

**BROWNFIELDS REVITALIZATION AND  
ENVIRONMENTAL RESTORATION ACT OF 2001**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON**  
**ENVIRONMENT AND PUBLIC WORKS**  
**UNITED STATES SENATE**  
**ONE HUNDRED SEVENTH CONGRESS**  
FIRST SESSION

ON

S. 350, A BILL TO AMEND THE COMPREHENSIVE ENVIRONMENTAL  
RESPONSE, COMPENSATION, AND LIABILITY ACT OF 1980 TO PRO-  
MOTE THE CLEANUP AND REUSE OF BROWNFIELDS, TO PROVIDE FI-  
NANCIAL ASSISTANCE FOR BROWNFIELDS REVITALIZATION, TO EN-  
HANCE STATE RESPONSE PROGRAMS, AND FOR OTHER PURPOSES

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FEBRUARY 27, 2001

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# C O N T E N T S

Page

## FEBRUARY 27, 2001

### OPENING STATEMENTS

Boxer, Hon. Barbara, U.S. Senator from the State of California .....	7
Carper, Hon. Thomas R., U.S. Senator from the State of Delaware .....	14
Chafee, Hon. Lincoln, U.S. Senator from the State of Rhode Island .....	1
Clinton, Hon. Hillary Rodham, U.S. Senator from the State of New York .....	16
Corzine, Hon. Jon S., U.S. Senator from the State of New Jersey .....	11
Crapo, Hon. Michael D., U.S. Senator from the State of Idaho .....	10
Inhofe, Hon. James M., U.S. Senator from the State of Oklahoma .....	12
Reid, Hon. Harry, U.S. Senator from the State of Nevada .....	6
Smith, Hon. Bob, U.S. Senator from the State of New Hampshire .....	3

### WITNESSES

Arlington, John, assistant vice president, American Insurance Association .....	45
Prepared statement .....	75
Bollwage, Hon. J. Christian, Mayor of Elizabeth, New Jersey .....	32
Prepared statement .....	56
Responses to additional questions from Senator Chafee .....	58
Cope, Grant, environmental advocate, United States Public Interest Research Group .....	47
Prepared statement .....	76
Ferris, Deohn, president, Global Environmental Resources Inc. ....	50
Prepared statement .....	90
Responses to additional questions from Senator Inhofe .....	93
Ford, Mike, Mike Ford Agency, on behalf of the National Association of Realtors .....	42
Prepared statement .....	70
Responses to additional questions from:	
Senator Chafee .....	71
Senator Inhofe .....	71
Fox, Robert, partner, Manko, Gold and Katcher, LLP .....	48
Prepared statement .....	85
Front, Alan, senior vice president, The Trust for Public Land .....	44
Prepared statement .....	72
O'Brien, Philip J., Director, Division of Waste Management, New Hampshire Department of Environmental Services .....	36
Prepared statement .....	66
Walker, Hon. Myrtle, Mayor of East Palo Alto, California .....	34
Prepared statement .....	59
Whitman, Hon. Christine Todd, Administrator, Environmental Protection Agency .....	18
Prepared statement .....	52
Responses to additional questions from:	
Senator Chafee .....	54
Senator Inhofe .....	54
Senator Smith .....	54

### ADDITIONAL MATERIAL

Statements:	
American Institute of Architects .....	101

IV

	Page
Statements—Continued	
American Institute of Chemical Engineers .....	94
Environmental Business Action Coalition .....	100

**BROWNFIELDS REVITALIZATION AND  
ENVIRONMENTAL RESTORATION ACT OF 2001**

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

The subcommittee met, pursuant to notice, at 10:17 a.m. in room 406, Senate Dirksen Building, Hon. Lincoln Chafee (chairman of the subcommittee) presiding.

Present: Senators Chafee, Inhofe, Crapo, Boxer, Carper, Clinton, and Corzine. Also present: Senators Smith and Reid [ex officio].

Senator CHAFEE. The hearing will come to order.

I would like to recognize Chairman Smith for the purposes of introducing some honored guests. Mr. Chairman?

Senator SMITH. Mr. Chairman, it is a pleasure for me to introduce some of our counterparts from the Netherlands who are visiting with us this morning. We are hosting members of the delegation of the Select Committee on Housing, Spatial Planning, and the Environment from the Netherlands, who are all sitting over here on the right side of the room, a seven member delegation led by Mr. Reitsma. I would appreciate if they would just stand and be recognized. I welcome you all here to observe our own legislative process at work.

[Applause.]

Senator SMITH. The Netherlands is a leader in Europe in environmental policy and in taking care of many of their environmental problems. I have made a commitment today to try to go over and visit in Holland. Hopefully, some of the committee members will come with me, and maybe we can learn something.

I also would like to take this moment, Mr. Chairman, to recognize Tom Gibson, who worked for many years here on our side of the aisle, in a bipartisan manner, I might add, for the committee. He is now over at EPA. So, Tom, I guess it is good to see you over there.

[Laughter.]

Administrator WHITMAN. I think so.

Senator SMITH. Thank you, Mr. Chairman.

**OPENING STATEMENT OF HON. LINCOLN CHAFEE,  
U.S. SENATOR FROM THE STATE OF RHODE ISLAND**

Senator CHAFEE. Thank you. We will have brief opening statements and get to the testimony.

Today, this subcommittee will receive testimony on S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001. Together with Senators Smith, Reid, and Boxer, and other members of the committee, I introduced this legislation on February 15. This is the same bipartisan legislation that was introduced in the 106th Congress and amassed 67 cosponsors. This landmark bipartisan bill, which is pro environment and pro economic development, has attracted broad support from senators and stakeholder groups.

The Nation's laws governing abandoned hazardous waste sites date back to the late 1970's and the discovery of thousands of barrels of toxic waste buried in a New York community outside of Buffalo. Congress responded to Love Canal and other sites by enacting Superfund. This law was intended to clean up the Nation's worst sites and ensure that the parties responsible for the pollution cleaned it up. Litigation ensued throughout the 1980's which slowed down the pace of clean-ups. But by the 1990's Superfund clean-ups had increased. But the fear of prolonged entanglements and Superfund liability became an impediment to the clean-up of lightly contaminated sites known as "brownfields."

While all parties agree that we should remove the barriers to redeveloping brownfields, those reforms were always considered part of a broader comprehensive Superfund reform. Based on a multitude of letters and phone calls from various stakeholders, the sponsors of this legislation decided to move brownfields legislation separately and in a bipartisan manner.

This is not to say that there is not merit to broader Superfund proposals. Issues such as natural resources damages need to be examined, and we will look at those issues later. But it is important that we finally move this legislation with its broad bipartisan support.

S. 350 represents a delicately balanced compromise of interest. While no compromise legislation makes everyone 100 percent happy, this bill does enjoy strong support from real estate, community, local government officials, State officials, business groups, and environmental groups. I do look forward to its quick consideration in this session of Congress.

[The prepared statement of Senator Chafee follows:]

STATEMENT OF HON. LINCOLN D. CHAFEE, U.S. SENATOR FROM THE STATE OF RHODE ISLAND

Good morning. Today, the subcommittee will receive testimony on S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001. Together with Senators Smith, Reid, and Boxer, and other members of the committee, I introduced this legislation on February 15. This bill is the same bipartisan legislation that was introduced in the 106th Congress and amassed 67 cosponsors. This landmark, bipartisan bill which is pro-environment and pro-economic development has attracted broad support from Senators and stakeholder groups.

The nation's laws governing abandoned hazardous waste sites date back to the late 1970's and the discovery of thousand of barrels of toxic waste buried illegally in a New York community outside of Buffalo. Congress responded to Love Canal and other sites by enacting Superfund. This law was intended to clean up the nation's worst sites and ensure that the parties responsible for the pollution cleaned it up. Litigation ensued throughout the 1980's, which slowed down the pace of clean-ups. By the 1990's, Superfund clean-ups increased. But the fear of prolonged entanglements in Superfund liability became an impediment to the clean-up of lightly contaminated sites, today known as brownfields.

While all parties agreed that we should remove the barriers to redeveloping brownfields, those reforms were always considered as part of broader comprehensive Superfund reform. Based on a multitude of letters and phone calls from various stakeholders, the sponsors of this legislation decided to move brownfields legislation separately and in a bipartisan manner. This is not to say that there is not merit to broader Superfund proposals. Issues such as natural resource damages need to be examined and we will look at those issues later. But it is important that we move this legislation, with broad bipartisan support, first.

As the chairman of the Senate Superfund Subcommittee, I have made of brownfields reform my top environmental priority. As one of six former mayors in the Senate, I understand the environmental, economic, and social benefits that can be realized in our communities from revitalizing brownfields. Estimates show there to be between 450,000 and 600,000 brownfield sites in the United States. Why do we have so many of these abandoned sites? The shift away from an industrialized economy, the migration of land use from urban areas to suburban and rural areas, and our nation's strict liability contamination statutes have all contributed. By enacting this legislation, we can recycle our nation's contaminated land, reinvigorate our urban cores, stimulate economic development, revitalize blighted communities, abate environmental health risks, and reduce the pressure to develop pristine land.

People may legitimately question the necessity of enacting Federal brownfields legislation. Given the frequent touting of brownfield success stories, is Federal legislation necessary? The short answer is "yes". While many States have implemented innovative and effective brownfield programs, they cannot remove the Federal barriers to brownfield redevelopment. By providing Federal funding, eliminating Federal liability for developers, and reducing the role of the Federal Government at brownfield sites, we will allow State and local governments to improve upon what they are already doing well.

I would like to briefly describe the highlights of our legislation. The bill authorizes \$150 million per year to State and local governments to perform assessments and clean up at brownfield sites. In addition, that money will allow EPA to issue grants for clean-up of sites to be converted into parks or open space. It also authorizes \$50 million per year to establish and enhance State brownfield programs. The bill clarifies that prospective purchasers, innocent landowners, and contiguous property owners, that act appropriately, are not responsible for paying clean-up costs. Finally, this legislation offers finality by precluding EPA from taking an action at a site being addressed under a State clean-up program unless there is an "imminent and substantial endangerment" to public health or the environment, and additional work needs to be done.

Enactment of this legislation and the accompanying redevelopment will provide a building block for the revitalization of our communities. Communities whose fortunes sank along with the decline of mills and factories will once again attract new residents and well-paying jobs. We will bring vibrant industry back to the brownfield sites that currently host crime, mischief and contamination. There will be parks at sites that now contain more rubble than grass. City tax rolls will burgeon; schools will be invigorated; new homes will be built, and community character will be restored. This vision for our communities can be realized with enactment of this legislation.

As with all legislation, we must reach across the aisle and work with bipartisan cooperation to be successful. While no compromise legislation makes everyone one hundred percent happy, this bill enjoys strong support from the real estate community, local government officials, State officials, business groups, and environmental groups. I look forward to its quick consideration in the Senate.

Senator CHAFEE. Senator Smith?

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

Senator SMITH. Thank you very much, Mr. Chairman. Let me commend you for your leadership on the issue, as well as you, Senator Boxer, and others who have worked hard to try to come to a bipartisan conclusion on this legislation. It is a difficult issue. There are some things that I would have liked to have changed. But in order to get at a bipartisan bill, I feel we need to move forward because of the significance.

I certainly welcome you, Governor—I can't get away from calling you Governor—Administrator. We are glad to have you here. It is

I think your first hearing since your confirmation. I am also pleased to have with us Dr. Phil O'Brien, from the New Hampshire Department of Environmental Services, who will be testifying a little later today. As many of you know, New Hampshire, as does other States, has its fair share, more than fair share of brownfields from all across the State.

