would not wish to see the tax element become so large that deals are made because of it. I think deals have to be good deals, good cleanups, good commercial outcome and so on, and tax can help. Again, with reference to the revenue implications of it all and the simplification issues that I think would be helpful to everybody, we probably ought to be doing that. Property tax abatement is not a Federal Government issue, but there should be some encouragement, possibly even Federal grants to communities that provide that abatement so that it is less painful and they get a quicker payoff on the bringing of the jobs and the redeveloped property back onto the tax rolls.

Mr. TURNER. Thank you. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman. One of the things I found most encouraging about the evolution of brownfields policy is that since we got started, there were new technologies available that are actually bringing down radically the costs of doing cleanups. There have been some examples. For example, biologicals that are now being used to break down poisons in the ground rapidly and allow for what would have been fantastically expensive cleanups with huge movement of earth to be achievable in a fairly unintrusive way. What sorts of changes need to be made in the Federal program to make it easier to introduce these new technologies? Mr. Seif.

Mr. SEIF. You are right, and Superfund engendered those technologies as capitalists desperately looked for ways not to dig up thousands of tons of Earth, burn it and bury it somewhere else, which was often required, even in these big landfills where NCR got caught in.

We have since learned that a variety of new techniques can be used, many of them developed in the private sector, which is the best place to develop anything, in my view. It saves the taxpayers a lot of money, but in the energy area, and because of the most recent energy bill, there will be a lot of investments in clean coal technology and that will have an enormous benefit in Pennsylvania and Ohio and elsewhere because you have a lot of old abandoned coal sites, or grayfields, if you will. The coal that we used to throw away is now, has enough BTUs in it to make it worthwhile going after and you can make diesel fuel out of it. That is what we have done in Schuylkill County shortly here and do other things. The Federal Government has really stepped up to the plate in the most recent energy bill in helping that happen.

You can also prevent more grayfields from being formed if there were more nuclear power. That is way off the topic of this meeting, I understand, but it is clear that if nuclear power came to us now with the global warming effort, the enviros would be saying what a great thing. And we perhaps ought to turn in that direction for

the variety of reasons that we are all familiar with. But the Federal Government can incentivize at fine universities, especially like this one, the development of more technology, but not be the developer itself, obviously, and let the private sector judge which one makes it in the market and which ones don't.

Mr. ENGLISH. Mr. DePasquale, in applying these new technologies, do you see any way that we should be refining or sharpening the Federal program to make it possible to introduce them more quickly?

Mr. DEPASQUALE. I think that some of the tools are already there and Don Welsh, who is the Region 3 Administrator, has shown his leadership in being creative with the MOA. I think that across the board, whether it be environmental protection agencies across the country at the State level or even all the regions in EPA and Washington, you need to have a culture of creativity and, because I believe the tools are already there, and you need to have, you know, people that are committed at the higher level of the agencies and also at the lower level, that are committed to being problem solvers on these issues because the tools that you raise in the question are already there. I mean, I don't think that you really need to pass new legislation, I think, you know, maybe it is banging away at it to make sure that the people who are listening both at the State and Federal level that they need to be creative and find solutions because, you know, in a, to be fully honest, if you think everyone in the DEP in Pennsylvania is really throwing parties because of what I do, it is not the case. I mean, sometimes you have to really work to get people to come to the table and figure these things out, but I am fortunate to have a boss like Governor Rendell and Secretary McGinty that back me up on these things. And I can imagine that for Abe doing some deals at the Federal level, he has similar issues. It is a culture of creativity that needs to be a match from the top on down.

Mr. ENGLISH. Mr. Colangelo, do you have anything to add from your perspective with your association?

Mr. COLANGELO. I would say training, education and outreach is, this brownfields market is constantly changing. Each year the USCPA hosts a brownfield conference and the numbers have grown each year. This year they are looking at 5,000 people in Denver and the interesting part of that is that there are so many new faces each year as this rotates around the country. And so when you are talking about new technologies or new processes, all these new entrants into the market need to be trained and they need to understand, you know, how they apply and what changes have taken place. And that goes for all the stakeholder groups, too, you now, working with the property owners, working with the developers, you know, working with the investors. And again, you know, Pennsylvania had gone through some budget cuts and to say it politely, but they were really a lead marketer and that hurt the whole industry when that budget got cut, so providing that constant outreach and education and training internally and to the stakeholders, I think, is something that has to be done continuously.

Mr. ENGLISH. Thank you, Mr. Chairman.

Mr. TURNER. Thank you. Mr. Seif, one of the things that you related to us when you talked about the two points that need to occur

is the issue of getting a piece of paper or a release and understanding of your liability. The question that I have for the panel relates to a portion of my brownfield tax credit bill, which is No. 4480, and that is the goal of providing that type of relief to individuals that come in and redevelop brownfield sites or even a past polluter that has joined in the redevelopment and the cleanup of the site.

A brief overview, again, the bill provides a 50 percent tax credit, it doesn't provide 100 percent of the funding, but the tax credit can be applied to environmental remediation and building demolition to the extent that buildings need to be removed with respect, as part of environmental remediation. It also includes petroleum. The goal of providing relief to individuals who utilize the tax credit, initially, in the 108th Congress, the bill provided a release if the past polluter came to the table and funded portions of the remaining environmental remediation and the individuals that were redeveloping it, also, were able to avail themselves of liability relief.

And in working with the Real Estate Roundtable, we have narrowed that as a result of a number of objections that people had who, on the environmental side, were very concerned about another form of relief or release being provided. And we were encouraged to fashion the bill so that there is a requirement now that individuals availing themselves of the tax credit would have to go through the volunteer cleanup program, and through the volunteer cleanup program, they would then receive their relief from liability that they would be seeking.

One of the issues that we have, obviously, Mr. Schoff, your summary in your testimony of your Business Law Today article where you talk about the 2002 bill, the Small Business Liability Relief Act, and the relief that it provides under CERCLA, but the failure to include RCRA and TSCA that the MOA with Pennsylvania encompasses, raises an issue of there are several States that do not have that opportunity of providing their volunteer cleanup program developers or past polluters this type of relief.

And I would like, if you will, one, to talk about the issue of how difficult was it to accomplish including all of those. Since the 2002 bill did not specifically include RCRA and TSCA, did Region 3 have difficulty in coming to the table and providing that umbrella with Pennsylvania, and from that, then, is there a need for additional legislation to enable EPA to do that on a routine basis so that the 2002 Small Business Liability Relief and Revitalization Act would recognize that both EPA and the States are encouraged to have a more broader MOA? From Pennsylvania's standpoint, how critical has it been for it to be a full umbrella, how difficult was it to include it? And if the rest of you could talk about the issue of the need for that relief and what you have seen and experienced. Mr. Ferdas.

Mr. FERDAS. OK. First of all, I want to say that one of the major events in Superfund was a realization that private people can do the work better than us. We basically went into a so-called enforcement first, so we basically encouraged the responsible parties to do the cleanups and Region 3 right now is 80 percent of all the cleanups are being done by responsible parties and that is what gives the credibility and the creativity to the cleanups. And one other point is a major development is also going on in the assessment

side in the sense that we are getting better and better tools to sample things in the field and that is also reducing significantly the amount of cost of assessing aside, which is the first step for that.

And that, just following with your question, I think that what we did in Region 3 in Pennsylvania is we figured out how to deal in the back room in the sense that we still have the whole RCRA structure clicking away, but it is hidden. It is basically taken care of in the back room and if there are any problems, obviously, we will say it and we have the authority to say it, but basically, it is done invisibly, transparent from the person who is trying to do the development and I think that is a key issue and we never claimed that RCRA went away, that TSCA went away. They just, we made it transparent to the person that is coming in and Pennsylvania understands those laws and they can do it. So I mean, I obviously can't say that we should change RCRA. I mean, I am not in a position to say that, but I think what we did was actually come to a solution, which is just make it transparent to the person that is coming in.

I mean, TSCA has even more severe problems than RCRA, I think, because of the different regulations and so on and so I think that, you know, I can't talk about changing the law, but what I am saying is we found a way to kind of do it transparent from the people who are trying to get help to develop.

Mr. DEPASQUALE. I mean, my response would be it depends on whether you are trying to find a way to get the yes or trying to find a way to get to no, and in our region and with DEP, we are trying to get the yes. So when it comes to the umbrella side, yes, there is this Memorandum of Agreement, but as you can imagine, when it comes to day by day, I mean, there are things that develop that are somewhat outside of that agreement or there are problems that you didn't know about or you know, like Jim has been banging away at this for a couple years more than me, maybe two or three more than me. There are things that you need to get better at over time and so the best way I, you know, just really would echo what Abe has said and that is we really get in project by project sometimes to figure out some of the new challenges that come up inside of this umbrella agreement that we have, so you know, you can pass a law and sometimes that will make it, you know, enforce what we are already doing, but again, sometimes I don't want to give people an out. There are already the tools to make this work.

Mr. SEIF. The transparency issue was the most important. The developer doesn't care under which statute or under which sovereign it is that he can proceed, he wishes to proceed. And it is incumbent upon public servants, if they wish to be called servants, to figure out how to help. Forcing standards to be sure, but to make it happen. It also occurs to me that any scheme, mix of Federal and State cleanup laws, regulations and people needs not to make any distinction between past polluter, future user and all that.

There is no such thing as a polluter on most Superfund sites, either in the legal sense, because they are long gone and their grandchildren are in California, or in the sense that you still have a viable company and what it did in 1942 was make products that we all bought for less cost than they would be today because the prac-

tice was to throw it out in the back 40. Not blameworthy, maybe not nice and neat, but the point is when we go after people, common term used in the bureaucracy or when we call people, make the polluter pay was the congressional mantra when Superfund was passed. Well, you are looking at a polluter and you would find that same polluter in the mirror.

The fact is, it is a public problem most severe in States like ours which have an industrial legacy that we ought to be proud of and not point fingers about, so when we enable a cleanup, statutorily or otherwise, we ought to say everybody welcome, do your part and that excludes date cutoffs about eligibility for certain tax credits. It includes petroleum because that was an inexplicable omission in Superfund, well, explicable in a certain way and not explicable logically. And we also ought to, for the benefit of the public, require the use of the program that exists in a given State because that program was passed by the general assembly or the legislature and it is administered in a public and, we want to hope, transparent way, and the community ought to have whatever the other parties are up to, some confidence that there is a procedure that is common to everybody.

And the people who are developing other sites ought to have some confidence that no shortcuts are being made by their competitors. So there ought to be whatever the package that is developed ought to have those characteristics, in my opinion.

Mr. TURNER. Mr. Schoff.

Mr. SCHOFF. I will keep my remarks very brief. Just two points, Chairman Turner. One is during Mr. Ferdas' initial testimony he said that it was important that the consumer or the taxpayer had a one-stop shop and I think it is very important in order to have a one-stop shop. And before the MOU or the MOA came into effect, you still had the concern that "Gee, if it was something covered by RCRA or TSCA, you know, the legislation which was passed in January 2002 is not going to cover it." So you still have that potential risk. In the back of your mind you are thinking, "Well, the EPA could still come in and do this. They could come in, they could do an overfiling, they could say, 'Alright, we know you are under the Pennsylvania program, but under our auspices, now, we don't think that meets muster.'" To have that one-stop shop is critical from the private sector's standpoint, you know, to know that you have complete protection, that you only have to deal with the agency on a one-time basis. That is very, very important.

The second point I want to make, I guess, is that the easiest thing to do would be to amend the 2002 legislation to include protection under all Federal environmental laws, not just under CERCLA. Like Mr. Seif had indicated, for CERCLA not to include petroleum, I mean, I can tell you from a practical standpoint, the vast majority of brownfields out there have some petroleum contamination, some petroleum constituent. I think everyone would agree with that on this panel. Sure, you want to make sure that the dioxin sites are very carefully and very detailed, examined, that they have a very high level of scrutiny and the potential for damage to the health, safety and welfare of the individuals and the public is very high there. But for sheer numbers standpoint, you have industrial solvents, you have petroleum, you have leaking un-

derground storage tanks. A lot of these are petroleum based. CERCLA doesn't touch that. That is RCRA and other Federal environmental statutes.

If the 2002 legislation were to be amended to include protection for under all Federal environmental statutes, I think that would go a long way toward easing a lot of people's fears and putting their fears to rest once and for all.

Mr. TURNER. Mr. Colangelo.

Mr. COLANGELO. Thank you, Mr. Chairman. According to our research, there is about \$4 to \$6 trillion of industrial property in the United States and corporations own about 40 percent of that. And we estimate that somewhere between 20 to 50 percent of it is environmentally impaired. And those sites aren't coming to market because of this reason. And I think that is the next evolution for the brownfield market is dealing with this liability relief for liability clarity for the potentially responsible parties and you know, the key there is, I think we all agree in polluter pays, the question is how much and there is a whole group of companies out there that are willing to voluntarily clean up their properties to the suggested standards through the State voluntary cleanup programs if they can get off the hook and right now, we have a double standard. A developer or a perspective purchaser can buy a property, enter it into the program, clean it up to the standard, get liability relief, but the property owner can't. And so I think that is the next issue that needs to be fixed, you know, using a combination of the State oversight insurance or a third party fiduciary to help, you know, look at the long-term stewardship of this are all ideas that I think have some efficacy in this area.

Mr. TURNER. Thank you. Mr. Dent.

Mr. DENT. Yes, I am just going to ask one fairly quick question to both Paul Schoff and to Jim Seif. Paul, you mentioned the policy of State environmental agencies that are seeking compensation for National resource damages. You discussed the approach taken by New Jersey, I think, in particular to obtain financial compensation for the damages suffered by natural resources. Can you explain your suggestions to how Congress could assist in helping this trend with regard to existing and future MOAs?

Mr. SCHOFF. Sure, I will be happy to. It is a subject that is near and dear to my heart. Natural resource damages is a concept which, I am not sure exactly where it began, but I know New Jersey has taken a fairly active role where they believe that, or at least it is the policy is such, that if there was damage to the State's natural resources in any fashion as a result of contamination from a particular site—for instance, if groundwater had been affected and migrated to a field, to a stream, to a river—if there was anything which affects the natural resources of the State, there should be compensation paid by whoever did this pollution. Which, if you just listen to it, it sounds like it actually makes sense except for the fact that there is, the real question is where do you draw the line?

And it may be a combination of things that have caused that contamination. It may be a combination of contamination from several different sites that have caused pollution of a particular stream bed or a river. It may be the wind blowing contaminated soil from one

site to another. There is three media that contamination can exist in. There is air, there is water and there is soil, you know. Right now, if you take a look at their policy, they are focusing on soil and water, especially on water. But, as I said in my remarks, I mean, everybody could be held liable for fouling the air we breathe because we drive cars that pollute the air.

The real question is where do you draw the line? I think it is sort of taking the, taking something, an idea which has surface appeal and then just magnifying it, saying well, we just need to get compensation for any damages which were ever done to any natural resources of the State.

As I mentioned in my remarks, one of the things that perhaps could be considered is to have EPA institute a policy that they won't sign an MOU or MOA unless NRDs, natural resource damages, are excluded. That may provide some incentive. I mean, ultimately, it is a State issue, but from a Federal standpoint, I would imagine that would be one way that the Federal Government could get a handle on it by having the EPA say this just doesn't make sense.

In some ways, it is almost a throwback to the old days of CERCLA where, you know, we are going to clean it up to pristine Adam and Eve standards, which is just as, it is just not practical. And you end up, you know, the people that you want to get to pay end up being people that are not the people that did the pollution to begin with. You know, they may be people who purchased the site, cleaned it up for whatever was there at the time, from the previous owner and yet, they are still being hit by natural resource damages because the site, itself, contributed to those damages. It would seem to me that, you know, one way of dealing with that would be through the EPA.

Mr. DENT. Finally, Jim, just a quick question for you. You participated in the MOU agreement, the signing ceremony down here, a few blocks from here a few years ago.

Mr. SEIF. Yes, I did.

Mr. DENT. If that agreement had not been signed by DEP and EPA at the time, do you believe that we would be able to redevelop that 1,800 acre tract of land?

Mr. SEIF. I have it on the authority of Hank Barnett, the president emeritus of Bethlehem Steel and you will hear, I think, from Steve Donches, that answer would be no. There are other sites that the company owns in other States that were closed at the same time and have had no further progress made.

Mr. DENT. So that agreement is really what facilitated all the activity we are seeing down there today?

Mr. SEIF. Essentially. Tom Ridge would say so, as well, I might say.

Mr. TURNER. Gentlemen, I want to thank you for both the time that you prepared for this hearing and also your participation in it and I also thank you for your expertise that you lend to our communities as we tackle this tough issue and I want to give you one opportunity for closing remarks. If there are things that we didn't ask you that you wanted to add to the record or things that you thought of since you have heard other people's testimony that you would like to add to, I want to give you one opportunity for those

closing remarks. Would anyone like to add anything to their testimony? Mr. Seif.

Mr. SEIF. One of the most sensitive Federal/State relations areas in the environment is the overfiling situation, whether it is a water case, a Superfund thing. It is a really sticky thing causing lots of disputes. I don't know that you can legislate borders that prevent those kind of disputes. The real solution to this and indeed, to the problem of natural resource damage suits is to have smart Governors appoint sensible DEP secretaries and so they don't fight with them. I am not saying that has been done in Pennsylvania, but I do believe that results show less strife and more progress than elsewhere, where I have seen real blowups and in my own history at EPA, between—Abe recall West Virginia on just about every case and progress was not made. You really need to be sensitive in legislating not to create new opportunities for those kind of struggles and to count on the training and other kinds of things that people who want to make these sites work can bring to the table and the fact that people who really want cleanups would rather not fight, they will just figure out how to do it right. The private sector is that way. Time is money. Fights are losers.

Mr. DEPASQUALE. Yes, under the Commerce Department there is the Economic Development Administration and while that is maybe not necessary for this panel here to have jurisdiction over, but it may be something to take back to your colleagues and that is as much the EDA/NPA has some funding to help with remediation, Commerce has the big money to help put some deals together. When I was director of Economic Development in the city of York, we did a brownfield project and the key was EDA money. They brought in \$1 million and that is the whole of what we get in Pennsylvania from EDA and again, I am not saying that is bad, I mean, but that is just where the two agencies are limited in funding.

I would take back to your colleagues that EDA, that funding, considering the President's priority he has put on brownfields, that is another pot of money that when you think about that can be targeted to brownfields across the country and there is no real stipulation one way or the other right now, I mean, but that is an area where they could really focus on helping to revitalize the cities by using that money, also, for remediation in putting together economic development projects in the cities across the country, so that is another piece that I wanted to make sure that I made you aware of.

Mr. SCHOFF. Just very quickly, I just want to thank the subcommittee for taking the time to go into this and this is just, it is one of the—Acts 2, 3 and 4 in Pennsylvania—are one of those few pieces of legislation that really, really works and I really have to hand it to then-Governor Ridge and to Jim Seif for putting in place a program which really has been exemplary and from the private sector has been a tremendous boon and as Bob Colangelo told you, it has been a model for the country, you know, and has spurred development throughout the country, so really kudos to that administration for doing this and for following up, and with this administration for following up on Governor Ridge's program.

Mr. COLANGELO. I mentioned earlier that this brownfield market is growing and one of the things, as the market matures, is that

there is starting to be a big economic divide between the “have” and “have-not” cities and so one of the things that we need to look at, as an industry, is how do we help some of these smaller cities on the other side of the economic divide? As the market matures, all the developers, investors want to do the big projects in the well-located areas and they don’t want to tackle the smaller brownfield sites in the cities without strong market demand. And so I think that is something that we are going to have to collectively look at, is there special incentives or what can we do, as an industry, to help provide extra relief for those smaller cities, because many times that is a harder problem for that city. They don’t have the resources and they lost a big job base when that factory closed.

Mr. TURNER. Good point. Well, gentlemen, I want to thank you so much again for your time here and with that, then we will be turning to our second panel. Our second panel includes Kerry Wrobel, president of the Lehigh Valley Industrial Park; Chad Paul, chief executive officer of the Ben Franklin Technology Partners; Ray Suhocki, president and CEO of the Lehigh Valley Economic Development Corp.; and Stephen Donches, president of the National Museum of Industrial History. If you gentlemen will come forward. To let you know, I am going to ask you to take the oath, which means that you will be standing. If you would like to set your materials down and remain standing, we can just proceed directly to the oath. Gentlemen, it is the policy of this committee that all of the witnesses be sworn in to testify.

[Witnesses sworn].

Mr. TURNER. Please let the record show that all witnesses have responded in the affirmative. Kerry, we appreciate the tour that you gave us this morning and it was wonderful to see the site and your success. We look forward to your testimony and we will begin with you.

STATEMENTS OF KERRY WROBEL, PRESIDENT, LEHIGH VALLEY INDUSTRIAL PARK, INC.; CHAD PAUL, JR., CHIEF EXECUTIVE OFFICER, BEN FRANKLIN TECHNOLOGY PARTNERS; RAY SUHOCKI, PRESIDENT AND CEO, LEHIGH VALLEY ECONOMIC DEVELOPMENT CORP.; AND STEPHEN DONCHES, PRESIDENT, NATIONAL MUSEUM OF INDUSTRIAL HISTORY

STATEMENT OF KERRY WROBEL

Mr. WROBEL. Thank you, Mr. Chairman. Good morning. My name is Kerry Wrobel and I am president of Lehigh Valley Industrial Park. LVIP is a private, nonprofit economic development corporation, which ironically was founded due to a 100-day strike at Bethlehem Steel. Today LVIP is constructing its seventh industrial park on 1,000 acres of the former Bethlehem Steel plant in the city of Bethlehem. As in our previous six parks, we envision a premier business center with diverse uses, manufacturing, technology, distribution, office and retail, all in this major brownfield site that we call LVIP VII at the Bethlehem Commerce Center. LVIP’s first six parks converted greenfields into business centers. Our success, 1,500 acres of industrial development, 370 companies and 17,000 employees, has played a supportive role in diversifying the Lehigh

Valley economy and ultimately, weathering the loss of Bethlehem Steel.

While developing our greenfield park over the past 15 years, LVIP kept a watchful eye on opportunities to redevelop an urban brownfield site. In June 2001, Bethlehem Steel approached LVIP with just such an offer to develop a major portion of the company's South Bethlehem plant. I have to give credit to Steve Donches, who made the phone call to LVIP. We purchased 1,000 acres of the plant in May 2004. LVIP VII at the Bethlehem Commerce Center will cost approximately \$100 million to develop, and that is just infrastructure alone. That is more than our previous six parks combined. LVIP, a land developer, will construct roads, as you saw this morning; utilities and a 108-acre intermodal facility. We are addressing all environmental issues on the site and we are preparing the parcels for end users.

And progress can be seen already this afternoon. In fact, I will leave here and attend a ribbon cutting ceremony for our first tenant, U.S. Cold Storage, a firm based in Cherry Hill, NJ, and Cold Storage has constructed a first phase 175,000 square foot facility with 38 employees on LVIP VII's 32 acres. At full build-out, they expect a 625,000 square foot facility and 200 employees.

Perhaps no other issue resonates as soundly with today's populace as the continual march of suburban sprawl. As farms give way to residential and commercial developments, there is a clear understanding that public policy and regional planning must incent and direct the reuse of urban sites. If we are to rebuild our cities and prioritize brownfields, the public sector must invest public dollars to offset the premium costs associated with brownfield development. Here are a few of my recommendations.