This legislation removes the uncertainty and encourages brownfields clean-up. Basically, it codifies and streamlines the current EPA program. It nearly doubles the funding to clean up these brownfields, and it provides common sense and balanced liability protections to those who clean up the environment. It will promote conservation through redevelopment. That's the bottom line. You do not have to take new green areas when you can redevelop old brown ones. So, this will help to revitalize our city centers and create new inner-city jobs. This is a win for the environment, it is a win for the economy, and, frankly, it is a win for each and every State in the Nation. I am proud to be a cosponsor.

Unfortunately, we have not been able to do the same thing with Superfund, in spite of all the attempts we have made. But maybe this is a good omen that we can get started on that as well.

I am glad that Senator Reid has joined us. I appreciate the bipartisan spirit in which he has worked with me on a lot of things for a long time, not just here in the committee but in other committees that we have been involved in, most specifically ethics, which is never a fun time, and also in working on the committee rules. Where some committees are still struggling, we have already gotten a resolution to the committee rules because we do work in a bipartisan manner.

I will be very brief here, Mr. Chairman. Two years ago, when we held hearings on comprehensive Superfund we had brownfields in it. We could not get anywhere. We could not get the comprehensive reform, as much as we all would have liked to have had it. At that time, I felt that we ought to get comprehensive reform; if we do not get it, we should get nothing. But I have changed my mind because I believe it is important that we begin the process of cleaning up these waste sites around the country, whether they be brownfields or Superfund. To argue about them and continue to argue about them, fight over them, go to court over them, I have had enough of it.

I think we need to move forward. That is why I am pleased, even though there are some areas that I would have liked to have seen stronger in the bill, I am pleased and am prepared to move forward. If we delay, the losers are the people to live near the sites, green space, urban centers will remain blighted, and local communities will miss out on revitalization opportunities. That is not acceptable to me.

So I would just ask our witnesses to keep in mind this when speaking to the elements of our bill and the contents: How is S. 350 better than current law? That is the bottom line. I think it is better, and if it is better, then we ought to move forward.

I will reserve the rest of my time, Mr. Chairman, for my questions. Thank you.

[The prepared statement of Senator Smith follows:]



## STATEMENT OF HON. BOB SMITH, U.S. SENATOR FROM THE STATE OF NEW HAMPSHIRE

Mr. Chairman, thank you for calling this important hearing on S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001. I would like to thank Senator Chafee for his leadership on this issue as well as our Democratic counterparts, Senators Reid and Boxer, for their cooperation and partnership. Also, I would like to welcome today's witnesses and thank them for their participation in this hearing. We are honored to have Administrator Whitman here and I am very pleased to welcome Dr. Phil O'Brien from the New Hampshire DES.

I know all too well the problems faced in New Hampshire when those willing to clean up and redevelop brownfield sites are too often discouraged from doing so because of the uncertainties they face. There are literally hundreds of these sites in New Hampshire—Milford, Nashua, Durham, Concord, and on and on. Our brownfields legislation, S. 350, removes the obstacles of uncertainty and will encourage cleaning up brownfields sites by codifying and streamlining the current EPA program, nearly doubling funding, and providing commonsense and balanced liability protections to those who clean up the environment. This bill will promote conservation through *redevelopment* as opposed to *new* greenfield development; and will help to revitalize our city centers and create new jobs in the inner-cities. This legislation is a win for the environment, a win for the economy, and a win for New Hampshire and the nation.

There are numerous interests who support S. 350, many of them represented on panels today. I'd like to mention the U.S. Conference of Mayors, National Association of Realtors, the Trust for Public Land, American Insurance Association, Smart Growth America, Environmental Business Action Coalition, and many, many more. With that said, I am proud that S. 350 has such broad, bipartisan support—something that, unfortunately, is not typical for issues that pertain to CERCLA. I hope the bipartisan success of this bill will translate into other areas of Superfund reform that are desperately needed. We all want a clean environment, Republicans and Democrats, and by working together, this bill will help to set the stage for future, common sense, legislative reforms.

Just 2 years ago, when Senator John Chafee, my predecessor as chairman, sat at the helm of this committee, we held a hearing on a comprehensive Superfund reform bill, which had a brownfields title. That bill had no bipartisan support. There was a comparable bill put forth by my Democratic colleagues and it, too, lacked bipartisan support. Today, we have done what just 2 years ago seemed impossible. We reached a compromise both parties can and should support. Is this everyone's ideal bill? Absolutely not. But continuing to delay enactment of this bill—in search of the perfect bill that will never pass—is not the way to address the issues faced at an estimated 450,000 brownfield sites nationwide. We have this chance now to move forward on a piece of legislation that, while not 100 percent of what everyone wants, gets as close as all our divergent interests are going to get. If we delay, the losers are people living near the sites that eventually become full fledged Superfund sites, the greenspace that is lost to new development, the urban centers that remain blighted, and the local communities that will miss out on revitalization opportunities. I ask our witnesses to keep this in mind when speaking to the contents of our bill.

How is S. 350 better than current law? Simply stated, our bill provides an element of finality that does not exist today, while allowing for Federal involvement under a specific universe of conditions. Current law allows EPA to act whenever there is a release or threatened release; this bill ups the ante by requiring:

- 1) EPA to find that "the release or threatened release may present an imminent and substantial endangerment to public health, welfare or the environment" and after taking into consideration response activities already taken, "additional response actions are likely to be necessary to address, prevent, limit or mitigate the release or threatened release";

- 2) the action to come at the request of the State;

- 3) contamination to have migrated across State lines; or,

- 4) new information to emerge after the clean-up that results in the site presenting a threat.

That's not all our bill does to improve the current situation. S. 350 authorizes \$150 million in critically needed funds to assess and clean up brownfield sites, as well as \$50 million to assist State clean-up programs. This is more than double the current level of funding expended toward the EPA Brownfield program.

This is a balanced bill—and we are determined to move quickly through the legislative process. Senator Reid and I have committed to marking up this bill in early March, and we hope to have floor time soon afterwards.

I look forward to hearing from today's witnesses.

Senator CHAFEE. Thank you.

Senator Reid, would you like to make an opening statement?

**OPENING STATEMENT OF HON. HARRY REID,  
U.S. SENATOR FROM THE STATE OF NEVADA**

Senator REID. Chairman Chafee, thank you very much. I first want to express my appreciation publicly for Senator Smith's kind remarks about me. But I want to reciprocate. I think that this committee has set a tone for what I hope this Congress will be. We have worked out our differences, as Senator Smith has indicated, on the committee structure. It was not easy, but it was fair and firm and we were able to get something that I think other committees could use as a pattern, a guideline. So I publicly express my appreciation to Senator Smith, chairman of this committee.

I also want to express my appreciation to Senator Boxer. She comes from a unique background and perspective, not the least of which is she represents 34 million people as a Senator from the State of California. I am grateful to her for her taking responsibility for this subcommittee. This subcommittee deals with some of the most important issues facing our country, and she has the background and experience to do the good job that I know she will do, and I appreciate her taking this responsibility.

I say to you, Governor Whitman, that you are an example of how the Superfund can be used to a State's advantage, what you did in New Jersey. And I talked to Governor Guinn yesterday, Governor of the State of Nevada, telling him that we were going to spend more time with him. People run from Superfund sites but Superfund sites can do good things. I have invited you to Nevada and we are going to work out a convenient time for you to come to the State of Nevada and see in Nevada what a Superfund site can do.

We had a very ugly gravel pit that was a hundred times bigger than this room, maybe a thousand times bigger, a huge, huge gravel pit and it was contaminating many things. It had upwards of five to six million gallons of fuel that had leaked out of various facilities that was going into our river. Anyway, to make a long story short, it was declared an emergency Superfund site and now it is one of the most beautiful areas in all of northern Nevada. It is called the Sparks Marina. Sailboats. It is beautiful. So we do not need to run from Superfund sites.

Brownfields are a step below that as far as contamination, a long ways below that. I am glad that we are going to start someplace. We probably are not going to be able to change a lot with Superfund in the next short period of time, but we can change this. In Nevada, and Las Vegas is an example, we have 30 brownfield sites that have already been identified. If we can clean up those, it will create hundreds and hundreds of jobs and it will give new tax revenues to State and local governments. That is important.

But some people think that these brownfield sites are only urban problems. They are not. We can go 350 miles from Las Vegas to a place in Nevada called Hawthorn, and we have there very limited lands that the city cannot handle because 87 percent of the State is owned by the Federal Government, but we have some brownfield

sites there. One site, 250 acres of valuable space, has been used as a landfill for many years. We can clean that up. It will cost just a little bit of money and will give that area of Hawthorn, Nevada the opportunity to grow.

This bill will turn around these sites by providing money to assess and clean up the areas, it will encourage clean-up and redevelopment of these properties by giving legal protections for innocent parties, and will provide funding enhancement of State clean-up programs, and a balance of certainty for developers and others while still ensuring the protection of public health. And finally, it will create a public record of brownfield sites to help identify redevelopment opportunities, and to enhance community involvement in site clean-up and reuse.

This bill is the result of compromise. It represents a careful balance of competing interests. It is a bill which has gotten broad bipartisan support, both Democrat and Republican Administrations support this. I strongly support this bill. We have a rare opportunity to enact bipartisan environmental legislation this Congress, in fact, I hope within the next few months. We should do all we can to get this balanced bill enacted into law, do all we can to avoid having this effort fail by persons seeking a partisan path. I will personally do all I can with my colleagues to maintain this bipartisan balance.

I say to you, Chairman Chafee, thank you for allowing me to go out of order. And I say to Governor Whitman, she will get used to this, we have a lot of other things going on. I am also the ranking member on the Energy and Water Subcommittee on Appropriations and we are having a very important hearing there at this time on the Corps of Engineers, so I am going to have to be excused here shortly. But, Mr. Chairman, I leave it in your good hands and Senator Boxer's good hands.

Senator CHAFEE. Thank you, Senator Reid.

The ranking member of the subcommittee, Senator Boxer.

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

Senator BOXER. Thank you so much, Mr. Chairman. It is nice to see you again, Administrator Whitman. And to my chair, Senator Smith, and ranking member Harry Reid, it is always a pleasure to work with you. And thank you, Harry, for those kind remarks.

People say how is it possible to represent 34 million people. The answer is it is not really that possible. It is very hard. You just do it the best you can. And on any given issue, a third of the people love you, a third despise you, and a third say "Barbara Boxer? Now who is she?" That is kind of the way it is when you represent such a large State.

I am indeed pleased to be here in my new role as ranking member of this subcommittee and working closely with Chairman Chafee. I loved your father and I am very impressed with you, and I look forward to our coming up with some bipartisan legislation here.

I am also excited to see Mayor Myrtle Walker of East Palo Alto here today, and Alan Front from The Trust for Public Land, which is based in San Francisco. We are happy that you are here to add

to this dialog. I know that these witnesses will highlight how important and relevant brownfields clean-up is to my particular State. I am very interested to hear from the Mayor about the role the Federal Government has played in assisting with the clean-up efforts in Palo Alto.

The question of the appropriate Federal role is likely to provoke vigorous debate in this committee. As a matter of fact, I think it is the one bone of contention within this committee. But I do believe we have compromised that issue very well, as best as we can. Not everyone is getting everything that they want from this legislation.

If you look at California, I am sad to say that some of California's industries have not been responsible and have left the State with a frightening legacy of contamination. In my State, there are estimated to be hundreds of these sites. And while the State has struggled to address these, a Federal role is clearly needed. And again, I think we have weighed that carefully in this legislation and that is why I support S. 350. I think we are doing the best we can.