As Secretary DePasquale just mentioned, allocate a fixed percentage of EDA funding annually for brownfield development. LVIP VII received a \$2 million EDA grant for the construction of infrastructure in its first phase. The grant offsets the significant premium costs of trenching for utilities and roads through 20 foot foundations and 5 foot slabs. By offsetting the premium costs, the EDA grant has allowed LVIP to sell its land at a price that is competitive with greenfield developments. Certainly, any new targeted brownfield funding that was mentioned here this morning would be welcome and appreciated by the economic development community.

No. 2 would be to allow funds from the EPA's Brownfields Revolving Loan Fund to pay for environmental insurance. Environmental insurance premiums for brownfield sites can reach seven figures. Equally challenging, the environmental insurance premium must be paid at the time of land acquisition, before land sales can generate revenue of an organization. A grant from the Revolving Loan Fund could provide critical assistance early in the project's life and, once again, offset a premium cost not experienced in greenfield development.

We heard much from the previous panel about the One Clean-Up Program Memorandum of Understanding and I echo their sentiments that, without that agreement, we would not be funding or developing LVIP VII. It is that critical to the confidence of our private sector developers and users. As the developer of a 1,000-acre site who knows that the timetable for that development will occur

over 10 to 15 years, my concern is in 10 years will we still have the same fervor for brownfields as we do today? How do we codify and how do we incent our regulators to continue to work with us over the next decade in development?

My comments have been based on that of a practitioner, someone who is developing the site. I will state that the legislation proposed by you, Mr. Chairman, regarding the Brownfields Revitalization Act of 2005, would add another weapon to our arsenal. We can provide local tax incentives, we can provide State funding, we can provide Federal funding. If we can also provide Federal tax incentives, that is a missing link that at the moment we cannot provide. As you know, we cannot provide Federal grants directly to private businesses, so that is a hole in our incentive program and another form of assistance for those taking the risk—it truly is a risk to step on and develop and put one's equity into a brownfield site.

In closing, LVIP VII at the Bethlehem Commerce Center is an exciting project that has challenged and galvanized all elements of our organization. It is extremely fulfilling to work with partners at the local, State and Federal levels on a project that will make a difference for generations to come. On behalf of the Board of Directors, I would like to thank you for the opportunity to speak before you today.

[The prepared statement of Mr. Wrobel follows:]

Subcommittee on Federalism and the Census, City of Bethlehem
October 25, 2005

Good morning. My name is Kerry Wrobel and I am president of Lehigh Valley Industrial Park, Inc. (LVIP). LVIP is a private non-profit economic development corporation founded in 1959, ironically, in response to a 100-day strike at Bethlehem Steel. Today LVIP is constructing its seventh industrial park on 1,000 acres of the former Bethlehem Steel plant here in the City of Bethlehem. As in our previous six parks, LVIP envisions a premier business center with diverse uses - manufacturing, technology, distribution, office and retail – on this major brownfield site we call LVIP VII at the Bethlehem Commerce Center.

LVIP's first six parks converted greenfields into business centers. Our success – 1,500 acres of industrial development, 370 tenant companies and 17,000 employees – has played a supportive role in diversifying the Lehigh Valley economy and ultimately weathering the loss of Bethlehem Steel.

While developing our greenfield parks over the last 15 years, LVIP kept a watchful eye on opportunities to redevelop an urban brownfield site. In June of 2001, Bethlehem Steel approached LVIP with an offer to develop a major portion of the company's South Bethlehem plant. We purchased 1,000 acres of the largest privately-owned brownfield site in the U.S. in May of 2004.

LVIP VII at the Bethlehem Commerce Center will cost approximately \$100 million to develop – more than our six previous parks combined. LVIP, a land developer, will construct roads and utilities plus a 108-acre Intermodal facility. Environmental issues will be addressed and parcels will be prepared for end-users. Progress can be seen already.

This afternoon, we will celebrate the ribbon-cutting of our first tenant, United States Cold Storage, a firm based in Cherry Hill, NJ. Cold Storage has constructed a first phase 175,000 square foot warehouse facility in LVIP VII with 38 employees. At full build-out, a 625,000 square foot facility and 200 employees will occupy 32 acres of LVIP VII.

Perhaps no other issue resonates as soundly with today's populace as the continuous march of suburban sprawl. As farms give way to residential and commercial developments, there is a clear understanding that public policy and regional planning must incent and direct the reuse of urban sites.

If we are to rebuild our cities and prioritize brownfields, the public sector must invest public dollars to offset the premium costs associated with brownfield development.

Here are a few recommendations:

1. Allocate a fixed percentage of EDA funding annually for brownfield development – LVIP VII received a \$2 million EDA grant for the construction of infrastructure in its first phase. The grant offset the significant premium costs of trenching for utilities and roads through the former slabs and foundations of massive steel structures. By offsetting the premium costs, the EDA grant has allowed LVIP to sell land in LVIP VII at a price that is competitive with greenfield developments.
2. Allow funds from the EPA's Brownfield's Revolving Loan Fund to pay for environmental insurance – Environmental insurance premiums for brownfield sites can reach seven figures. Equally challenging, the environmental insurance premium must be paid at the time of land acquisition, before land sales can generate revenue for an organization. A grant from the Revolving Loan Fund could provide critical assistance early in the project's life - and once again offset a premium cost of brownfield development.
3. Enhance the One Clean-Up Program Memorandum of Understanding (MOA) between EPA and the Pa. Department of Environmental Protection – The MOA has been invaluable to the success of LVIP VII. The cooperation between DEP and EPA on LVIP VII has given our potential buyers the requisite confidence

they need to invest in a brownfield site. It is early in the life of the MOA; however, the test will come as administrations change and priorities likewise. As the developer of a brownfield project with a 10-15 year build-out rate, my concern is how do we insure that the interest in brownfields development in five or ten years matches today's fervor.

LVIP VII at the Bethlehem Commerce Center is an exciting project that has challenged and galvanized all elements of our organization. It is extremely fulfilling to work with our many partners at the local, state and federal levels on a project that will make a difference for generations to come.

On behalf of the LVIP Board of Directors, I would like to thank you for the opportunity to speak before you today.

Mr. TURNER. Thank you. Mr. Paul.

STATEMENT OF CHAD PAUL

Mr. PAUL. Good morning, Mr. Chairman, Mr. English, Charlie. Thank you very much for inviting me to speak about the Ben Franklin involvement with the brownfields projects here in Bethlehem. The Ben Franklin Technology Partners was another great idea coming from a Governor. Governor Thornburgh, in 1982, along with legislative partners, passed legislation to create the Ben Franklin Technology Partners. We work with early stage technology entrepreneurs to bring their companies to market and we use technology to creatively solve problems for established manufacturers in Pennsylvania to keep those family sustaining jobs in Pennsylvania. Our particular center is located here on the campus of Lehigh University and my office is responsible for this activity in the 19 counties that make up the northeastern corner of Pennsylvania.

We bring business expertise and, notably, investment in those companies; up to a half a million dollars over 3 years can be invested in a particular company that we are working with. We bring business, university and government links together to solve problems for those clients. What does that have to do with brownfields? Ben Franklin Northeast has started over 300 companies, created almost 600 new products, created almost 10,000 jobs in Pennsylvania, retained in excess of 17,000 jobs and we have done that through our investment processes and through the operation of our National award winning business incubator on the mountaintop of Lehigh University's campus.

The problem is that those incubators can only be so big and when companies get to a certain point, we need to move them out. We need to create post-incubator space and we have done that on the south side of Bethlehem. The committee had an opportunity to see two of the three buildings that are on the Bethlehem Technology Center campus and that was, in fact, a collaboration of Ben Franklin and our economic development partners, notably organizations represented by two other folks on this panel, showing you that local, State and ultimately, Federal assistance can do great things with respect to the development of technology and redeveloping brownfields all at the same time and with the same money.

We collaborated together in 1993, before the 1995 act, obviously, was passed to build the first Bethlehem Technology Center on Bethlehem Steel brownfields property without the protections that came with the 1995 act. It made it much more difficult, as you can imagine, for a nonprofit group to create an "if you build it, they will come" kind of project. We were able to do that with \$3.7 million and now that facility is occupied 100 percent by one of the original tenants, IQE, with an employment of 90 folks. Bethlehem Technology Center II followed in 1999, a \$3.2 million collaboration of the similar partners, primarily for OraSure Technologies, but also for two other incubator graduates, CDG Technologies and SCG. All folks that started in our incubator with one or two folks and an idea.

Bethlehem Technology Center III is now the headquarters of OraSure Technologies and it was built entirely with resources pro-

vided by OraSure and its management. No public money was involved in the development of that facility, at all.

And finally, we are in the planning stages of Bethlehem Technology Center IV, since we are bursting at the seams, both at the incubator and in our post-incubator facilities and it is in that area that I would say to the committee that to the extent that you are providing funding sources, that you can strongly consider that an element of funding for redevelopment should be in helping local economical development organizations to do projects such as our Bethlehem Technology Centers through grants that match what it is that we can provide in the way of funding to make more opportunities for more of these technology companies to grow in our communities and reclaim brownfields at the same time. I think you can see that the leverage that is being provided by these activities has been outstanding.

[The prepared statement of Mr. Paul follows:]

**House Government Reform Subcommittee on Federalism and the Census
Field Hearing
October 25, 2005**

**R. Chadwick Paul, Jr., Chief Executive Officer
Ben Franklin Technology Partners of Northeastern Pennsylvania**

Presentation Notes/ Support Materials

PRESENTATION NOTES

The Ben Franklin Technology Partners of Northeastern Pennsylvania is a non-profit corporation that is part of a four-center, state-funded economic development initiative. The program was created by the Commonwealth in 1983 to play a leadership role in strengthening regional economies, building the state's technology economy, and creating and retaining high-wage, high-skilled jobs.

Our strategy encompasses three key areas:

1. Developing early-stage, technology-oriented companies;
2. Helping established manufacturers creatively apply new technology and business practices; and
3. Promoting an innovative community-wide infrastructure that fosters a favorable business environment for high-growth companies.

The northeastern center serves 19 counties and is located on the campus of Lehigh University. We have three regional offices.

Funding is usually what brings clients to BF. We invest up to \$150,000 per year for up to three years in early-stage technology firms and established manufacturers. But it is our in-house expertise and our extensive Solutions Network of consultants, investors, and other professionals that Ben Franklin alumni cite as most valuable.

In addition, Ben Franklin provides a crucial link between companies and Pennsylvania's world-class research universities. Faculty and students work directly with many Ben

Franklin clients. This provides companies with access to specialized facilities and equipment, additional staffing, and new ideas. It also encourages entrepreneurial students through real-world internships that provide valuable work experience.

Our results are attributed by client companies as the direct result of their work with Ben Franklin. Our center is the most empirically successful in the state. Since 1983, the Ben Franklin Technology Partners of Northeastern Pennsylvania has:

- Started 337 new companies
- Developed 580 new products and processes
- Created 9,373 new jobs
- Retained 17,266 existing jobs

Ben Franklin started its business incubator more than 20 years ago, when business incubation was just beginning. Our incubator on the Lehigh campus has been extremely successful, having graduated 34 companies that gross more than \$350 million in annual revenue, and creating over 2,400 jobs. The incubator currently houses 16 companies with a total of 67 employees and an annual payroll of more than \$2.6 million. The Ben Franklin Business Incubator received the 2001 National Business Incubation Association Incubator of the Year Award. We leveraged our expertise to support a ten-facility business incubator network throughout our region.

The prosperity of our business incubator created a space need for newly-graduated companies. Often these companies wanted to remain physically close to Lehigh and Ben Franklin. Concurrently at that time, Bethlehem Steel had downsized operations, creating a large brownfield space along the riverfront in Southside Bethlehem. A team of economic development organizations developed the Bethlehem Technology Center Campus, located on brownfields, as a way to keep the graduating incubator companies in Bethlehem while at the same time reusing the former Bethlehem Steel property.

The partnership creating Beth Tech I included four non-profit economic development organizations. It utilized five sources of loans totaling \$1.7 million, and grants. Beth Tech I was the initial project in a comprehensive urban riverfront industrial park development initiative. The Center sought to provide below-market rental rates to early-stage, post-incubator technology firms.

The \$3.7 million project was completed in 1993, providing 44,000 square feet of office, research and development, and light manufacturing space. The building achieved full occupancy in 1995, originally housing four tenants, three of which were graduates of the Ben Franklin Incubator. Currently one incubator graduate company, IQE, occupies the building with more than 150 employees.

Based on the success of Beth Tech I, the same economic development team undertook the construction of Beth Tech II. The Center used four sources of loans and grants, and the \$3.2 million, 32,000 square foot facility was built in 1999. Eighty per cent of the facility was pre-leased. Within one year, OraSure Technologies occupied Beth Tech II as the anchor tenant along with two other company residents. OraSure went on to lead in oral fluid collection and immunoassay detection, providing a growing number of diagnostic capabilities internationally. Its 20 minute, saliva-based HIV test is having a major impact on the fight against the spread of HIV and AIDS. The company merged with a publicly-traded company in 2000, built a 40,000 square foot Beth Tech III on its own, and now employs more than 250 people on the Southside Bethlehem technology campus.

Beth Tech IV is in the planning stages as a three-story, 32,000 square foot life sciences facility. BethTech IV will include both business incubator and post-incubator rental space, as both are in short supply.

OraSure, IQE, and three other graduates of the Ben Franklin Business Incubator now reside on the Bethlehem Technology Center Campus in Southside Bethlehem on former Bethlehem Steel brownfields. Today, the total payroll of the companies in the Center exceeds \$18 million, and the five incubator graduates residing there employ 329 in family-sustaining jobs. Further, our joint Ben Franklin-Lehigh University client company projects have attracted more than \$15 million in federal research grants.

Teaming with the Lehigh Valley Economic Development Corporation, Lehigh University, and others, Ben Franklin staff applied our experience with the Bethlehem Technology Centers to form a Keystone Innovation Zone, or KIZ, in Southside Bethlehem. KIZs are industry zones designated by Pennsylvania and adjacent to research colleges and

universities. These “knowledge neighborhoods” are attractive to both recent college graduates and companies because they:

- Build on existing student/faculty relationships
- Provide students with “real world” experience
- Provide companies with an “extra pair of hands”
- Let companies utilize university facilities and equipment
- Provide tax incentives

The Southside Bethlehem KIZ includes the Ben Franklin Business Incubator, the Bethlehem Technology Centers, and Bethlehem Steel brownfields. Indeed, Southside Bethlehem served as a KIZ model, and Southside Bethlehem was one of the first two designated KIZs in the state.

The Ben Franklin Technology Partners of Northeastern Pennsylvania and its economic development partners have a demonstrated record of success in redeveloping brownfields as job- and revenue-creating technology parks. We need financial assistance to keep the momentum strong. We request that you provide matching grants for appropriate bricks and mortar post-incubator facilities on brownfield sites, where local economic development organizations and research universities collaborate to make such sites attractive to the next generation of technology companies.

The facilities you help create will serve a dual purpose. They will encourage business incubator graduates to stay in the area by providing them with appropriate and well-situated space. In addition, they will reclaim and reuse long-idle brownfields, building the local tax base and adding to the local economy. The companies, the community, the Commonwealth, and the nation all stand to benefit. It will be an outstanding investment, and the Ben Franklin Technology Partners stand ready to assist the committee in any way to facilitate the creation of such a program.

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SUPPORT MATERIALS**Ben Franklin Technology Partners of Northeastern Pennsylvania****Who We Are**

For more than 20 years, the Ben Franklin Technology Partners of Northeastern Pennsylvania has helped this region's technology companies prosper by providing access to capital, business expertise, and university resources. As hundreds of companies have experienced, Ben Franklin delivers hands-on support, guidance, and investment funds at companies' most vulnerable times, helping clients to achieve and sustain commercial success and competitive advantage.

Capital – Ben Franklin makes investments that typically range from \$30,000 to \$150,000 per year for up to three years. We take calculated risks investing in young, unproven companies that could not secure seed funding through conventional means. We also assist early-stage firms as they prepare to raise additional capital, and provide an important initial endorsement for a new company.

We provide support to established companies by providing attractive loan packages for manufacturing innovation and access to our network of industry experts. Work is usually technology development or application, and is accomplished with a university partner.

Business Expertise – Each company in the Ben Franklin portfolio benefits from the collective experience of seasoned professionals who focus on turning high-potential ideas into high-growth businesses. In-house expertise is complemented by Ben Franklin's extensive Solutions Network of advisors, service providers, and investors, creating a powerful and comprehensive support program for clients.

University Resources – We tap into the research strength of Pennsylvania's colleges and universities, whose faculty and graduate students work directly with many clients. Ben Franklin provides a crucial link between the Commonwealth's

companies and the wealth of knowledge, facilities, and manpower resources in the state's higher education institutions.

The Ben Franklin Technology Partners of Northeastern Pennsylvania is a non-profit corporation that is part of a four-center, state-funded economic development initiative. The northeastern center is headquartered on the campus of Lehigh University with regional offices in Lewisburg, Reading, and Wilkes-Barre, and operates a technology incubator on Lehigh's Mountaintop Campus.

What We Do

Our mission is to promote, sustain, and invest in the transformation of our regional economy through innovation and partnering. Our strategy encompasses three key areas:

- 1 - Developing early-stage, technology-oriented companies
- 2 - Helping established companies creatively apply new technology and business practices to achieve industry leadership
- 3 - Promoting innovative community-wide initiatives that foster a favorable business environment for high-growth companies

Ben Franklin works with the most promising technology ventures to deliver on these strategies. To qualify, companies must be located in, or relocate to, our 19-county northeastern Pennsylvania service area (Berks, Bradford, Carbon, Columbia, Lackawanna, Lehigh, Luzerne, Monroe, Montour, Northampton, Northumberland, Pike, Schuylkill, Snyder, Sullivan, Susquehanna, Union, Wayne, and Wyoming counties). Companies must also offer significant potential for future growth through the development of an innovative technology, or an innovative application of technology.

Ben Franklin works with clients as integrated enterprises to enhance their entire way of doing business. We are evaluated on the basis of the commercial success achieved by our clients as a result of our assistance.

Keystone Innovation Zones

The Keystone Innovation Zone (KIZ) program is a key element of Governor Ed Rendell's economic stimulus package and has already produced successful results throughout the Commonwealth. KIZs create "knowledge neighborhoods," close to colleges and universities to keep new graduates and budding entrepreneurs in the area.

By focusing talent and resources, KIZs build synergies among emerging technology companies. Here, entrepreneurs find ready resources, including research and peer groups, entrepreneurial support, and workforce and financial assistance. The program encourages the creation of new business, expands the research and development sector of Pennsylvania's economy, and facilitates technology transfer to existing companies.

Ben Franklin worked with the state on implementation plans for the KIZ initiative. During that process, our CEO presented the Ben Franklin/OraSure Technologies/Lehigh University partnership model to a statewide university presidents' meeting hosted by Governor Rendell as a model to be replicated. More recently, BFTP/NEP leveraged our experience, teaming with the Lehigh Valley Economic Development Corporation, Lehigh University, and others to form a KIZ in Southside Bethlehem. This KIZ includes former Bethlehem Steel brownfields. Since then we have played a key role and provided support and assistance in the development of other northeastern Pennsylvania Keystone Innovation Zones.

Southside Bethlehem KIZ Wireless Project

One example of the incentives provided to recent graduates and small businesses as part of the KIZ is Southside Bethlehem's broadband wireless network. In partnership with area colleges and universities, other economic development organizations, local hospitals, and the City of Bethlehem, Ben Franklin spearheads the drive for a broadband wireless network in the 2.5 square miles of the Southside Bethlehem KIZ.

The broadband network provides high speed, ease of access, and ubiquitous coverage at a low cost to local students, small businesses, and residents. In addition, the network

will expand to support services such as traffic surveillance, police and fire applications, automated meter readings, and community-relevant information.

The availability of broadband wireless Internet coverage at a low cost will facilitate simple access for members of the community, including visitors, business travelers, low-income residents, and non-profit organizations. Through this network, the Southside Bethlehem KIZ, upon which the KIZ statewide model was built, enables entrepreneurs to remain connected during their companies' critical early stages.

Ben Franklin's role in Lackawanna, Luzerne, and Pocono Mountains KIZs

Ben Franklin was one of the drivers in developing and implementing the two additional KIZs in Luzerne and Lackawanna counties. With its economic development colleagues including the Great Valley Technology Alliance, the Greater Wilkes-Barre Chamber of Commerce, the Greater Scranton Chamber of Commerce, CAN-DO in Hazleton and other university and community leaders, Ben Franklin invested in and worked to create these KIZs. The KIZs include four incubators, one each in Carbondale, Hazleton, Scranton, and Wilkes-Barre, all of which are members of the Ben Franklin Business Incubator network. These business incubators spur entrepreneurial development to help build a stream of new enterprises in the KIZs.

Ben Franklin was involved at the concept stage in the development of the Pocono Mountains KIZ with university and community leaders throughout Monroe County. The ESU Accelerator, which is located within this KIZ and is a member of the Ben Franklin Business Incubator network, serves as the focal point for KIZ program development throughout the county.

Greater Susquehanna KIZ

Ben Franklin chaired and spearheaded the KIZ application and implementation process to create five sub-zones within the greater Susquehanna KIZ: one in Bloomsburg, two in Danville, one in Selinsgrove, and one in Lewisburg. The sub-zone in Bloomsburg hosts the Bloomsburg Regional Technology Center, a 32,000 square foot renovated facility that will be used as a technology incubator, a project that was also led by Ben Franklin. Due to their proximity to Geisinger Medical Center, the Danville zones will facilitate the creation of early-stage life science companies in the region.

The Ben Franklin Business Incubator Network

The concept of business incubators in Pennsylvania originated with the BFTP/NEP program. Established just months after BFTP/NEP in 1983, the BFTP/NEP Business Incubator has graduated 34 successful companies, grossing over \$350 million in annual revenue, and creating more than 2,460 jobs. These graduates create a pipeline of intermediate-stage firms interested in locating in the Bethlehem Technology Center facilities on former brownfields.

The reduced operating costs of starting a company in a business incubator are usually what initially draw early-stage companies. But the business development assistance and sharing of best practices among tenants are also key benefits. The BFTP/NEP Business Incubator, located on Lehigh University's mountaintop campus, was named 2001 National Business Incubator of the Year by the National Business Incubation Association (NBIA). Staff members apply the incubation expertise that won this honor as we continue to support business incubators in a ten incubator network throughout our region.

This year, two new incubators were added to the network: CAN BE in Hazleton and the Bloomsburg Technology Center. Other facilities in the network are: Ben Franklin Business Incubator Center (Bethlehem), Bridgeworks Enterprise Center (Allentown), Carbondale Technology Transfer Center, East Stroudsburg University Accelerator, Pottsville/Schuylkill Technology Incubator, The Enterprise Center (Sayre), The Innovation Center @ Wilkes-Barre, and Scranton Enterprise Center. Seven out of ten of the incubators in the Ben Franklin Business Incubator Network are key elements of the Keystone Innovation Zones in northeastern Pennsylvania.

Ben Franklin Results Statewide

The Ben Franklin Technology Partners program statewide boosted Pennsylvania's economy by \$8 billion in the 12-year period between 1989 and 2001, according to an independent economic impact study. Nexus Associates, a Boston-based economics and management-consulting firm, conducted the study.