The interesting thing about these sites, I am sure the Governor knows this, now Administrator Whitman knows this, is that many of these sites are located in low income, minority communities, in places like Las Angeles, Oakland, San Diego, and Sacramento. So what you have is a toxic legacy that is felt more by our most vulnerable and disempowered citizens. We want to give some power to citizens who deserve to have it. Clearly, they are not the only communities at risk, but they are certainly some of them. And that is why the U.S. Conference of Mayors is so involved in this legislation.

So the bill we are discussing today fills an important need in the efforts to address our past mistakes. I am not going to read every word of this statement; I will now summarize it very briefly. But we know that this issue is one that involves pockets of light, if I could put it that way, throughout this country and we are missing an opportunity to recycle this land and use it. And the failure to reclaim these brownfields means that clean, undeveloped areas are used instead when we could reuse these lands.

I think, to its credit, EPA has tried to fill this gap by taking on this brownfields initiative. I hope that Administrator Whitman will carry on with that banner. Let me say that we have two of EPA's leading brownfields initiatives in our State. East Palo Alto will tell us how they have been named a Showcase Community on this effort.

I think that if we pass this bill, and I really do think Senator Smith is right on this point, is this bill better than what we are dealing with now? And I would ask a second question, will it lead to cleaning up these sites and reusing the sites and making the sites part of the community once again? I have answered that question yes. That is why I am a supporter of this bill. It does not mean that we can't make it better. Of course, we can make it better. But the issue is to keep the coalition together, as Chairman Chafee has stated. Certainly, that will be my goal throughout this process.

Thank you very much. I ask unanimous consent that my entire statement be placed in the record.

Senator CHAFEE. Without objection.  
[The prepared statement of Senator Boxer follows:]

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

I am pleased to be here today in my new role as Ranking Member of the Subcommittee on Superfund, Waste Control, and Risk Assessment. The issues that will come before this subcommittee are very important and I look forward to working closely with the chairman on these matters.

I am also pleased to welcome two witnesses from California: Mayor Myrtle Walker of East Palo Alto, and Alan Front from the Trust for Public Land, which is based in San Francisco.

I expect that both of these witnesses will highlight how important and relevant brownfields clean-up is to my State. I am particularly interested to hear from the Mayor about the role that the Federal Government has played in assisting with the clean-up efforts in Palo Alto. The question of the appropriate Federal role is likely to provoke vigorous debate in this committee.

I am sorry to say that some of California's industries have left the State with a frightening legacy of contamination. In my State, there are estimated to be hundreds of sites. While the State has struggled to address these, a Federal role is clearly needed and that is one reason I am a strong supporter of S. 350, the Brownfields Revitalization and Environmental Restoration Act.

In California, many of these sites are located in low-income, minority communities in places like Los Angeles, Oakland, San Diego, and Sacramento. The result is that this toxic legacy disproportionately impacts our most vulnerable and disempowered citizens.

But these are not the only communities at risk. A recent report by the U.S. Conference of Mayors highlighted the fact that brownfields sites are found throughout the Nation and are a concern for nearly every community.

The bill that we are discussing today fills an important need in the efforts to address our past mistakes.

Currently, Superfund directs the Environmental Protection Agency to give priority to our Nation's most toxic sites. While EPA is struggling to keep up with the over 1,400 so-called "Superfund" sites that it has on its National Priorities List, tens of thousands of other less polluted sites are left unattended.

These so called "brownfields" sites are left unused, or only partially used. The result is that these sites become pockets of blight. The worst case scenario is that these brownfields pose a serious hazard to human health and the environment.

At best, these sites represent a missed opportunity to "recycle" the land for better uses. Failure to reclaim brownfields often means that clean undeveloped areas are used instead, contributing further to the sprawl that afflicts many parts of the country. Neglect of brownfields also means that the land is not put to productive use, either for economic redevelopment or as parkland and green space.

To its credit, EPA has tried to fill this gap through the development of its Brownfields Initiative.

California has been the site of two of EPA's leading brownfields initiatives. The mayor will tell us about East Palo Alto's experiences as a brownfields "Showcase Community." These communities are at the cutting edge of the brownfields effort; their experiences will help us learn how to bring together Federal, State, local, and non-governmental interests to address the brownfields problem. They will serve as a model for the rest of the Nation.

I know that Californians believe that the program has been fairly successful; however, it has been operating with one hand tied behind its back. It lacks adequate funding and would benefit from clear statutory authority that enables it to confidently move forward and expand.

This bill will help EPA take the next step with this important program.

By authorizing increased funding for this program, clarifying some of the liability questions, and directing the program to the areas of greatest need, this legislation will help expand the scope of this program and elevate its visibility in the eyes of the American public.

As Senator Chafee stated, the bill is a carefully crafted compromise—one that has succeeded in bringing together diverse interests who come from divergent political viewpoints. That matters. Because it means that we might finally be successful in improving our management of the brownfields problem that now plagues our communities.

Nevertheless, I expect that some of our witnesses today will provide detailed criticism of this bill. I look forward to hearing their concerns and hope they can offer us constructive solutions.

At the same time, we must not lose site of the end game. The status quo is not acceptable and thoughtful legislation is needed.

I believe that we owe it to our children to leave them an environment that is cleaner and healthier than the one we have inherited. And, I believe that the promotion of redevelopment will bring with it a multitude of benefits that are both environmental and economic in nature. This bill will help take us in that direction.

Senator CHAFEE. Senator Crapo.

**OPENING STATEMENT OF HON. MICHAEL D. CRAPO,  
U.S. SENATOR FROM THE STATE OF IDAHO**

Senator CRAPO. Thank you very much, Mr. Chairman. I, too, appreciate your holding this hearing. I think it is the third hearing we have had in about a year on the brownfields issue. And as probably most of those engaged on the issue know, I was one of the strongest opponents of moving brownfields legislation alone last year without, as Senator Smith has indicated, including needed reforms of other parts of the Superfund law, like natural resource damages and a number of the other issues in liability and remedy.

Last year, however, I committed that if we were not successful in doing so, I would not hold brownfields back in this Congress. Regardless of the outcome of the election, I said that I would work to try to help us get something to move forward. I will keep that commitment. That commitment was made in the context of an agreement by all of the other Senators involved at that time that we would not, if we had to move brownfields forward this year, we would not let other needed areas of reform simply fall by the wayside. And I expect that we in this committee will continue to work on those other important areas of reform.

That having been said, I also understand that there has been a commitment to work to try to make this bill the best bill possible. As the chairman said, this is the exact same bill that was introduced last year. There are problems in this legislation. We can do a much better brownfields bill. In fact, in my opinion, there is an opportunity now to reform one of the most important parts of Superfund, brownfields, in a way that will let us make tremendous strides forward.

I recognize that we have to maintain the coalitions to pass this legislation. But I believe some of the needed changes out there are broadly supported. In fact, I suspect that most stakeholders, whether it be at the State and local government level, or at the industry level, or otherwise, would support some of the needed changes. And so I would encourage this committee to recognize that this is a work in process and that as we move forward, as we do with all legislation, there will be opportunities to identify needed areas of improvement.

One of those areas that I think needs to be identified right now is the question of whether we are going to continue to have the Federal Government basically manage these issues, or whether we are going to recognize that we can trust the States. I am glad to see a former Governor as the Administrator of the EPA. Her boss, the President of the United States, recently said exactly those words, that in managing these kinds of issues we need to trust the States. I do not think that this bill goes far enough in giving that

kind of trust. There are too many loopholes, as I see it, with regard to State finality on decisionmaking that allow the EPA to step in and use that heavy hand of the Federal Government yet once again to control the management of these issues. It is time that we do what we say, and that is, trust the States.

There are a few changes in this legislation, a very few, frankly, that are needed, but critical changes that would dramatically improve our ability to let this transition of power away from the Federal Government and back to the States truly become a reality instead of giving it lip service. I am hopeful, Mr. Chairman, that we will have the opportunity to address these issues as we move forward. Thank you.

Senator CHAFEE. Thank you, Senator.

Senator CORZINE.

**OPENING STATEMENT OF HON. JON S. CORZINE,  
U.S. SENATOR FROM THE STATE OF NEW JERSEY**

Senator CORZINE. Thank you, Mr. Chairman. Let me say that I will submit a formal statement, if I could have unanimous consent for that. But I want to congratulate you personally and Senator Boxer for the early introduction of something that I think is truly a positive win-win situation for everyone, both environmentally and economically. I am proud to be a cosponsor of legislation that Senator Lautenberg previously had led. I want to work very closely with all of you to make sure this comes about.

I am also very proud that our former Governor and now Administrator Whitman is here to speak to these efforts because she was a very proactive leader in arranging for brownfields legislation and efforts in New Jersey and did an outstanding job. I do not see Mayor Bollwage, but he was on the receiving end of a lot of those efforts in turning around a community, Elizabeth, New Jersey, in a terrific way, both economically and environmentally. And it is very, very tangible and palpable how successful these efforts have been.

I think this legislation plays very strongly into that. I do believe that perfect should not be the enemy of the good. So we need to make sure that we do have legislation that moves that addresses most of the concerns. I am quite, quite pleased to be a cosponsor of this, and look forward to working with you and all of those on the committee. Thank you.

[The prepared statement of Senator Corzine follows:]

STATEMENT OF HON. JON S. CORZINE, U.S. SENATOR FROM THE STATE OF NEW  
JERSEY

Thank you, Mr. Chairman.

Let me congratulate you, Mr. Chairman, along with Senators Smith, Reid and Boxer, for introducing this bill and scheduling it for a hearing so early in the congressional session. I am very hopeful that with your leadership, and the broad bipartisan support this legislation enjoys, we will be able to quickly enact this legislation in the 107th Congress.

While welcoming all those testifying today, I also would like to especially recognize and welcome Environmental Protection Agency Administrator Whitman and Mayor Christian Bollwage, the Mayor of Elizabeth, New Jersey, who will appear on behalf of the United States Conference of Mayors. Governor—now Administrator—Whitman, it's great to see you here in your new capacity. I am sure you were pleased that your appointment won such broad support. And Mayor Bollwage, I'm grateful for your willingness to join us today. You've been a terrific leader on this

issue. And I know that you and Administrator Whitman will be able to help the committee and public understand the importance of this legislation, and the success of New Jersey's own Brownfield's program.

Mr. Chairman, I am proud to be a cosponsor of your bill, and continue the efforts of my predecessor, Senator Frank Lautenberg, who sponsored a similar bill in the previous Congress. Like Senator Lautenberg, I recognize the tremendous value of cleaning up contaminated industrial sites that lay under-utilized or even abandoned, largely because of the difficulty, risks, and expense of cleaning them up.

When developers now look at these sites, Mr. Chairman, they see a hornet's nest of problems. But when most of us look at them, we see opportunities. Many of these brownfield sites are located in economically depressed urban areas. Cleaning them up can spur economic development, create jobs and bring in additional tax revenue.

Elizabeth, New Jersey has a prime example of this. There, thanks to a similar initiative, a municipal landfill was transformed into a thriving retail shopping center that now employs over 5000 people.

Of course, cleaning up brownfields does more than help the economy. Often, it helps the environment and removes highly dangerous contaminants. In addition, by cleaning up sites in our urban areas, it redirects development away from our remaining open space, and reduces the many problems associated with sprawl.

As you know, Mr. Chairman, despite the broad benefits of cleaning up brownfields, the private sector often finds it unattractive or unrealistic to take on the task. Nor is it easy for States and local governments. That's why this legislation is so important. By providing needed funding, and placing reasonable limits on developers' liability, it should encourage the development of many brownfields and the revitalization of depressed areas around our nation. It's a win-win initiative.