Significant findings include:

- Ben Franklin generated 93,105 job-years at a cost to the Commonwealth of \$3,342 per job-year. Job years are defined as the number of jobs created that last a full year or more multiplied by the number of years they have existed to date.
- Every public dollar invested in Ben Franklin yielded nearly \$23 of additional state income
- The state garnered more than \$400 million in additional tax revenue as a direct result of the program, which exceeded the program's operating costs over the same period.

COMPANY SUCCESS STORIES

OraSure Technologies, Inc., Bethlehem, PA

Product/Service:

Medical diagnostics with a focus on the oral fluid, point-of-care market – especially for HIV and drugs of abuse – as well as medical devices and portable cryosurgical systems

Ben Franklin Investment: \$235,000

Oral fluid testing saves lives, injects millions into local economy

The concept seems simple enough – using saliva rather than blood or urine to simplify and speed testing for HIV, other infectious diseases, drugs of abuse, and alcohol.

The implications, however, have been monumental for the developer, OraSure Technologies, Inc., and for millions of people around the globe.

The company's breakthrough oral fluid testing technology has been lauded by the President and the U.S. Department of Health and Human Services (HHS). Claude Allen, Deputy Secretary of HHS, said, "The introduction of ... the OraQuick® Rapid HIV-1 Antibody Test, has enabled us to reduce barriers to testing and help increase the number of people who know their HIV status, helping to stop the spread of AIDS."

Other recognition for the OraQuick HIV-1 test has included a Gold Medical Design Excellence Award, Popular Science magazine's "Best of What's New" award, and the prestigious Photonics Circle of Excellence Award. FDA approval in 2004 allows the OraQuick HIV-1/2 test to be used at more than 180,000 sites in the United States, including outreach clinics, community-based organizations, and physicians' offices.

It's no wonder company revenues soared from \$77,000 to \$40 million between 1989 and 2003, an average compound growth of 56% per year. And it's no surprise that the Ben Franklin Technology Partners of Northeastern Pennsylvania provided vital resources and funding during the company's genesis.

Sunscreen product launched bright future.

Founders Bill Hinchey, a marketing and sales executive, Mike Gausling, a corporate finance specialist, and Sam Niedbala, a research scientist, teamed up in the 1980s and formed Solar Care Technologies Corp. to develop and market a sunscreen towelette. After work on a business plan, market evaluation, and product formulation, the team set up shop in Ben Franklin's business incubator on Lehigh University's campus. The cost of incubator space was attractive, as were its amenities, such as laboratories, meeting rooms, and shared business equipment, not to mention the presence of other start-up firms with whom Solar Care shared information and brainstormed on business issues.

Mentoring advice from Bob Thomson, Ben Franklin's Lehigh Valley Regional Manager, also proved beneficial to the young company. Soon after moving into the incubator, Solar Care received a \$95,000 investment from Ben Franklin to finalize development of the towelette product. Shortly thereafter, Solar Care successfully licensed its sunscreen towelette to pharmaceutical giant Schering-Plough.

Rapidly building on successes.

The company quickly expanded from sunscreen into enzyme immunoassay tests for the insurance risk assessment market. An additional \$140,000 investment from Ben Franklin enhanced product development and commercialization and enabled the company to work with Lehigh professors.

In 1994, the company acquired the assets of Enzymatics, another Ben Franklin client, and its patented saliva alcohol test. Renamed STC Technologies, Inc. in 1995, the company secured exclusive worldwide patent and trade secret licenses for a label technology called Up-Converting Phosphor Technology (UPT™).

STC received \$9.1 million in venture capital during 1999, including an investment from Pennsylvania Early Stage Partners. And in 2000, STC merged with Epitepe, Inc., Beaverton, Ore., and became OraSure Technologies, Inc., which is traded on the NASDAQ stock market (NASDAQ:OSUR).

As a leader in oral fluid testing, OraSure now offers a growing number of diagnostic capabilities, such as tests for infectious diseases, drugs of abuse, and alcohol abuse, to a variety of markets worldwide. Its medical devices and diagnostic products are used by public- and private-sector clients, life insurance companies, clinical laboratories and physicians' offices, and for workplace testing.

In the Lehigh Valley, OraSure has created more than 200 jobs (and millions of dollars in payroll), reclaimed Bethlehem Steel brownfields, attracted significant outside investment and provided research and development work for Lehigh University faculty and students

From its humble beginnings in the incubator to national recognition for its HIV testing advances, OraSure is rocketing to prominence in the medical diagnostics industry. And Ben Franklin is honored to have been the launching pad.

IQE, Inc., Bethlehem, PA

Product/Service:

Molecular beam epitaxy (MBE) epiwafers for telecommunications, optoelectronics, and electronic applications

Ben Franklin Investment: \$231,146

High-tech venture succeeds with high-level support.

The real estate adage "Location, location, location" has a cousin in the semiconductor industry: "Faster, faster, faster."

The inexorable desire for speed – not to mention size reduction, reliability, cost, and design flexibility – had led to new materials and processes, including sophisticated molecular beam epitaxy, MBE.

In 1989, Tom Hierl and his start-up company, Quantum Epitaxial Designs, Inc. (QED), saw an opportunity for producing MBE wafers on an outsourced basis. Between him and success were costly validation research, million-dollar equipment, and exacting facility requirements on top of the extraordinary rigors of launching a business. Scale-up continued into 1996.

Two years later, QED was one of the fastest-growing companies in Eastern Pennsylvania. And in 1999, Hierl's company merged with Epitaxial Products International, Ltd. (EPI) in Cardiff, Wales, to form International Quantum Epitaxy, or IQE. Evidently, "faster, faster, faster" applies to the business as well as the products.

No wavering on wafer advancements.

MBE is a wafer production method that uses a molecular beam of materials to deposit atom-thin layers onto advanced, multi-element substrates like Gallium Arsenide. The resulting semiconductors are used in mobile telephones, missile guidance systems, satellite communications, power systems, automotive applications, and more.

Complicated processes like MBE demand expensive state-of-the-art equipment, extremely pure material sources, and an ultra-high vacuum environment. The Ben Franklin Technology Partners of Northeastern Pennsylvania helped deliver the capital funding to start QED's operation.

"Ben Franklin made the introduction to the bank for us. The staff hooked us up with Mid-Atlantic Venture Partners for venture financing. They found us capital," says Hierl. "And when there were questions along the way, Ben Franklin was always there as a resource for guidance."

Business operations get a boost.

In addition to funding assistance, Ben Franklin provided space and resources to the new company in the nationally recognized Ben Franklin Business Incubator.

“Just being in the incubator center was a big advantage. You come in as a freshman and you talk with the juniors and seniors about things needed to run a business, like medical insurance and phone systems,” says Hierl. “Eventually, you become a senior and graduate. It’s helpful to be around others going through the same issues.

“Plus, being able to have cleanroom facilities at the incubator was very important. A commercial landlord would want a guarantee for lease improvements, so that was a big step that we didn’t need to worry about,” he said.

Weathering the market’s boom-bust cycle.

IQE offers outsourced production of high-quality wafers to some of the biggest names in the electronics industry – companies that wanted to benefit from the firm’s expertise and unique manufacturing capacity.

During the telecommunications boom in the late 1990s, IQE’s sales rose dramatically as its customers rushed to meet consumer demand. When demand dipped, the company had a financial footing solid enough to survive. “We had a good amount of critical mass, so when the market did a downturn, we were able to weather it, as opposed to being debt financed and having cash flow issues,” says Hierl.

Now with more than 70 employees and a 40,000-square-foot facility on former brownfields in Bethlehem, IQE is looking to expand its presence overseas. “We’ve been making inroads into the Far East and are starting to see good results in Japan and Taiwan. We’re also looking to get into China and South Korea,” says Steve Gergar, who manages IQE’s Bethlehem operations since Hierl left the company in 2003. “It’s very tough to break into the market. But once you do, you have a big foot in the door and it really opens up new opportunities.”

Mr. TURNER. Thank you. Mr. Suhocki.

STATEMENT OF RAY SUHOCKI

Mr. SUHOCKI. Good morning. Good morning, Mr. Chairman, Charlie, Congressman English. Thanks for the opportunity. Lehigh Economic Development Corp. is somewhat unique. We are an economic development organization representing the two counties of Lehigh and Northampton and we are what we call a one-stop shop and part of that one-stop shop includes a function called the Lehigh Valley Land Recycling Initiative. And we are unique in that we are not, we don't do redevelopment of the property, we are not a government agency, we are a facilitator between the government agencies and the property owners and the developers. So it is a somewhat unique situation and I want to offer some perspective as it relates to our experience in dealing with both sides of the fence.

First of all, I want to note that the majority of the brownfield sites within the Lehigh Valley are located within the urban boundaries of our three cities, Allentown, Bethlehem and Easton or smaller, generally poorer municipalities and therefore, the proposed Federal tax credit legislation should provide incentives to support LVEDC's continued effort in the redevelopment of brownfield sites in the region.

A few of the impediments that should be looked at and could help us, and I will touch on three of them, the first, the community perception of health risks associated with environmental impact that remain in place as part of brownfield redevelopment projects. Although the use of engineering and institutional controls are widely accepted as safe, permanent alternatives to removing historical industrial impact, the public continues to fear the presence of residual contamination. Additional education efforts are needed to help the general public understand the use of these strategies and their long-term impact on a community. I want to talk about the public understanding. That public is not just the John Q. Public, it is also folks that are developers, engineering firms, accounting firms that are, and bankers who are advisers to potential property owners.

The second issue, multi-layered regulatory programs that often require numerous approvals from multiple agencies and departments within agencies. This results in increase of project costs and time to insure appropriate approval is obtained from all parties involved. Recently, in Pennsylvania, the Department of Environmental Protection under Secretary Kathleen McGinty, announced a new program to facilitate the review and approval process on brownfields redevelopment project. That program, the Brownfields Action Team [BAT] program, created a single point of contact approach to the review and approval process across the agency. Permits, plans, reports and submittals are required to demonstrate compliance under State laws go through one point of contact. That person is responsible for facilitating the review and approval process that ultimately reduces the cost and time to complete the project. This effort should be extended to the Federal agencies through the recently approved Memorandum of Agreement between Pennsylvania and EPA such that one point of contact can be as-

signed to brownfields projects and involve both State and Federal approvals.

Through the MOAs, a one-stop shop can be established where both agencies agree to one lead agency and one point of contact that is responsible, again, for facilitating all reviews and approvals required to comply with both State and Federal environmental laws. Our experience has been that one-stop shop through the BAT team is extremely helpful and allows that insider to cut through red tape, to understand how to push for approvals, etc.

And last, funding for due diligence and site assessment activities needs to be increased. With the reduction in funding available from State environmental cleanup programs, in this case, the ISRP, the Industrial Site Redevelopment Program, a critical gap is developing. Although EPA brownfields assessment grants are available for these activities, the time and administration associated make these dollars hard to use on small and time-sensitive projects. With the introduction of new regulations governing All Appropriate Inquiry [AAI], and due diligence that is required to protect innocent purchasers, greater focus will be on completing due diligence and site assessment activities before communities or innocent purchasers take title to brownfield properties.

These investigations typically come when crucial, time-sensitive decisions need to be made. For example, tax foreclosure or property takings by eminent domain. Time to develop and obtain approvals for work scopes and bid contractor workout may not be available under the EPA funding programs and historically, State brownfield programs filled this gap and provided the necessary funding on time-critical schedule to complete the work. Those are a few examples of our experience and recommendations for where some changes might be made. Thank you for your time and attention.

[The prepared statement of Mr. Suhocki follows:]

**House Government Reform Subcommittee on Federalism and the Census
Oversight Hearing
“The Challenge of Brownfields: What are the Problems and Solutions in
Redeveloping Pennsylvania’s Lehigh Valley Communities?”**

**Testimony
Lehigh Valley Economic Development Corporation
R. F. Suhocki – President & CEO**

In the mid-1990s, government, business, and community leaders in Lehigh and Northampton Counties began examining ways to promote economic development in the region through the redevelopment of abandoned and underutilized industrial sites. Through the efforts of the Lehigh Valley Planning Commission, the first brownfields site inventory for the Lehigh Valley was created in 1997. This inventory located 250 such sites throughout the region and identified over 70 sites for inclusion in a “Potential Redevelopment Site” inventory.

With an inventory of sites in place, a committee called the *Lehigh Valley Brownfields Strategy Task Force* was convened to oversee the inventory and promote the redevelopment of these properties. The eventual outgrowth of the Task Force was a strategic partnership of economic development professionals, environmental professionals, and community organizations known as the *Lehigh Valley Land Recycling Initiative* (LVLRI). In 2000, LVLRI was given full time staff commitment as a department within the *Lehigh Valley Economic Development Corporation* (LVEDC).

The mission of LVLRI is to promote the revitalization of brownfields sites throughout Lehigh and Northampton Counties in order to protect human health and the environment, create jobs, leverage private investment, increase local tax base, and preserve greenspace. LVLRI works to accomplish this mission by:

- Maintaining a detailed inventory of brownfields sites in the region;
- Providing assistance with the preparation of grant applications, workplans, and agreements;
- Maintaining a database of technical resources available to facilitate redevelopment activities, i.e., environmental consultants, developers, commercial lenders, and legal services;
- Providing access to state and federal financing programs for environmental assessment and remediation work at brownfields sites.

Since 1998, LVLRI has been the administrator of Northampton County’s EPA Brownfields Assessment Demonstration Pilot program, as well as LVEDC’s EPA Assessment Grant awarded in 2003. Most recently, LVEDC was the recipient of two additional community-wide Brownfield Assessment grants as well. Since 2000, LVLRI has also been administering both Lehigh and Northampton Counties’ EPA Brownfields Cleanup Revolving Loan Fund programs (RLFs).

With the recent inclusion of quasi-governmental entities as eligible applicants for EPA Assessment grants, Lehigh and Northampton Counties have been able to even further regionalize their brownfields revitalization efforts by partnering with LVEDC as they serve as the applicant for additional assessment grant funding.

In addition to the successful administration of federal brownfields funding program LVLRI has also assisted with the application and implementation of numerous state brownfields funding programs.

As the brownfields revitalization efforts in the Lehigh Valley evolve and expand, LVLRI is pleased to embrace new partnerships, not only at the County level, but also with our three major metropolitan areas. The Cities of Allentown, Bethlehem and Easton are proactively looking at the acquisition and cleanup of many of their historically blighted properties, utilizing LVLRI for the planning activities and program management in this effort. In this cooperative model, LVEDC's Assessment grant will work in partnership with metropolitan areas and smaller municipalities in the Lehigh Valley.

In addition, the City of Easton is proposing a strategic redevelopment project along the Bushkill Creek Corridor. LVEDC recognizes the regional impact of this project for the Easton Area and surrounding communities, and is excited about the significant opportunity this offers in terms of revitalization and adaptive reuse of some of the older buildings, and the cleanup of blighted and old manufacturing / industrialized areas.

By continuing the already-successful collaborative efforts of Lehigh and Northampton County and by extending new partnerships which are able to leverage on the experience of past successful efforts, we believe that the coordinated brownfields redevelopment effort in the region will continue to create jobs, leverage private investment, and increase local tax base all while protecting the environment, preserving greenspace, and encouraging smart growth.

LVEDC strongly believes that for any brownfields redevelopment program to be successful, it must be responsive to the needs of the community it serves. In order to achieve this level of responsiveness, virtually all of LVEDC's brownfields redevelopment efforts are based in community partnerships. The LVLRI Advisory Committee, which provides the vision and strategic planning for LVEDC's brownfields efforts, is made up of representatives from municipal governments, private for-profit businesses, economic development professionals, community-based non-profits, and environmental advocacy groups. This structure assures significant community involvement in all of LVEDC's decision-making processes relating to brownfields.

The success of LVLRI as a project is based in its ability to facilitate the successful redevelopment and reuse of brownfields sites. To achieve this goal, funding is often necessary for various elements of projects including environmental assessment, cleanup, demolition, site acquisition, infrastructure, and construction. LVEDC's experience in

leveraging financing from state, Federal, and private sources to fill these funding gaps has been a tremendous asset in maintaining the overall success of LVLRI. The funding programs include:

State Programs

LVEDC has aided many site owners in acquiring assessment and cleanup financing through Pennsylvania's Voluntary Cleanup Program. Since 1998, LVEDC, through their land recycling efforts, has leveraged over \$5 million from state funding sources to complete assessment and remediation activities. The funds have been predominantly from the state's Industrial Sites Reuse Program (ISRP) administered by the Pennsylvania Department of Community and Economic Development (DCED). However, in recent years this program has been cut and the level of funding available significantly reduced.

Just as private financiers are often unwilling to commit funding to projects until environmental concerns have addressed, many state financing programs require the completion of environmental assessment work prior to their participation in the project. LVEDC has worked on several projects in which the completion of assessment work through LVLRI aided in leveraging other development financing at a later date.

Federal Programs

LVEDC has been successful leveraging funding through the EPA Brownfields Assessment Grant and Revolving Loan Fund programs since the inception of LVLRI. It has successfully managed two \$200,000 assessment grants for Northampton County and with its recent award, an additional \$600,000 worth of assessment grant funding is being directly managed by LVLRI under the auspices of LVEDC. LVLRI also manages \$1 million in remediation financing available through Lehigh and Northampton Counties' Brownfields Cleanup Revolving Loan Funds. In addition to direct project financing, LVEDC has also assisted property owners in taking advantage of the Federal Brownfields Tax Incentive, which allowed eligible parties to deduct assessment and cleanup costs from their federal income taxes in the year in which they are incurred. With the recent amendments to Superfund the use of these funds has become more flexible better facilitating the needs of the communities and developers using the funding. However, further streamlines of the procedures and administrative requirements is needed to ensure timeliness of funding availability and less liability on the part of the end users.

LVEDC also has a great deal of experience bringing development dollars to projects through other state and federal business financing programs. Since 2000, LVEDC has leveraged over \$98,000,000 in public financing for projects in the region. This funding has in turn leveraged over \$400,000,000 in private investment and created and/or retained over 7,000 jobs. LVEDC also has many private for-profit and non-profit partners who provide funds for the facilitation of development projects. These include the Wildlands Conservancy and HDR Engineering's contribution of in-kind services specifically to the development and oversight of LVLRI. Additionally assistance from organizations like

PPL Electric Utilities and First Energy Corporation to establish loan programs for community revitalization projects. Funding and assistance through these public and private sources fill funding and technical support gaps and assure the success of LVEDC's brownfields redevelopment efforts through LVLRI.

The majority of the brownfield sites within the Lehigh Valley are located within the urban boundaries of three major metropolitan areas, or smaller rural municipalities of lower income, so therefore the proposed federal tax credit legislation should provide incentives to support LVEDC's continued effort in the redevelopment of brownfield sites in the region.

Impediments that continue to impede brownfields redevelopment projects include:

- Community perception of health risks associated with environmental impacts that remain in place as part of brownfields redevelopment projects. Although the use of engineering and institutional controls are widely accepted as safe permanent alternatives to removing historical industrial impacts, which is too costly for most redevelopment projects, the public continues to fear the presence of residual contamination. Additional educational efforts are needed to help the general public understand the use of these new strategies and their long term impact on the community.
- Multi-layered regulatory programs that often times require numerous approvals from multiple agencies and departments within agencies. This results in the increased of project costs and time to ensure appropriate approval is obtained from all parties involved. Recently, in the state of Pennsylvania, the Department of Environmental Protection under the leadership of Secretary Kathleen McGinty announced a new program to facilitate the review and approval process on brownfields redevelopment projects. That program, the Brownfields Action Team (BAT) program, created a single-point-of-contact approach to the review and approval process across the agency. All permits, plans, reports and submittals required to demonstrate compliance under state environmental laws go through one point of contact. That contact is responsible for facilitating the review and approval process that ultimately reduces the cost and time to complete projects. This effort needs to be extended to the federal agencies through the recently announced Memorandum of Agreement (MOA) between Pennsylvania and EPA such that one point of contact can be assigned to brownfields projects that involve both state and federal approvals. Through the MOA a "one-stop-shop" can be established where both agencies agree to one lead agency and one point of contact that is responsible for facilitating all review and approvals required to comply with both state and federal environmental laws.
- Funding for due diligence and site assessment activities needs to be increased. With the reduction in funding available from state environmental cleanup programs (ISRP) a critical gap is developing. Although, EPA Brownfields

assessment grants are available for these activities, the time and administration requirements make these dollars hard to use on small and time sensitive projects. With the introduction of new regulations governing All Appropriate Inquiry (AAI) and due diligence that is required to protect innocent purchasers, greater focus will be on completing due diligence and site assessment activities before communities and/or innocent purchasers take title to brownfields properties. These investigations typically come when crucial time sensitive decisions need to be made, e.g., tax foreclosure and/or property takings by eminent domain. Time to develop and obtain approvals for work scopes and bid contractor work out may not be available under the EPA funding programs and historically state brownfields programs filled this gap and provided the necessary funding on a time critical schedule to complete the work.

Mr. TURNER. Thank you. Mr. Donches.

STATEMENT OF STEPHEN DONCHES

Mr. DONCHES. Chairman Turner, Mr. Dent, Mr. English, thank you for the opportunity to speak today. I would like to talk about Bethlehem Steel's approach to brownfields remediation during the time I was in charge of the redevelopment of the idled former steel plant you visited this morning. The decision to close a plant is never an easy one and without exception, it presents hardships to both communities and to employees. Historically, the loss of jobs and business opportunities and tax revenues is always further aggravated by the fact that too many sites remain dormant because existing laws and practices provided no incentive for the owner to redevelop the property.

The steel industry, along with other old line industries, suffered through downsizing throughout the 1980's and 1990's and at which time numerous plants in many States were closed. And, depending on the State in which a shut down facility was located, a company may or may not have had a good opportunity to redevelop or reuse the site. For example, Bethlehem Steel closed a plant in Lackawanna, NY in the early 1980's and then subsequently closed the local plant in the mid-1990's. The Lackawanna plant in New York under then New York law, did not provide for brownfield cleanup and liability release and consequently, other than demolition, not much else has taken place up there. Plans have been put in place, but the laws restricted activity.

Contrast that, if you will, with the Pennsylvania approach. When Governor Tom Ridge took office in 1995, he worked with the General Assembly to pass the Land Recycling Act, which we have heard, Act 2, early that year. The law addressed two key things from an employer-owner standpoint: that is the uncertainty associated with brownfield cleanup standards and it also brought finality as far as liability release is concerned. Secretary Seif already commented, but it is safe to say and at the time, our chairman, Hank Barnett did say that had Pennsylvania not had Act 2 in place at the time, Bethlehem Steel would not have been able to take the approach it did on the 1800 acres here in Bethlehem. It would have been a totally different project and the Beth Works now and the LVIP projects that we see today are only possible because of the fact that we had Act 2 in place.

There are several key factors that position the 1,800 acres for the opportunity that exist today and one was the leadership provided by Secretary Seif of the DEP and which is being continued by Secretary McGinty. Another was the enlightened management of Bethlehem Steel that was willing to take some measured risks and to negotiate some uncharted waters in applying the new law to its property. Many of the principles of both DEP and Bethlehem Steel were the same both before the new law and after the law. The difference was that with the new law in place and with inspired leadership, instead of an adversarial approach with little or no progress, the parties saw an opportunity to convert an inactive operation into a potentially prosperous community economic development project by jointly addressing the issues.