So, Mr. Chairman, I again congratulate you for your leadership, and I look forward to working with you to secure the enactment of this legislation as soon as possible.

Senator CHAFEE. Thank you, Senator.

Senator INHOFE.

**OPENING STATEMENT OF HON. JAMES M. INHOFE,  
U.S. SENATOR FROM THE STATE OF OKLAHOMA**

Senator INHOFE. Thank you, Mr. Chairman.

Madam Administrator, it is nice to have you here today.

I could pretty much take Senator Crapo's opening remarks as my own. I have expressed a lot of concern in the past over major reform, a comprehensive reform of Superfund, including retroactive liability, joint and several liability, natural resources damages. I hesitate falling into something where we are cherry picking at one area and not getting the comprehensive reform that Senator Crapo and I both want ultimately to achieve.

There are three different areas that I think could be improved, and I hope that we will have the opportunity to do it. One is, as Senator Crapo said, work on the clean-up finality provision. It appears to me that no matter how it is done at the States, the Federal Government can come in, the Federal EPA can come in under the way that this bill is drafted right now and do it their way. Second, if the States were to comply completely with the guidelines, the EPA, if they desire to do so, can merely sidestep it and let RCRA or one of the other programs come in and take care of these problems. Third, it might be worthwhile for us to look at some type of a cap to put on, a spending cap so that there is some limit that the Federal EPA would have in dealing with some of the States' problems.

I just feel that the thrust of this Administration is going to be to let the States have the power; that the States, who are closer to the problem, recognize what that problem is and should be assisted in resolving that problem without having the heavy-handed bureaucracy over them. I know that you, having been a Governor



of a State, have been on the receiving end of some of this heavy-handedness and I am sure that you understand from experience what I am talking about.

So I look forward to comprehensive reform and to seeing what we can do to make this a better bill. Thank you.

[The prepared statement of Senator Inhofe follows:]

STATEMENT OF HON. JAMES M. INHOFE, U.S. SENATOR FROM THE STATE OF OKLAHOMA

Thank you, Mr. Chairman. First, I want to commend you, Chairman Smith, and other members of the committee for your work on the brownfields issue.

Over the last several years, this committee worked very hard on Superfund reform. We have decided, for now, to address only brownfields a single portion of the old comprehensive Superfund reform bills. However, I want to reiterate my eagerness to work with members of this committee and the Administration in the future on small business and used oil recyclers liability relief as well as natural resource damages reforms—at a minimum.

So if we are only going to do a small portion of the Superfund reform for now, let's get it right. S. 350 contains items, which I like and dislike. However, let me outline issues that—if addressed—would make a real difference in our nation's ability to address brownfields and could be addressed in a bipartisan manner. The issues are (1) the legislation's site clean-up finality provisions; (2) the scope of the legislation's clean-up finality provisions; and (3) an administrative cap on the bill.

(1) First, the clean-up finality provision is of concern. Advocates of S. 350 declare that the bill's purpose is to provide assurances to parties, who clean up brownfields under State plans, that the Federal EPA will not come back and force further Federal clean-ups. S. 350 only provides developers with very moderate assurances for Superfund-forced clean-ups. I have heard some argue that the bill does nothing to this end.

Many people would, ideally, like for the Federal EPA to have no authority under any statute to override a State-approved clean-up of a brownfield. However, S. 350 takes the other extreme. As it is currently written, S. 350 will allow the Federal EPA to overturn a State clean-up essentially whenever it wants. Myself and others would like to work to find a more delicate balance between the two extremes.

(2) Second, the scope of the clean-up finality provision is of concern. As we will hear from an expert today, if the power of EPA to force clean-ups under Superfund is taken away, then the Federal EPA can simply side step the bill by using the Resource Conservation and Recovery Act (RCRA) or the Toxic Substances and Control Act (TSCA) to force parties to clean up sites even after a clean-up has been performed under a State program.

I know the Federal EPA has never overfiled on a brownfields clean-up. However, it is the perceived threat of a Federal EPA overfiling that has hampered brownfields redevelopment. Furthermore, while I have full faith that Administrator Whitman's EPA will do everything possible to encourage brownfields redevelopment, I have serious concerns about legislating for a particular administration. There are no assurances that every future Administrator will have the same mind set. Therefore, I would like to work with the committee on these two portions of the finality provision to provide the peace of mind so many parties seek before they will enter brownfields redevelopment projects.

(3) Finally, I would like to work with the members of the committee and the Administration to place a cap on administrative costs of the Federal EPA. A cost cap would ensure the States and parties, seeking to redevelop brownfields, are getting the significant majority of the funds for their brownfields programs and clean-ups.

Again, there are other areas of concern. But I have outlined three issues, which would make a real difference in our nation's ability to address brownfields and could be addressed in a bipartisan manner.

I look forward to hearing from Administrator Whitman, Robert Fox a true expert on brownfields redevelopment, and the other witnesses on this very important issue. I also look forward to working with committee members on both sides of the aisle to craft meaningful brownfields and other Superfund-related legislation.

Senator CHAFEE. Thank you, Senator Inhofe.

Senator CARPER.

**OPENING STATEMENT OF HON. THOMAS R. CARPER,  
U.S. SENATOR FROM THE STATE OF DELAWARE**

Senator CARPER. Thank you very much, Mr. Chairman. To my colleagues, good morning.

Governor, good morning. A year ago, we were in Washington together just wrapping up a National Governors' Association meeting. You have been in your new job for almost a month. How are you doing?

Administrator WHITMAN. I am surviving. Still here.

Senator CARPER. Good. I caught a train to come down this morning, as I often do, and as the train pulled out of the Wilmington train station heading South, I looked out my left window, as I often do, at an area where during World War II 10,000 people worked to build the ships that helped win World War II. They built destroyer escorts, troop landing ships, all kinds of ships, hundreds of them. The day the war ended we had 10,000 people working there and a few years later we had almost nobody working there. That area went to seed and for almost 45, 50 years decayed. Little was done with it. It looked awful. It ran right along the Christina River, a potentially lovely area. But nothing much happened to it.

Several years ago our State legislature passed and I signed brownfields legislation which we used to go in there and to turn just a waste dump into a place that is lovely. We have parks there, we have museums there, restaurants there, the winningest minor league baseball team in America plays baseball there, we have a shipyard, shops, home of tax free shopping in Delaware, and it has turned into quite a lovely river front redevelopment. We stole some ideas from Rhode Island, the folks over in Providence, Mr. Chairman, and some others that are represented here that I think will actually be testifying later.

But the long and short of it is we do not have much land in Delaware. We have a lot more than Rhode Island.

[Laughter.]

Senator CHAFEE. Not a lot more.

[Laughter.]

Senator CARPER. A little more. But what we do have we have to use pretty carefully and judiciously. So by going back and taking some areas like the area along the Christina River and turning it into something useful and beautiful, we reclaim that land. And, frankly, it is farmland and other land where we are now growing soybeans and corn and other natural life that can carry on just as it is and continue to be lovely and beautiful and unspoiled.

I want to thank both Senator Chafee and Senator Boxer and others who have been working on this for a while. I was not around here last year to be involved in this. But I am happy to be able to play a little part now and to be a cosponsor of this legislation.

Our friend George Voinovich, who chaired the NGA when I was vice chairman, Senator Voinovich has offered legislation I think in the last session, I do not know if he has done it this time, that has some pretty good ideas in it. My hope is that, as we come down toward the home stretch in a couple of months, we can find some elements of his bill to incorporate into elements of this bill which many of us have cosponsored. I particularly want to point to the provisions in the Voinovich bill in the last session which addressed

finality. That is, the notion that when somebody comes in and takes over a piece of land that is not being used, in fact, it has been misused, that if they were willing to do that, in the end they would be given some flexibility to clean it up, States and local governments are given some flexibility to help that clean up. But in the end, there actually is a conclusion and that the finality of the State's certification of brownfield clean-up actually means something, and its prohibition of a site being included on the National Priority List without the concurrence of the Governor of the State where the site is located means something as well.

That having been said, Mr. Chairman, I want to ask that my entire statement be entered into the record as is. I thank you all for this opportunity. And again, Governor, welcome. It is great to see you. Thank you, Mr. Chairman.

[The prepared statement of Senator Carper follows:]

STATEMENT OF HON. THOMAS R. CARPER, U.S. SENATOR FROM THE STATE OF  
DELAWARE

I thank the chair for the opportunity, and I would like to welcome Governor Whitman this morning, and the other distinguished witnesses. I look forward to hearing your thoughts about the brownfields legislation before us.

This morning, as I do every morning, I rode on Amtrak from my home in Wilmington Delaware to Washington DC. I know, Governor Whitman, that you have passed through Wilmington on the train a few times, and that probably many of you here have done the same. Each time I ride the train, I look out the window as it pulls away and take a few minutes to marvel at the Wilmington Riverfront. Ten years ago, the view was significantly different.

As Delaware's Governor, I signed legislation aimed at revitalizing industrial brownfields. My administration worked closely with the Riverfront Development Corporation in Wilmington. They received \$55 million to acquire, investigate, and redevelop sites, and partially as a result of their effort, 92 contaminated sites have been cleaned up and determined to no longer pose environmental threats to Delaware. We have drawn new investment to the city's waterfront, and we recently opened a new riverwalk connecting the train station to our baseball stadium. Shops, and restaurants are opening in a region some thought of as the worst in the city. Once a prime example of post-industrial urban blight, Wilmington's new waterfront has become a catalyst for 21st century urban renewal.

The benefits to Delaware from cleaning up and revitalizing brownfield sites are numerous, more than 500 jobs and 50 business created, increased tax revenues, 266 apartments for University of Delaware students, 3 new school sites, and several parks and recreational areas.

I am excited to be a co-sponsor of the bill introduced by Senators Chafee and Boxer, and I think it is a good start. As I rookie on this committee, I enter this debate a little late and I was not around last year while much of the work to develop this language went on, but I commend those who were at the table for their efforts. I would like to make a couple of points.

First, I support efforts to clean up and re-use brownfields and the discussion this bill generates will help us along. Second, I fully support the provisions that release prospective purchasers from liability for clean-up, and authorize funds for State and local brownfield clean-up programs. Let me also say that I am encouraged to see that the bill provides authority to States and local governments to conduct voluntary clean-up programs and authorizes funds needed to do so. This should not be an unfunded mandate. As a former Governor, I want to make certain that as we move to strengthen the brownfields program, States and local governments are given the authority and flexibility to conduct effective brownfield programs. States and local governments must be able to assure property owners and prospective purchasers that they will not be held liable for mistakes that were not their fault, and encourage them to reuse these sites which are often in very desirable locations close to critical existing infrastructure. Each brownfield acre we can use downtown can prevent an acre of farmland from being developed.

Mr Chairman, there are two guiding philosophies, born of my 8 years as a Governor, that will guide me in my service to this committee and to the Senate. First, I believe the Federal Government should recognize the ability of State and local gov-

ernments to make good, sound decisions and hold them accountable. We should not forget in Washington, DC, that the citizens and officials of States like Delaware, or California, or Rhode Island, live with the consequences of their decisions. We should help them to make good decisions for themselves before we make decisions for them.

Second rather than just dictating strict Federal standards, the Federal Government should whenever possible strive to provide States the flexibility and support to meet those standards. In Delaware, I saw time and time again that when people were shown why a change or program was needed and given the flexibility to develop the mechanism to achieve that change, they developed effective programs—often using less time and less expense than if they had been forced to follow a government recipe. There are times flexibility is not appropriate, but in many cases, it may be the right thing to do.

When I was vice-chairman of the National Governors' Association, our chair was my friend from Ohio, Governor Voinovich, who sits on this committee. Last year he introduced S. 2590, a bill that is similar in many ways to S. 350 and yet also incorporates elements that vest more responsibility and flexibility with State and local governments. As we move forward on this bill, I am interested in working with my friend from Ohio and with the chair and ranking member to see if we can incorporate some of the provisions of S. 2590 without upsetting the careful balance of support that S. 350 enjoys.

I know that the NGA has expressed support for some elements of Senator Chafee's bill, while also commending some of the provisions in Senator Voinovich's bill as well. In particular, they support its stronger language on the finality of a State's certification of a brownfield clean-up, and its prohibition of a site being included on the National Priority list without the concurrence of the Governor of the State where the site is located. As I said, I think that S. 350 is a good start, and I support its introduction. However, I think that just might be a few things we can do to make it even stronger, perhaps including a few of the provisions of the gentleman from Ohio. I haven't made up my mind however, and I look forward to today's discussion and will take it into consideration.

Thank you Mr. Chairman.

Administrator WHITMAN. Thank you. Good to see you, as always.

Senator CHAFEE. Thank you, Senator Carper.

Senator CLINTON.

**OPENING STATEMENT OF HON. HILLARY RODHAM CLINTON,  
U.S. SENATOR FROM THE STATE OF NEW YORK**

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

Welcome, indeed, I guess it is Madam Administrator still. Hopefully, Secretary some day.

Administrator WHITMAN. Whatever. Once a Governor, always a Governor.

Senator CLINTON. Yes, once a Governor, always a Governor. I join in welcoming you here today.

I, too, am pleased to be an original cosponsor of S. 350, the Brownfield Revitalization and Environmental Restoration Act of 2001. This legislation enjoyed broad bipartisan support of a majority of the Senate in the last Congress as well as the support of a diversity of State and local government organizations, business interests, and environmental advocacy groups. I think that the support is in large measure due both to the bipartisan efforts of this committee's leadership, which I very much appreciate, and to the carefully crafted legislation which was produced. I also would like to pay tribute to Senator Corzine's former colleague, Senator Lautenberg, who was extremely dedicated to the issue of brownfields revitalization.

Senator Carper and Senator Corzine and Governor Whitman and I all come from a position of seeing a lot of brownfields in the States that we represent. It is an issue that is of grave concern to many of my constituents because we have the effects of all the in-

dustrialization that Senator Carper referred to that really helped build America, that made us the great industrial economy and now turning into the information economy that we are. We cannot just walk away from that past and expect that we will be able to reap future economic benefits and protect our environment. That is why brownfields revitalization makes such good sense, both good economic sense and good environmental sense.

This bill strikes a delicate balance. I understand that compromises and tradeoffs are important in any piece of legislation but probably no more than when we are trying to balance our economic and our environmental needs. But, clearly, if we get about the business of cleaning up these brownfields, then businesses and developers will be able to use existing infrastructure, thereby reducing sprawl and preserving green space. I remember being in Utica about a year ago, which is a community in upstate New York which has a great industrial history but has experienced, as many of these similar communities have over time, the loss of a lot of jobs and population. But what struck me is that in downtown Utica there were all these old mill buildings and factory buildings that were already tied in with existing utilities that could be, with appropriate development and remediation, immediately available for developers. I spoke with a local developer who said that it is so expensive, they need the help to try to clean these brownfields up and make them available for development, and as an alternative they just keep moving further and further out into the country and buying up more and more open space, more and more farmers being bought out. And so there is an important way that we can redevelop a lot of our existing cities while we also clean up the brownfields.

We have seen the benefits of this throughout New York, from Buffalo to Glen Cove and many places in between. To date, over 20 communities across the State have received assistance through the EPA's existing brownfields program. It is my hope that there will be many, many more when we finish this legislation. I think that former Administrator Carol Browner had the foresight to establish the existing Federal brownfields program, and we have seen the results which have literally leveraged billions of dollars in economic benefits.

So I hope that, as we consider this legislation, we understand that there is no perfect piece of legislation, but we cannot let the perfect be the enemy of the good. We have to work hard to create an opportunity for us to pass this, to get it implemented under your leadership, and get about the business of not only cleaning up the brownfields, but revitalizing the land so that it can be used for further economic benefits.

Senator CHAFEE. It is now my pleasure to introduce our first witness. Governor Whitman, welcome.

Administrator WHITMAN. Thank you, Mr. Chairman.

Senator CHAFEE. Your first hearing on the Hill since your confirmation.

Administrator WHITMAN. It is. It is very appropriate that I should be here for my first hearing, first testimony as Administrator of the United States Environmental Protection Agency.

**STATEMENT OF HON. CHRISTINE TODD WHITMAN, ADMINISTRATOR, U.S. ENVIRONMENTAL PROTECTION AGENCY**

Administrator WHITMAN. I am delighted to be here with you, Mr. Chairman, the members of the subcommittee, all the faces that I have seen before and with whom I look forward to working as we move forward, and especially be here to testify on something that is of such importance to you, to this Administration, to the Environmental Protection Agency, and, frankly, I believe to the country, which is brownfields redevelopment.

I commend the subcommittee chair, I commend Senator Boxer, and of course Chairman Smith and Senator Reid for their leadership in introducing S. 350 the Brownfields Revitalization and Environmental Restoration Act of 2001. I am pleased to report that the Administration supports S. 350. As we continue a more thorough review of the legislation as you go through the process, we would appreciate the opportunity, obviously, to offer refinements that would be consistent with the President's principles and budget. And I look forward to working with all the members of this committee to see an early introduction of this legislation and see it move to the Senate floor as quickly as possible.

Brownfields clean-up is, as has been alluded to by so many of the Senators here, an important redevelopment tool. It provides an alternative to the development of greenfields and open space farmland that is so easy to develop because it tends to be flat and well-drained. The Administration believes that brownfield legislation is important enough to be considered independently from other statutory reform efforts, such as Superfund. I know that there are members in this committee who are very dedicated and interested in seeing Superfund reform and I am committed to working with them, but I would urge that Superfund reform issues not hold up the passage of S. 350.

As you may know, President Bush is committed to strengthening State and local brownfields programs based on the following principles, which I will reiterate, that he spoke of during the course of last fall's campaign:

Brownfields legislation should remove a significant hurdle to brownfields clean-up by providing redevelopers with protection from Federal Superfund liability;

Brownfields legislation should ensure that States have the authority and the resources to run their own brownfields programs while ensuring that the clean-ups are protective of human health and the environment;

Brownfields legislation should direct EPA to work with States to ensure that they employ high, yet flexible clean-up standards, and allow EPA to step in to enforce those standards where that is necessary;

Brownfields legislation should streamline and expedite the process by which grants are given to States, and in turn to local communities, so that they have maximum flexibility to use those funds according to their particular needs;

The Federal Government should focus additional research and development efforts on new clean-up technologies and techniques to clean up brownfields; and

While not under the jurisdiction of this committee, I recognize, the brownfields tax incentive should be made permanent. And this Administration will support legislation to achieve that goal.

The States and the United States Environmental Protection Agency have been at the forefront of encouraging the clean-up and economic redevelopment of brownfields. EPA has awarded more than 360 assessment pilots of up to \$200,000 each to States, Tribes, and local governments to assist them with brownfields redevelopment. Grantees report that EPA assistance has helped leverage more than \$2.8 billion in economic development and generated more than 10,000 jobs. In addition, EPA has awarded \$32 million for Targeted Brownfields Assessments at more than 550 properties and has promoted local job training by awarding 37 Job Training and Development Grants.

However, much needs to be done to really maximize the potential that we have and to facilitate the rapid, high quality assessment, clean-up, and sustainable economic development in communities across this Nation. With your help, the Administration is committed to providing the tools that communities need to address the problems posed by brownfields. It is the commitment to encourage redevelopment while fully protecting human health and the environment.

S. 350 is a major step forward in encouraging the clean-up and development of a full range of contaminated brownfield properties. S. 350 authorizes grant and loan programs to identify, and assess, and clean up brownfields properties, and provides more flexibility in implementing those grants and programs.

In addition, S. 350 clarifies Superfund liability for contiguous property owners, prospective purchasers, and innocent landowners. These provisions have achieved broad bipartisan support in the Congress, and they represent an excellent way of encouraging brownfields redevelopment. S. 350 also preserves the Federal safety net that ensures that the clean-ups will fully protect the environment and public health.

This legislation also relieves the current program of unnecessary regulatory procedures for the Brownfields Cleanup Revolving Loan Fund, and clears the path for expedited funding of clean-up of contaminated properties by providing grants to State and local governments. In addition, this legislation provides needed grant funding to the States, local communities, Tribes, to support assessment, clean-up, and oversight of brownfield properties. The legislation provides flexible authority to fund State programs in ways that will enhance the already impressive efforts that have been undertaken by fully 47 States across this Nation. States with emerging programs like Nevada and Wyoming will gain valuable support in their use of creative approaches in encouraging protective assessment, clean-up, and redevelopment of property. States with established brownfields redevelopment programs, such as Pennsylvania, Rhode Island, Ohio, and New Jersey, will benefit from provisions that will enhance successful brownfields redevelopment work.

S. 350 also supports funding for technical assistance, training, and technology to encourage the best methods and approaches to cleaning up brownfields. New tools that improve the ability to con-

duct protective and safe clean-ups while reducing cost can speed up the redevelopment of brownfields across the Nation.

Whether States and localities receive Environmental Protection Agency grants for assessment and clean-up, Housing and Urban Development grants for redevelopment, Economic Development Administration grants, Department of Energy research support, or whether redevelopment is encouraged by the Federal brownfields tax incentive, this Administration is committed to providing the tools necessary to address the problems of derelict brownfield properties.

Thank you for this opportunity to appear before you this morning and to describe the President's support for brownfields legislation. I look forward to working with all of you as you try to achieve swift passage of this legislation.

Mr. Chairman, I would be happy to answer any questions if there are any. The eternal hope, of course, is that there will be none.

[Laughter.]

Senator CHAFEE. A few softballs I'm sure.

Thank you very much for your testimony and for your support of the legislation and also for the so-called safety net to ensure that the clean-ups do fully protect the environment and public health. I think that is one of the tensions that we will encounter as we discuss finality. I do not have any questions, but thank you for your testimony.

Chairman Smith, questions?

Senator SMITH. Thank you, Mr. Chairman. Just briefly, to respond to both of my friends from Oklahoma and Idaho, I agree with what both of you have said regarding the Federal Government look-back provisions, but it is my hope that we will get to a situation where the opportunity for the Federal Government look-back provisions will be irrelevant, that we are going to do the job in such a way that we can look at the technology we have, the interest now in getting onto these brown sites—it is important to remember that current law says that “whenever there is a release or threatened release”—“whenever”—and this is what we are changing. We are now changing it to say that new information has to emerge after that clean-up results in the site presenting a threat; second, that contamination has to have mitigated, moved across a State line; third, the action must come at the request of the State, the State is asking for help; and finally, to quote the legislation, “the release or threatened release may present an imminent and substantial endangerment to public health, welfare, or the environment, and after taking into consideration response activities already taken, additional response actions are likely to be necessary to address, prevent, limit, or mitigate the release or threatened release.”