Another key factor was that DEP introduced EPA into the project at an early date and we have heard about the agreement that was signed between the parties. This turned out to be very significant because throughout the negotiations, all the principle parties, the decisionmakers, Bethlehem and its advisors, DEP and EPA, were always at the table. And the importance of this approach was that surprises were eliminated or at least minimized because new information was passed among the parties almost simultaneously upon being received.

Now, after completing the studies to determine highest and best use of the land, the most important question critical to a property's future was how the environmental issue was going to be managed. By choosing the brownfield remediation approach, Bethlehem was able to prepare most of the 1,800 acres for sale or reuse, and DEP and EPA at the time called this a National model for brownfields redevelopment. Bethlehem had projected that when fully developed, investment of private and public dollars in the Bethlehem Works and Bethlehem Commerce Center project would be about \$1.2 billion, would create between 7,500 and 10,000 jobs and generate some \$70 million in annual tax revenues.

These projections still look good today, but now the investment looks, now looks like it will approach \$2 billion and probably exceed the \$2 billion. To date, there has been significant investment in a power plant by CONECTIV Energy, about \$600 million, an intermodal facility by Lehigh Valley Rail serving Norfolk Southern, three technology centers you have heard referred to, a skating rink, LVIP's new industrial park and onsite infrastructure of more than \$25 million. Site preparation and planning by Bethlehem Steel exceeded \$40 million. Congressman Dent was here recently announcing funds for a new highway expansion, it will also add about \$60 million to the project and the National Museum of Industrial History has about a \$25 million investment in the project it is doing. None of this would have happened had we not had the Pennsylvania brownfields law in place. Thank you, Mr. Chair.

[The prepared statement of Mr. Donches follows:]

**Stephen G. Donches
President and CEO
National Museum of Industrial History
Bethlehem, Pennsylvania**

**Statement Before the
U.S. House Committee on Government Reform
Subcommittee on Federalism and the Census**

**October 25, 2005
Bethlehem, Pennsylvania**

Mr. Chairman and members of the Committee, thank you for the opportunity to present my statement today.

I'm Stephen G. Donches, President and CEO, National Museum of Industrial History, in Bethlehem, PA.

Today, I will be speaking about our approach to brownfields remediation during the time I was vice president of public affairs, Bethlehem Steel Corporation, in charge of the redevelopment of the idled former steel plant in Bethlehem, Pennsylvania and the benefits of the Pennsylvania law.

The decision to close an operation is never an easy one and, without exception, it presents hardships for affected employees and communities. Historically, the loss of jobs, business opportunities and tax revenues is usually further aggravated by the fact that too many sites remained dormant because existing laws and practices, principally environmental laws and financing practices, provided no incentive for the owner, or a prospective owner, to redevelop the property. In fact, if anything, there were usually disincentives to taking action.

So, no one benefited. No job replacements. No replacement tax revenues. And no new business development.

And, usually, to make matters worse, the neighborhood had to tolerate blight on the landscape for an indefinite time.

The steel industry along with other old line industries suffered through downsizing and restructuring during much of the 1980's and 1990's at which time numerous plants in many states were closed or significantly reduced in size, leaving many sites totally or significantly unused. Bethlehem Steel, for example, went from more than 100 separate operations, including 12 steel plants, in 1970 to about 20 operating units, including just 4 major steel plants prior to its bankruptcy.

Depending on which state a shutdown facility was located, a company may or may not have had reasonable options for sale and reuse of the sites.

A contrast in two states' approaches, which affected plans for reuse of properties, is New York and Pennsylvania. Bethlehem had closed a major steel operation in Lackawanna, NY in the early

1980's, and it also closed the Bethlehem Plant in Pennsylvania in the mid-1990's.

The Lackawanna Plant, under then NY law, did not provide for utilization of a brownfields cleanup and liability release, and, consequently, other than demolition, little progress was made on that site. Only a couple of operations remained active and sales of property were difficult at best. Office buildings, which generally did not pose the threat of possible contamination, and some ongoing operations were able to be sold. Programs for reuse of the site, I believe, are still under discussion.

Contrast that with Pennsylvania's approach when Governor Tom Ridge took office in 1995. He campaigned for reform of environmental laws and promptly set about to change them with the passage of the Land Recycling Act early that year. As you have heard, it became Act 2, which gives everyone an idea of the priority it had with his Administration. Pennsylvania became one of most progressive-thinking states with the passage of this and related laws.

It is now possible to address the uncertainty associated with brownfields cleanup and to bring finality with a liability release, at least as far as the Commonwealth of Pennsylvania, is concerned. That left the federal issue open.

It is safe to say (matter of fact, our chairman Hank Barnette did say at the time) that, if Pennsylvania had not had the Land Recycling Act when Bethlehem Steel closed its Bethlehem Plant, it would not have been possible for Bethlehem to plan for the adaptive reuse projects, known as Bethlehem Works and Bethlehem Commerce Center. Today's BethWorks Now project and the LVIP development at the Bethlehem Commerce Center are only possible because of the Pennsylvania brownfield law.

In addition to the new brownfields law itself, there were several key factors that positioned the 1,800 acres of the plant for the opportunity that exists today.

One was leadership provided by the Department of Environmental Protection under Secretary James Seif and now being continued by Secretary McGinty.

Another was the enlightened management of Bethlehem Steel that was willing to take some measured risks in applying the new law to its property and to negotiate some uncharted waters.

Many of the principals in both the Department of Environmental Protection and Bethlehem Steel were the same before the new law and afterwards. The difference was that, with the new law in place and with inspired leadership, instead of an adversarial approach to environmental issues with little or no progress, the parties saw an opportunity to convert an inactive operation into a potentially prosperous community economic development project by jointly addressing the issues.

Another key factor was that DEP introduced EPA into the project at an early date. This turned out to be significant because all the principal parties – the decision makers - were at the table for all important meetings: Bethlehem Steel and its advisors, DEP and EPA.

The importance of this approach was that surprises were eliminated, or at least minimized, because new information that was developed was shared more or less simultaneously.

We were all going through an adjustment period – a learning period – of building trust in each other and interpreting a new law. Initially, Bethlehem was looking at a 163-acre parcel that had been the location of typical steel operations – blast furnaces, electric furnaces, former open hearths, machine shops, forging facilities, foundries, etc.

The question for Bethlehem Steel at the time of the shutdown was “what could we do to help revitalize the community?” And, it follows, what were the obstacles we might face?

Generally, after studies to determine the highest and best use for the land, potential developers consistently raised four questions:

1. Who owned the land and how many owners were there?
2. How many government entities were involved?
3. What was the zoning?
4. How will environmental issues be managed?

While all of the questions were pertinent and important, the fourth question on environmental issues was critical to the property’s future. Without voluntary cleanup standards and

liability release, the prospects for finding investors and developers were very slim.

Bethlehem began by selecting an eight-acre parcel known as the Webster Street Redevelopment, where there are technology centers today, including Orasure. Since Act 2 was new at the time, we wanted to understand its complexities and determine how long the process might take. The pilot project turned out to be quite valuable and we went on to include the entire 163 acres of Bethlehem Works and, eventually, the remaining 1,600 acres of the Bethlehem Commerce Center.

What did we think were essential actions for a successful conclusion of the remediation plan?

At Bethlehem Works, the studies and the development of a detailed remediation plan was essential. Although intensive and time consuming, it was a necessary part of the process because it told Bethlehem's management and Board that at the end of this process uncertainty would be eliminated and, upon approval and implementation of the remediation plan, there would be a release from liability. Bethlehem could prepare the land for sale with a certain amount of confidence and buyers, banks and municipalities

could participate without fear of being in the chain of title for liability.

By pursuing this course of action, Bethlehem was able to prepare most of the acreage for sale and reuse. DEP and EPA called the Bethlehem Works remediation plan “a national model for brownfields redevelopment.”

Bethlehem Steel had projected that, when fully developed, investment of private and public dollars in the Bethlehem Works and Bethlehem Commerce Center projects would approach \$1.2 billion, would create between 7,500 and 10,000 jobs, and would generate new tax revenues approximating \$70 million.

These projections still look good today, but now the investment looks like it will approach or exceed \$2 billion.

To date there has been significant investment in a power plant by CONECTIV, an intermodal facility by Lehigh Valley Rail serving Norfolk Southern Railroad, three technology facilities, an ice skating arena, LVIP’s new industrial park, and on-site public infrastructure of more than \$25 million. Site preparation and planning by Bethlehem Steel exceeded \$40 million.

In addition, Federal and state funding for the upgrade of state highway 412 will be close to \$60 million. BethWorks Now has projected investment of almost \$900 million, and the National Museum of Industrial History in association with the Smithsonian Institution has a \$25 million project it is pursuing.

None of this would have happened if Pennsylvania did not have a progressive brownfields law in place. By eliminating the uncertainties of clean-up and putting a finality to liability, many good things are happening, and what could have been another blighted industrial site has the promise of a successful brownfield redevelopment.

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Mr. TURNER. Thank you. Mr. Dent.

Mr. DENT. Kerry, thank you for the tour this morning and also, I just was reviewing your comments once again and you made some specific suggestions about what we ought to be doing particularly with respect to Federal EPA funding. As you are probably aware, Ray probably more so, many of the State programs, I believe, are directed or there are incentives to take State program funding dollars toward brownfield sites. They give you greater incentive. I am not sure if there is a fixed percentage. Has it been your experience, and this is really for Kerry and for Ray, that EDA funding is not as targeted toward brownfields sites and do we need to provide that kind of a fixed percentage for brownfield sites of that funding? I just always thought that most of the funding would logically go there because that is where it is most needed.

Mr. WROBEL. LVIP was a recipient of EDA funding for three out of its previous six industrial parks and I think the issue there is the legislation and the environmental insurance industry catching up that allows for private development on brownfield sites, so most recently, I would say yes, it is my understanding that there has been an emphasis with EDA funding on brownfield sites, but if we can, again, codify and make sure a fixed percentage each year is definitely allocated toward brownfield—

Mr. DENT. What would be a reasonable percentage?

Mr. WROBEL. Working in brownfields? I would say—

Mr. DENT. Because industrial site reuse at the State level, I believe there is a fixed percentage. I don't know what it is off the top of my head, but—

Mr. SUHOCKI. The ISRP funds are down to about half a million dollars a year now.

Mr. WROBEL. But 100 percent allocated toward brownfields sites.

Mr. DENT. It is 100 percent?

Mr. WROBEL. Yes.

Mr. DENT. OK.

Mr. WROBEL. Yes. So I would say at least, you know, 60 to 75 percent I would assume.

Mr. DENT. Of EDA funds—

Mr. WROBEL. Should be targeted toward brownfield sites.

Mr. DENT. Great, OK. And then on the, you also mentioned the environmental insurance.

Mr. WROBEL. Correct.

Mr. DENT. That issue, how would you, would you recommend that EDA funds be allowed to go toward that, as well?

Mr. WROBEL. It is my understanding this is being discussed at the staff level and at EDA currently and again, the representative from EDA this morning, Abe, spoke about the block grants that are being given to communities. At the moment, those block grants must be used for remediation, which triggers another level of Federal reporting that is not required by Pennsylvania's DEP. By funding environmental insurance premiums, it is being discussed that Federal funding would not be triggered and because it is not actually funding remediation, it is funding the insurance premium and an organization like us would get the benefit of having the streamlined approach that DEP's providing as far as reporting and reme-

diation with the added bonus of a grant paying for what is a very significant up front cost.

Mr. DENT. OK, thank you. And just finally, Steve, I wanted to say I thank you to you and your colleagues at Bethlehem Steel at the time for being enlightened. The tour that we took today, I mean, Bethlehem Steel could have taken the approach, it could have just locked the gate and they didn't. They did a lot of things very thoughtfully and they planned well and I think today we are seeing some of the results of that planning in conjunction with Acts 2, 3 and 4 at the State level and just proud to be able to drive through there today and just see all the activity on a dreary, rainy morning, just to see, you know, life there, a lot of life and a lot of action there and I just want to thank you for your leadership and could you just quick give us a summary of where you stand with the museum right now?