So I am hopeful that we are going to get, the phrase has been used before, I will use it again, a new paradigm, if you will, a situation where command and control can be a stick perhaps held back that we never have to use. I know for a fact that President Bush and I think you as well, Administrator Whitman, would be supportive of stronger language. But I really say to you I appreciate very much your willingness to at least move forward to this and endorse this because I believe we will get there anyway. I think that this



bill will move us to exactly where we want to be. I commend you for your leadership on that. If we had the votes to move to where we could take away the look-back, I would be supportive because I do not think we will ever need it. But if we do not, then I think to not move holds up legislation, does not allow the technology that we have and the interest that we have to get on these sites to clean them up.

I know that coming in you could have very easily taken a different approach. You could have said, look, we are going to argue to have stronger language, we will put our own stamp on it. You did not do that. I think that is great leadership on your part and I want you to know that I appreciate both you and the President.

One basic question. In terms of the funding, I think the bill provides for about \$200 million as I recall, \$150 million and \$50 million, can we reasonably expect that those kinds of dollars are going to go into the program as prescribed in the legislation?

Administrator WHITMAN. With the appropriate appropriations, as we work through the legislation. That would be certainly the goal. And as someone who looks at it from both the perspective of my responsibilities as Administrator of the Environmental Protection Agency and a former Governor, I can tell you that the bump up from \$15 to \$50 million for the States is significant for those that have made a commitment and those that are just trying to develop their programs.

And if I may on the points you were making before, again to set aside my hat as Administrator and to speak as a former Governor, we always like to get out from under the Federal Government and like to have an understanding of finality. But I can also tell you as a Governor of a State that has done a great deal with brownfields—in fact, my second inaugural swearing-in was held in a wonderful facility in Newark called the Newark Performing Arts Center that was built on a brownfields site and is doing an enormous amount to reclaim and help revitalize that city—that it is with the assurances that are in this bill, the clarification of what it takes to clean up and to get an approved plan, that the standards are high enough that I would feel comfortable even being here as a Governor to say I would like to see the legislation move forward so that I can do more than what we are already doing, because we are very active in the State of New Jersey on this issue, and that I would be comfortable.

Your language, as you quoted it, a threat that really requires further remediation, it would require site-by-site analysis, it would come from the State saying we need additional help, that this is a time when you want that stick to be waived a little bit in order to get people to do the right thing on these brownfield sites, that that is good protection. That is not to say that we would not work on other language with you. Obviously, we will do whatever we need to do to see this done. But I will tell you that, from a perspective of a former Governor, this is an extraordinarily important tool that we could have to make an enormous difference. And as was pointed out, this is not just a problem of urbanized industrial areas, although we tend to have an inordinate amount of these sites, but brownfield sites occur across the Nation in a host of dif-

ferent communities. This kind of ability to move forward in addressing them can really be of enormous benefit.

Senator CHAFEE. Thank you, Senator Boxer.

Senator BOXER. Thank you, Mr. Chairman.

Let me just cut to the chase here. We all know the sticking point, Administrator, you have stated it well I think. We do not have any secrets here about the sticking point of the bill. I just want to make a couple of points here. I think it is crucial to have a Federal safety net, if you will, for those cases where perhaps the clean-up was not done correctly. For whatever reason we do not know, a State could run into problems, they could have people, just as we may have people sometimes, who do not really know exactly the right way to proceed. It seems to me as a check and balance over the money we are expending, we ought to make sure that this is done right. Wouldn't it be terrible for us to say to our taxpayers we gave this grant to State X and they did not know what they were doing, the site was not cleaned up, it cannot be reused, and we wasted all that money.

I also would point out that never in the history of this program, as I understand it, Administrator, please correct me if you think I am misstating this, I have never heard of a case where a brownfield site was fixed, if you will, by the EPA; in other words, they came in without the State asking them to come in. I have never heard of a site in which the big hand of the Federal Government, as Senator Crapo has said, has come upon a site where the Governor or the State has not asked. Do you have any information to the contrary?

Administrator WHITMAN. No.

Senator BOXER. And I think that is important too. Why do we have to legislate against a strawman just because somebody likes to make the point about the big hand of the Federal Government? We have not had, we have not seen the big hand. What we have seen is a helping hand in this program. Now I am not saying that in other cases you could point to a big hand that is not the best hand. But in this particular program, why set up this issue when we have never really had the problem? I just want to state the point again what a delicate balance we do have here. If we start moving away from the safety net a lot of people are going to jump off this bill. I hope that is not our intent to kill this bill because this is something we can do.

I want to say to Senator Crapo, because it is important that he has lifted a hold and he is trying to work with us, I do appreciate it. But I really do feel in this case it is kind of a made up problem that just has not been in evidence.

I do not have any questions for you, Administrator. I really appreciate your strong support.

Senator CHAFEE. Thank you, Senator Boxer.

Senator CRAPO.

Senator CRAPO. Thank you very much. I would first like to make a brief statement in response to Senator Boxer, because I think from what I have heard here today that either one of us is misreading the bill, or we have an agreement. None of us on this side of the issue believe we should take away the safety net. And

if the language said that the Governor had to request the support of the EPA, I would be willing to sign off on that right now.

Senator BOXER. No, it does not. You are right.

Senator CRAPO. The point is that, as I read the bill, it does provide that one of the occasions on which we could move forward is if the State requests it. That is not the only occasion. It also provides in the legislation that there are a number of other opportunities which the EPA has to simply override what the State has done and step in.

The question is not whether there should be no safety net. We are very willing to have a safety net in place. If we want something where a State can request help, if we want something where the EPA can say the State has not done the job and the EPA provides that the State is either unwilling or unable to do the job, or, as the chairman has said, new evidence has come forward or new facts have shown that something else needs to be done, all of those circumstances are fine. It is simply the new look back with the Federal Government being able to step in and say we do not like what the State has done and so we are going to do it again. That is the issue here.

I actually found a lot of hope in the fact that Senator Carper suggested that maybe the language out of Senator Voinovich's bill would be acceptable. Senator Voinovich in his legislation has proposed a section on State finality which is very acceptable. It basically provides, as I have said, that if the State asks for help, the EPA can come in; if new evidence comes forward, the EPA can come in; if the EPA can establish, it does not even have to establish, it has to simply make a finding that the State is unwilling or unable to do the job, the EPA can come in. So perhaps what we need to do is simply agree among ourselves that there does need to be a safety net, but it needs to truly be a safety net instead of a second bite at the apple by a Federal regulator.

Administrator, I would just ask your opinion as to whether that type of a safety net would be acceptable and supportable by you?

Administrator WHITMAN. Senator, as you point out, the request by the Governor is just one of the ways in which the safety net would be activated. If the new information shows that the clean-up is no longer protecting human health or the environment—that is why everyone here agrees with the need for there to be a safety net—it is my understanding and interpretation of the bill that the ability of the EPA, certainly the desire of the EPA any time that I am here and this President, will be that it come only if there is clear and compelling evidence that the clean-up is no longer meeting human health standards and protecting human health and the environment. The object here is to work in as collegial a way as possible to allow for there to be some finality so that there is assurance for clean-up to go forward. I think there are provisions in the bill that are excellent that do that, that really do move us forward—the prospective purchaser, the innocent party provisions, others in the bill that really move the process forward.

I would just say again that while of course we stand willing to work with the committee on any changes that they may deem necessary in this instance, my overriding desire is to see some form of brownfields legislation passed. I did ask staff, believe me, as a

former Governor, when I saw the language in the bill about whether it meant we could come in at any time just on a whim. In fact, I am assured that it would require clear and compelling evidence of something that warrants further remediation; that the clean-up is not doing the job that it was supposed to do. It would be a site-by-site review, which is something that you do not enter into lightly. It would not be just a broad-based “we do not think State X or Y is going to be able to do this job or is not doing this job well.” It would have to be on a site-by-site basis; and that those provisions, in fact, do provide some protection to the States and assurances to the redevelopers.

Having said that, I stand ready to work with the committee, as I indicated, on any fine tuning or changes you want to make, but I do urge that we not allow anything to stop the progress that is being made here on what is a very delicate and sensitive issue. This is something that goes to the heart of my philosophy about the relationship between the States and the Federal Government. Certainly, I share the emphasis on federalism of this Administration. Having said that, I know that this is an area where States are really looking for help and would like to have the tools.

Senator CRAPO. Thank you. I want to assure you that the concerns that some of us have do not relate specifically to our concern about how you may run the EPA or how this Administration may run the EPA.

Administrator WHITMAN. I recognize that.

Senator CRAPO. We have had experiences in the past that have caused us to recognize that the EPA can take very aggressive actions that the States do not agree with. In fact, I suspect that most Governors, if they were here, would willingly acknowledge that. This legislation is going to extend far beyond this Administration.

I guess one of the questions I have is—you are right, the core here is a dispute over basic philosophy of how our environmental laws should operate in the country. And it seems to me that the debate is somehow being characterized as to whether we should have a safety net at all, or whether we should simply let the States do whatever they choose without any Federal oversight. In my opinion, that is not the debate. As I have just said here, I am very willing to work to put a true safety net in place, a safety net that says that the States can call for help, the EPA can come in if the State is unwilling or unable to do the job, the EPA can come in if new evidence comes forward which the States cannot deal with or findings to that effect are made.

Hopefully, we will be able to find some common ground here. I would not want anybody on the other side to think that we are saying that the States should simply have the ability to thumb their nose at the EPA. The question here is whether the EPA has its ability to thumb its nose at the States. Hopefully, we will be able to find some common ground. Again I say I was very heartened to hear Senator Carper indicate that maybe he has found that common ground in Senator Voinovich's bill. Something like that which really does put a true safety net in place but requires the EPA, if it cannot make some of those findings, to acknowledge the role of the States in this process is what we are hoping to find. Thank you.

Senator CHAFEE. Thank you, Senator Crapo. The language in this bill is "imminent and substantial endangerment and needs further action." So we have tried to be as careful as we could with the language and that safety net.

Senator CRAPO. Our experience with that language has not been good so far.

Senator CHAFEE. Senator Corzine.

Senator CORZINE. First of all, let me commend the Governor for the Administration's and your support for this legislation. I think it is terrific. I think you know from your own experiences in New Jersey that the partnership between the States and the Federal Government in moving forward in these areas is a terrific, positive element for our communities. I have a little trouble listening to some of the language that I heard Chairman Smith read and not understand how that does not provide some fairness and balance of the Federal and State relations and so on. At least from one person's point of view, I am comfortable with that. I do hope that that does not stand in the way.

I am mostly worried about another question the chairman talked about, and that is will this receive the budget priorities that allow this to move forward. I think the need is extraordinary across the country, not just in our urban communities but, as we have heard here today, in various other areas. I hope that you will call upon us to work as hard as we can to make sure that that priority is in place, and I would encourage you and hope you will also fight within the priority process that goes on in the budget elements to have this at the top of the list.

Senator CHAFEE. Senator Clinton.

Senator CLINTON. I think the colloquy among some of the committee members about the Federal and State roles is very important. But one thing that is pointed out in the bill is that it does not require up front approval of State programs. What that means to me is that there is a great deal of flexibility to the States to design their programs, to utilize the technology that they choose, to license the clean-up crews as they choose, but that it would be I think irresponsible for the Federal Government not to preserve a strong Federal safety net, one that is fair but effective when needed, because I have seen a great deal of disparity among States in their capacity to analyze and clean up brownfields and other kinds of environmental issues. Very often they turn to the Federal Government in great need but after they have perhaps done some things that cost money and were not the most efficient process. So I think that we are trying to strike a balance here that does certainly give flexibility to the States but with a strong Federal fall-back.

Now one of the things I am concerned about, one of the many things I am concerned about are riders. I was pleased to hear in your testimony, Governor, that you want to see this legislation moved to the floor as soon as possible and that the Superfund reform issue should not hold up passage of S. 350. I wholeheartedly agree with that. But I also hope that we can avoid the efforts to attach extraneous and controversial provisions known as riders to the bill when it comes to the floor. I would appreciate your assistance and that of the Administration's in supporting our efforts to

move this forward once there is an agreement and this committee has done its work. I would hope that we could have that help.

Clearly, one of the great problems that we have faced on environmental legislation over the last several years are not only riders, but midnight riders. We are going to have to be watching very carefully to make sure that there are no noontime, midday, midnight, or early morning riders. I know that it is sort of a game of "gotcha" in some respects, but there are many of us who will be extremely vigilant and concerned about environmental riders because the work of a committee in conjunction with an Administration that is supportive should not be undone or perverted by these riders. And I would look for your assistance in trying to ensure that does not happen.

I am also concerned about the brownfields tax incentive being made permanent. Although that is not part of this committee's jurisdiction, many of us are concerned about it. I assume that will be in the President's budget?

Administrator WHITMAN. I cannot tell you all of the particulars of the President's budget. We will all hear that tonight. We will know in April when it is formally presented.

Senator CLINTON. We will hope that if there is going to be a commitment to it that it will be backed up by actual budgetary action.

I am also concerned about the continuing health problems that are associated with some of our toxic sites or potential or assumed toxic sites. For example, there is a school in Elmira, New York, a high school where the student body is experiencing a high incidence of cancer. The school was built on a former industrial site. It is uncertain that the site was ever adequately assessed prior to the school's construction. But recent environmental studies have shown that the soil and the groundwater are contaminated with a variety of pollutants. We have just had a similar situation occur here in the District of Columbia with the discovery of arsenic contamination at a child day care center that goes back I think all the way to weapons manufacturing in World War I. These health concerns are one of the reasons why we have to have a close Federal-State cooperative relationship, because, again, many of the resources and the expertise about health issues are much more likely to be found in the Federal Government with the resources that are available.

So I would again appreciate your assistance in making sure that health issues are dealt with in an appropriate manner. I would like to invite you to have a staff person accompany me to that school in Elmira and to try to find out what we could do about what is going on in that community because it is a very serious problem.

Finally, I would like to highlight the fact that in this legislation there is something drawn directly from your New Jersey experience; and that is a program for private citizens to conduct voluntary cleans. S. 350 provides the flexibility for awarding grants to nonprofits to conduct such clean-ups. Could you comment on this aspect of the legislation, tell us a little bit about how it worked in New Jersey and what we might look for with respect to not-for-profit environmental cleans and how that fits into the State system.

Administrator WHITMAN. What we did and the attitude that we took was that all the help we can get in cleaning up brownfield sites would be much appreciated, that the State had neither the resources nor the ability to do it all. It provided that those clean-up plans met the State's criteria. In this legislation, it requires also that step back, recognizing a great deal of flexibility for the States. How the States choose to approach the issue of brownfields clean-up is, again, allowed here, the flexibility is allowed here for them. If they choose with a level of comfort to contract with nonprofits or others to provide the clean-up, that that can happen.

What is so attractive and appealing about this bill is the amount of flexibility that is contained here for the States, recognizing that the problems vary within States themselves, not just amongst States. The types of communities impacted vary within States themselves, not just amongst States. This maximum flexibility that we find in the legislation is such that, from a State's perspective, it provides the real opportunity to get things done, and from the Federal Government's perspective and EPA's responsibility to ensure health and safety, it also allows us that opportunity to contract with States, to work with States at the front end to ensure that the standards are what we all agree upon and then allow them the flexibility to actually make a difference in their respective communities. That is what is so important.

And if I may, Senator, I was informed that I am allowed to say that in the President's tax proposal you will hear his commitment to a continuation of that tax incentive.

Senator CLINTON. Thank you.

Senator CHAFEE. Thank you, Governor.

Senator CARPER.

Senator CARPER. Thanks very much. When I was out of the room for a moment I understand Senator Crapo alluded to some comments that I made. I think our chairman and ranking member of the subcommittee have worked real hard to try to come up with a careful balance here and I sure hope we can keep it. I am interested, as I said earlier, in working with you and Senator Voinovich and others to focus particularly on the finality issue. But I realize that this is a tricky one and we have got to just keep that in mind as we come to it.

Let me come back, Governor Whitman, to the issue of finality. I am going to ask you if you can help me with some specifics. If you can, I would appreciate it. What specifically would EPA need to receive in order to reopen a brownfield site with respect to litigation, the sites that had previously been certified by both the State and by EPA?

Administrator WHITMAN. Well, it would be a clear indication that the clean-up at the site is no longer protective of human health and the environment, that it warranted further remediation. The chairman can give me the specific language again, I do not have it in front of me, but it is fairly specific, shall we say, as to what would be required to have EPA come in. It is an issue that, as I indicated to Senator Crapo, concerned me when I first saw it because, from the Governor's perspective, it appeared to be wide open. But on further examination of the language, it seems to me that there is a pretty high threshold here that would have to be met in order to

have the Environmental Protection Agency come in unrequested by the States. It would be something that would truly pose an imminent threat to health and provide an imminent threat to human health or the environment.

Senator CARPER. Thank you. That is helpful. The bill that we are discussing today, that we are holding this hearing on, does not require, as I recall, a Governor to concur with the EPA Administrator before a site could be listed on the Federal Superfund list. Let me just ask you as a former Governor and now as EPA Administrator, how do you feel about that provision?

Administrator WHITMAN. When we are talking Superfund sites, that is a whole different set of legislative criteria and programmatic criteria. That is not something that I would like to see hold up this legislation, as I indicated. We in New Jersey have more Superfund sites than any other State in the Nation; unfortunately, we have that distinction. We were at times trying to get sites off of Superfund into brownfield because we could clean them up and because Superfund was taking too long and was too difficult and too expensive and we did not see the kind of remediation that we felt was necessary.

But it is clear that there are times when the Federal Government has a role to play here and Superfund sites are at a very different level from the brownfield sites. That is an important thing to remember as you look at this legislation and look at the nexus between Superfund and brownfields. We are talking about a very different level of contamination and that is in and of itself very significant.

Senator CARPER. The last question I have, you said just a moment ago that New Jersey leads the Nation in Superfund sites.

Administrator WHITMAN. Unfortunately.

Senator CARPER. I have heard that any number of times. Does New Jersey also lead the Nation in Superfund sites that have been cleaned up, remediated?

Administrator WHITMAN. I think we are probably at the top. We have done a pretty good job. We have been working with our Federal partners. We may not be a No. 1, I cannot absolutely tell you that, but if not, we are right up there, we are No. 2.

Senator CARPER. All right. Thanks very much.

Senator CHAFEE. Thank you. Any further questions?

Senator CLINTON. Mr. Chairman, could I ask one followup question to something Senator Carper said with respect to the imminent threat to health?

Senator CHAFEE. Certainly.

Senator CLINTON. Just on a practical basis, if I go back to my Elmira school situation, and, again, we are not dealing in the realm of fact yet, we are just dealing in the realm of concern, would it be an imminent threat to health if it were thought that there were long term health damage that could occur under certain circumstances, or are we talking about something that is so imminent that it is literally causally provable and within a relative short period of time likely to happen?

Administrator WHITMAN. Again, that is something that we will probably be working out as the legislation is implemented. But my feeling is that it is in fact the latter, that we have to see imminent



threat to human health or the environment. It has to be something documented, not something that might potentially occur sometime in the future given a certain set of circumstances.

I think it is important to remember that the provision here in the legislation calls for very substantive recordkeeping. There is a requirement for full disclosure, thorough site assessment is part of the process that is required, and a conscientious remedial selection and approach. So it makes it highly likely that this reopener would not have to be used except in cases where there is really documented current threat.

Senator CLINTON. And if I may, just one last issue. What is it that would trigger the State's requirement under the flexibility that this legislation provides to deal with a brownfield? Because I am also conscious, as I think we all are, of the issue of environmental justice and the fact that very often those places in our communities that are most in need of remediation are often places where people do not have the kind of political power or voice in many State governments that would draw their attention. So is there any continuing role for the Federal Government to nudge, to persuade, to require the State to address any brownfield, or is it only on the State's initiative and then the Federal Government comes in on a safety net issue if the job is not well enough done?

Administrator WHITMAN. The legislation at the moment, and correct me, Mr. Chairman, if I am wrong, does not provide for the Federal Government to come in and do a site assessment of brownfields in an individual State in order to prioritize that State's addressing those sites. There is nothing in my understanding of the legislation that does that.

Having said that, the increase in dollars provided in this legislation, in bumping up, for instance, from \$15 to \$50 million the moneys available to the States for the work that they are doing in brownfields, is a powerful incentive. If a State is not addressing issues, if the State is not interested in trying to remediate brownfield sites, there is always that potential they will not receive dollars. And believe me, with budgets being what they are, States are always looking for additional dollars to help as they move forward on programs. So there is always that.

Senator BOXER. Would the Senator yield to me on her point?

Senator CLINTON. Yes.

Senator BOXER. There is I think something that might give you comfort here in terms of your particular problem. It says that the Administrator can come in "if the Administrator determines that information that on the earlier date on which clean-up was approved or completed was not known by the States." So, in other words, at some point in the future, if it is turning up that you can document these cancer cases, that would be enough for the Administrator, if it was clearly documented, to come in because the information was not known at the time the clean-up was being planned. So I think that should give you some comfort.

Administrator WHITMAN. Yes, after a site had been addressed by the State.

Senator BOXER. Yes.

Senator CLINTON. Thank you.

Senator CHAFEE. Senator Crapo?

Senator CRAPO. I would like to followup because I appreciated Senator Clinton's question and I think she is probably trying to get at the same objective that I would like to get at. A lot of it comes down to how do we interpret this imminent and substantial endangerment language.

As you may know, there is a Supreme Court case that just recently came out interpreting some similar language. It talked about an imminent and substantial, I can't get it exactly, threat as opposed to endangerment. In that case, the Court indicated that imminent meant it threatens to occur immediately. Would you agree that that would be part of it?

Administrator WHITMAN. That is my understanding, yes.

Senator CRAPO. And that we would not be talking about simply the presence of toxic waste, because if that is the case every brownfield site would qualify as an imminent threat. But the presence of that toxic waste would have to create an endangerment to human health or the environment immediately.

Administrator WHITMAN. Yes. That is my understanding of the legislation. That is the way I read that legislation.

Senator CRAPO. And in this case, they are using the word "threat." The word "threat" is not in this legislation, which I think may be helpful, because the Court went on to say that the threat must be present now but the impact of the threat may not occur until later. The statute that we are talking about says that there has to be an immediate danger, so that the EPA does not have time to let the State try to work it out. Would you agree with that interpretation?

Administrator WHITMAN. Yes. As a reopener, that is the intent of the legislation.

Senator CRAPO. I personally think that maybe we could clarify this, because it sounds to me like we are trying to achieve the same objective. I am not convinced that the statute, although we now have some congressional record on this, but I am not sure that the statute actually says that solidly enough. Perhaps we can simply say it a little differently or a little better to achieve what we are talking about, if the other members of the committee would agree that what we are trying to get at is a circumstance in which there is an immediate, meaning right away, and substantial endangerment that the EPA does not have time to let the State get involved and try to let the State fix it. Thank you.

Senator CHAFEE. Senator Corzine?