Mr. DONCHES. Well, we have raised about half the money we need, about \$12½ million. We started restoration work on the building by replacing the roof recently and we continue to raise funds to do the rest of the construction work and exhibit work. It is an opportunity to bring the Smithsonian Institution with our relationship to a small community, which was a major part of the affiliations program that the Smithsonian talked about, how to take objects that have been in storage in and around Washington warehouses and bring them out to communities throughout the country.

I am proud to say that we were the first affiliate. We served as the template for the affiliations program for the Smithsonian. There are now about 140 in some 38 or 39 States, all different types of purposes, so this is another opportunity that the brownfields presented, because you would not have done this otherwise.

And if I might comment, Charlie, that I think the important thing in this whole brownfields project was the public/private partnerships that we were able to establish early on. And it was to know the working process with EPA and DEP literally sitting around the table on a regular basis talking about the issues, doing the testing and I think the reference that was made earlier about the need to communicate to the public what brownfields are all about. It can't be overemphasized. It is critical because the general consensus right off the bat, for example, the steel plant, was that it will be so contaminated that it won't have possible future use. In fact, many of the sites are managed quite well from an environmental standpoint and the remediation under the options under brownfields law can be accomplished at reasonable cost and put to good use in the future.

But the detail work that went into the remediation plan is very, very significant. The monitoring wells, the soil testing, over periods of many quarters to determine what, if any, contamination exists and then to file a Notice of Intent to remediate with the State, which required approval. I think all that information is often just passed over because you say brownfields and people say oh, it is a different approach. It is different, but it is also very detailed and it does result in a cleanup.

Mr. DENT. Thank you. Thank you, Mr. Chairman.

Mr. TURNER. Thank you. Mr. English.

Mr. ENGLISH. Mr. Chairman, if I could, I would be happy to yield my time to Mr. Dent.

Mr. TURNER. Good, excellent. Gentlemen, I would assume that many communities come to you and look at the things that you have accomplished and look to advice as to how they can be more successful. When those communities come or when people ask you what do you think is essential for them to have success, what advice do you give them? Kerry.

Mr. WROBEL. Well, I think the LVIP model is very interesting. It is a stand alone organization, nonprofit, no government affiliation, so we keep politics at the door. We say we are nonpolitical. Our only focus is economic development, so to have an organization, and this is not simply to toot our horn, but it is something that other communities will say we don't have something like LVIP, which is a group that is independent, has the ability to secure Federal and State grants and low interest funding.

It has a specific focus of infrastructure development and selling land to end users and then really basically getting out of the way and letting the private sector function, so I would say LVIP is certainly a model that could be shown and demonstrated to develop brownfields successfully to other communities. And then will echo what Steve has said. LVIP VII is possible by funding from State, county and Federal levels, from the city of Bethlehem with timely approvals and tax abatement, the school district and the county, as well, with tax abatement, so it has to be—it is an overused term now, over 15 years I have been hearing this word—the “partnership,” it is overused, but it is so critical. You cannot develop a brownfield site without all governments at the table with non-profits making this a top priority for a community.

Mr. PAUL. Well, “partners” is in our name. Ben Franklin Technology Partners is the most respected, most successful and most imitated technology-based economic development organization in the United States. As a result, we have had visits from Governors' offices and various economic development groups from a dozen or more States and some foreign countries. And to echo Kerry, the partnership is what makes it work because we don't have all the resources that we need under our umbrella. The fact that we work with the university, with the city, with all of the other economic development organizations in a partnership to make something happen has been the secret to our success. Our companies that we are going to put into those brownfields buildings and have put in those brownfields buildings have companies that would not exist if these partnerships did not work.

Mr. TURNER. I will just build on that, and the partnerships are critical and the partnerships are on a regional basis. As I mentioned earlier, I represent two counties and across those two counties, that network that Chad talked about of education, government, etc. really pulls together in setting priorities so that when we are talking to government, we are talking from the same page. The issues that are important to us are the issues that are important for every partner, so there is that kind of agreement that doesn't keep us fighting one for the other for the few dollars. It lets us focus on the top priorities and move on those.

Mr. DONCHES. Mr. Chairman, I would say that it is important that people looking at sites understand that there are voluntary cleanup standards that they want to meet and they have the choice as to how they want to meet those standards, so it is important to have technical expertise as you approach the standards. Of course, the issue that I mentioned of finality and liability release, if you don't have that, you are not only not going to get developers, you are not going to get anybody to finance the projects, either.

I think communication broadly, to the community, is provided for in the brownfields law in Pennsylvania but it is important to do that at an early date. For example, we had a couple of open hearings, public hearings where we just invited, through newspaper advertisements, people to come and hear what the project was about and how remediation was going to be addressed. I thought that was very useful.

And I think I would probably say to owners or developers not to be afraid to explore the issues and the opportunities. You find one, you sit down today with DEP certainly in Pennsylvania and EPA. It is a different approach. And you find that it is not as bad as it used to be, the old adversarial days where we locked horns. I think today openness is there, there is transparency and I would say explore the issues; the opportunities are great.

And then, finally, it has been mentioned a number of times, infrastructure funding, both onsite and offsite, is critical and to get that into play early on. Locally here, we were fortunate to have the county, Northampton County, push for a bond issue that resulted in some \$13 million for a road that gets into the area that Kerry is going to be developing, but even with early support, that has taken a long time; they are finishing it up now. But it won't do any good to have a remediation plan and go through the whole process if you can't get to the site. And in the case of this one, it is extremely large, 1,800 acres.

It has been called the largest private brownfield development. You need not only the onsite infrastructure that the county has helped provide, but the highway that surrounds the site, State Highway Route 412. That funding has been under discussion for every bit of 10 years and we are now finally getting to that point where the funding is essentially in place. I think construction is out to 1998 for starter, but without the infrastructure funding, all the other work, if you can't have access to the site, it comes up a little bit short, so that is critical.

Mr. TURNER. Thank you. Mr. Dent for final questions.

Mr. DENT. Just to Chad Paul, actually. I believe before you arrived at the Ben Franklin Technology Partners, I guess Technology Centers I and II were already up and running, if I am not mistaken and I believe one or, I believe maybe both of those buildings were built prior to Acts 2, 3 and 4. Is that correct?

Mr. PAUL. We had coverage on 2, 3 and 4, I believe, Steve, right, for Beth Tech II?

Mr. DONCHES. Yes, Beth Tech II. Only the first one was—

Mr. PAUL. But we did not have it for the first one.

Mr. DENT. I guess the question I have, and maybe it is a better, I am not sure if I should address it to Chad or to Steve, but how

is it that you were able to build Tech Center I without that liability protection when you did it?

Mr. PAUL. The board of Lehigh Valley Industrial Parks of Northampton County Development Corp. had long talks with folks from Bethlehem Steel. They had guarantees, corporate guarantees from Bethlehem Steel to ease the pain and Steve was involved with all that. Perhaps you may want to address that in more detail, but it was the, it was assurances of help from Bethlehem Steel if there was more of a problem than what we had originally seen on the site that allowed all of us to, and again, I am talking about my organization, not me.

Mr. DENT. So Bethlehem Steel was essentially going to assume liability or—

Mr. DONCHES. Yes, there were dollar limits if they were exceeded, that Bethlehem Steel would step up and there was a risk involved, but it was a relatively small site and my memory is maybe 4 acres or something of that sort and since we owned the site for, Bethlehem Steel owned the site for 100 years, pretty good records as to what was there and what it was used for, so it was a measured risk which you might take on a small site and also, the main thing at the time was that Bethlehem was trying to present an opportunity to help revitalize the community, so it was part of a good citizenship thing that, with the consortium, would help to underwrite part of the costs, just to make it, just to give it a start and with LVIP, Job Corps II, BETCO, Northampton County, it came together, again, it was a partnership that everybody helped to pull a little bit on the oars.

Mr. PAUL. I should note as an addendum that finally this year we are getting final clearance on that original site.

Mr. DENT. My point is that I think you can see that somebody had to accept responsibility for a potential contamination liability; in this case it was Bethlehem Steel.

Mr. PAUL. Correct. Since our partnership of organizations owns those buildings through Northampton County New Jobs Corp., once Bethlehem Steel was no longer there to back us up, we felt it prudent to spend the dollars we needed to spend to get that final work done and get that clearance.

Mr. SUHOCKI. And we are trying to sell it, so obviously, we have to go through those clearances.

Mr. DENT. Trying to sell Tech Center I? OK.

Mr. WROBEL. And just finally, I just want to acknowledge for the committee here, that there were good local partners in this process. It wasn't just the State and the Feds, the MOA, but the—as was mentioned—the county governments matched significant dollars on that road that we drove on today, actually, that four lane highway—Commerce Boulevard. And also municipal government and, of course, the economic development corporations all played leading roles in the redevelopment of this site, so I just wanted to acknowledge that.

Mr. TURNER. Great. As with the first panel, I want to give you an opportunity for any closing remarks or if there are questions that we haven't asked you that you would like to respond to or things that you would like to add, having heard the other panel

members. I want to give you that opportunity if you have any additional comments.

Mr. SUHOCKI. I would just like to say that we appreciate your interest and involvement here. It is very, very important. We have approximately 100 brownfield sites in the Lehigh Valley. They are not all as famous and large as, fortunately, as the LVIP project, but they are very important and each one of those, as I mentioned earlier in my comments, are typically within an urban setting and it is great as we look at the proposed legislation that you are preparing that the tax credit will help those kinds of properties be returned to use and useful.

Mr. TURNER. Excellent. Well, before I give you my closing comments, I want to thank Mr. Dent for having us here in his district and for allowing us to focus on what is obviously a successful partnership and has given us some additional issues and ideas of what we need to do on the Federal level for brownfields. It is great to hear the past successes that you have had as a community and certainly, Mr. Dent's participation in that is why he is so effective in Congress and as Vice Chair of this committee because he brings that level of experience in working with you at the community level and his experience in the legislature to Congress so we can address National issues. And I want to thank Mr. English for being here. He certainly raises our profile and his leadership in being here at this hearing.

Mr. ENGLISH. Mr. Chairman, I would also like to thank you and Mr. Dent for being so proactive in sponsoring this hearing and in focusing on what I think is one of the better case studies in the country for this program and how you tackle brownfield problems, so it has been a privilege to be part of this process today and I think this will be immensely valuable to us when we make decisions in a number of committees in Congress.

Mr. TURNER. Excellent. Before we adjourn, Mr. Dent, do you have any closing comments for us?

Mr. DENT. I want to thank everybody for providing testimony today and I think what we have seen here today is, again, talking about the Bethlehem issue in particular is interesting, but most brownfield sites, of course, aren't as big or as complex and that, you know, we can take a lot of lessons out of here and apply them, frankly, to smaller sites, that hopefully will be less complex but nevertheless difficult and that is really what I am hoping for, that, you know, here we are taking, really, the mother of all brownfields in the United States and seeing a lot of success and there are lessons learned and hopefully we can take this experience, this model, from Pennsylvania and from Bethlehem and apply it around the country.

Mr. TURNER. Thank you. I want to thank all of our panel members, again, for your preparation today, for what you contributed in participating and also what you do for your communities. These field hearings are a valuable tool for us as we get to learn from your experience and your expertise and be able to take those back to Washington to look at Federal policies.

I would also like to express my appreciation to the city of Bethlehem and to Lehigh University for hosting us and we owe a special thanks to President Farrington and his staff, particularly, to

Vice President Michalerya, who has stayed here with us and for showing your wonderful facilities and for your accommodating efforts. And in the event there may be additional questions that we don't have time for today, we will leave the record open for 2 weeks for submitted questions and answers and statements for the record. With that, I thank you all and we will be adjourned.

[Whereupon, the subcommittee was adjourned.]