Senator CORZINE. If I might make a comment. I think we are talking about the same subject. I am not sure that everyone would want to interpret "imminent and substantial" in the same way, and that is probably your concern. But it is my concern as well that you have to have confirmed cases of cancer happening before the EPA could intervene. That does not sound like a very high standard at all to me and I would be concerned about that.

Senator CRAPO. My only concern is, Senator, to me, the presence of toxic waste at a brownfield site, which is what you have if you have a brownfield site, means that there is a threat or an endangerment to human health and the environment. And so, if there is something more than the existence of a brownfield site that we are trying to say gives the EPA the ability to come in,

what is that? And it is this immediate and imminent endangerment that I think is the concept.

So I am trying to figure out, so that I can get a comfort level with what we are saying here, what is that beyond the existence of the threat that is there by definition that then is the trigger which gives the EPA the ability to step in. And what we have seen in the past is that in any case the EPA can say there is toxic waste at this site, that is a threat to the human health and the environment, and therefore we can step in. So I am trying to figure out how we can make that trigger more definable.

Senator CLINTON. Mr. Chairman, this is I think——

Senator CHAFEE. We have several more panels.

Senator CLINTON. We do have several more panels. This is a very interesting issue because I think no one wants to put the health and well-being of any person at risk. The question is, as Senator Boxer pointed out, that the language is pretty clear if we have some underlying agreement about what it means. So I think that the committee will work through that.

But I would hope that we do not leave this discussion thinking that unless it is burning and running into the water supply and people are taking a glass of water out of the faucet in the kitchen and dropping dead on the kitchen floor that it is not an imminent and substantial endangerment. Obviously, there is some issue there. Also, I would hope that we would not say endangerment means that chronic asthma is not so bad because you are not dropping dead on the kitchen floor. I think there are some issues that we can discuss among ourselves and kind of work through so that we have a better idea of what the legislation would mean in practice both in the States and from the vantage point of the EPA.

Senator CHAFEE. Yes. And ultimately it is going to depend on the activism of the Environmental Protection Agency. I am sure Senator Crapo is concerned about, as the Administration changes and the Agency Director changes, the level of that activism and how we craft this legislation. But ultimately it comes back to a good moderate course by the Agency.

Senator CLINTON. Mr. Chairman, my alert staff just handed me an article which said the Supreme Court did uphold the way the Federal Government sets clean air standards. We do not want to set a different standard for the issue when it comes to brownfields. I think that when the Court upheld the Federal Clean Air Act and said that the Government does not have to consider the financial costs of reducing harmful emissions when it sets air quality standards, we need to make sure that we are not setting a different standard when it comes to brownfields. And I would say that has to go into the thinking as well.

Senator CRAPO. You are right, if you want to set up the extreme examples of endangerment, none of us want that to happen. It just seems to me that if we are trying to create a system in which the States are the ones who do the clean-up unless there is a problem, we have to define that circumstance. That is all I am trying to achieve here.

Senator CHAFEE. Thank you, Senator.

Thank you, Governor. Enjoy the rest of your day.

Administrator WHITMAN. Thank you very much. Let me just say that I do commend you on something that I know is very difficult. There are deeply felt and deeply held beliefs here, but this is an issue of extreme importance, and I look forward to working with you in any way that we can.

Senator CHAFEE. Likewise. Thank you.

Senator CHAFEE. At this time I would like to invite the second panel to the table. The second panel is here. Welcome. We have Mayor J. Christian Bollwage of Elizabeth, New Jersey, the great State of New Jersey, and he will testify on behalf of the United States Conference of Mayors; and we have Mayor Myrtle Walker of the great community of East Palo Alto, California, and she will present testimony on behalf of the National Association of Local Government Environmental Professionals; we have Dr. Phil O'Brien, Director of the great State of New Hampshire's Department of Environmental Services, Division of Waste Management, and he will offer the State perspective.

Because of the number of remaining witnesses, I would ask the witnesses to limit their remarks to 5 minutes and we will have one round of questions.

Mayor Bollwage, welcome back. It has been a year since you were here.

**STATEMENT OF HON. J. CHRISTIAN BOLLWAGE, MAYOR OF  
ELIZABETH, NEW JERSEY**

Mayor BOLLWAGE. Thank you very much. It is good to be back here and it is good to see you again, Senator Chafee. As you know, this is probably my fourth or fifth trip. Thank you for the opportunity to say a few words on behalf of the U.S. Conference of Mayors. It is also good to be with Senator Corzine, my Senator from New Jersey. Senator Smith, I have been before your committee as well. It is good to see you.

The U.S. Conference of Mayors is a national organization that represents more than 1,050 cities with a population of 30,000 or more. Mr. Chairman, just 2 weeks ago I was in your great State and was a keynote speaker at the Grow Smart Conference of Rhode Island. I was able to tour Providence and Cumberland and other cities to learn about the mill buildings and the debate that you are having in Rhode Island on how to rehabilitate those areas. It is an interesting question on balancing the historical context with the public health as well as creating economic development, jobs, and rateables for the State of Rhode Island. Two years ago I spoke in Cedar Rapids, Iowa, and toured areas there about brownfields and the ability to redevelop our Nation's land and recycle.

As you have heard from our former Governor Whitman, the support for S. 350 and to act on this legislation quickly is very important for the Conference of Mayors and for our Nation's mayors. Our President, Brent Coles from Boise, Idaho, has written to Chairman Smith and Senators Reid and Boxer to convey the Conference's strong support for this legislation.

This weekend, the Conference's top leaders met to review the top legislative priorities for the Congress, further emphasizing S. 350 as one of the top priorities for the Nation's mayors.

Mr. Chairman, I am not going to go into the survey that we have done for the U.S. Conference of Mayors. I have stated those findings here in the past and they are a part of the record. So in the interest of time, I would just reference those findings and previous letters and testimony here.

S. 350 takes the next step by putting in place Federal policy in line with local and State efforts to get these sights cleaned up and returned to productive use. I want to just emphasize a few key points. First, we have gone as far as we can as mayors with the ongoing administrative efforts by the U.S. Environmental Protection Agency. We are at the point where specific statutory changes are now needed to deal with the many liability concerns and constraints affecting the use of existing Federal resources.

Members of this committee and others have worked to secure resources for local brownfield efforts in advance of final legislative action by this committee and the Congress. I would like to thank and acknowledge the efforts of the previous Administration for their work on policy reforms and initiatives in support of our brownfield efforts, as well as this committee in moving forward here today.

I am pleased to note that many of the issues that we have previously raised in testimony before this committee are reflected in the provisions of S. 350. The pending proposal provides the opportunity for cities and other local governments to receive funding for their programs directly. It provides these resources for both assessments and clean-ups. S. 350 deals with many of the liability reforms that should stimulate increased private participation in cleaning up and redeveloping these sites. It also provides resources directly to States to strengthen existing State clean-up program efforts, making available resources to the States for these most important programs.

Mr. Chairman and members of the committee, the Nation's mayors believe that the time has come for bipartisan action on brownfields. We have waited a long time for final congressional action on brownfields legislation. We are extremely excited that S. 350 is scheduled for immediate action, supported by the Administrator in earlier testimony before this committee. This is a carefully crafted legislative package that provides a very strong foundation for an expanded commitment to recycling America's land. In moving forward with S. 350, Mr. Chairman, you can count on the strong and continuing support of the Nation's mayors.

On behalf of the U.S. Conference of Mayors, I would like to thank you for this opportunity to share the views of the Nation's mayors on this very important issue. And Mr. Chairman, unlike the past meeting when I had to run out for a political endorsement, if you remember that last year, I will be here for questions. I thank you for your indulgence.

Senator CHAFEE. We knew you left, we just did not know why. [Laughter.]

Mayor BOLLWAGE. It was a PBA endorsement, Senator. I could not miss that endorsement.

Senator CHAFEE. Mayor Walker.

**STATEMENT OF HON. MYRTLE WALKER, MAYOR OF EAST  
PALO ALTO, CALIFORNIA**

Mayor WALKER. Thank you. Mr. Chairman and distinguished members of the subcommittee, my name is Myrtle Walker and I am the Mayor of the City of East Palo Alto, California. I am pleased to be here today to testify on behalf of the National Association of Local Government Environmental Professionals, or NALGEP. I want to especially thank Senator Barbara Boxer for inviting me to be here today and for all of her support for our community. I also want to congratulate Senator Boxer on her new position of leadership on this subcommittee.

NALGEP represents more than 140 communities across America, including East Palo Alto and many other localities represented by the members of this committee. NALGEP has been actively working with local governments on brownfields issues for many years.

My written testimony provides details on a range of Federal incentives needed to promote brownfield revitalization in local communities across America. In my verbal testimony, I wish to send a straight forward message that local governments need Federal brownfields legislation, and S. 350 provides a valuable, positive approach that meets local needs.

The City of East Palo Alto, for example, is a small community of 25,000 people. We have not enjoyed the economic prosperity of our neighboring communities in Silicon Valley. We have the highest levels of unemployment and poverty and the lowest median income in San Mateo County. We have no bank, we have no grocery store. The City has struggled significantly to reduce its high crime rate. In addition, East Palo Alto has suffered the effects of toxic contamination, abandoned chemical factories, and other pollution that has turned much of our community into idle brownfields.

Nevertheless, the City is successfully moving forward to revitalize our community and its brownfields. Our focus is on the Ravenswood Industrial Area. Ravenswood includes about 130 acres in an area that historically has had mixed uses including agricultural, commercial, and industrial. The property is affected by a multitude of toxic substances, including arsenic, chromium, pesticides, herbicides, chlorinated solvents and petroleum contamination. For many years the private sector avoided this area because everyone suspected that the clean-up would top approximately \$30 million. However, through a site assessment performed by Environment Protection Agency funding, the City has determined that the site can be cleaned for a cost of \$2 to \$5 million. That is a substantial reduction, but it is still a major challenge for a city like mine.

The City seeks to redevelop the Ravenswood area into a mixed-use development and employment center, with over 2 million square feet of commercial and high-technology offices and light manufacturing. New, medium-density housing is also planned nearby. The City expects that redevelopment of the Ravenswood Industrial Area would create 4,000 new jobs and generate more than \$1 million per year in new tax revenues, which are sorely needed for a community like mine.

East Palo Alto is also proud to be one of the first brownfields Showcase Communities in the Nation, along with Providence, Rhode Island, and six other communities represented by members

of this subcommittee. The Showcase program is an example of Government at its best. A Federal, State, and local partnership that has brought together twenty-plus Federal agencies to revitalize the community from the ground up.

Under U.S. Environmental Protection Agency leadership, the Showcase Program has helped East Palo Alto obtain brownfields assessment and clean-up funding, staff assistance, economic development funding from HUD and the Economic Development Administration, technical assistance for flood control, and ecosystem restoration from the Corps of Engineers, and brownfield job training from the National Institute of Environmental Health Sciences. I can tell you without a doubt that East Palo Alto would not be moving forward on our brownfield goals without the partnership of the Federal Government.

That is why approaches like S. 350 are so important to us. S. 350 provides important tools that will help local communities revitalize their brownfields, including critical funding for localities for site assessment, clean-up grants and local clean-up loan funds, liability protections for innocent parties, and authority for the State brownfields programs to take the lead on brownfield clean-ups while preserving EPA's ability to provide a safety net for the public health and environment of exceptional circumstances. Together these provisions represent a strong approach that would go a long way toward meeting the needs of America's communities.

NALGEP wishes to raise two other important issues for local communities. First, Federal law should ensure that brownfields funding can be provided to localities to address brownfield impact by petroleum, by lead, and by asbestos in buildings. Under current law, these pollutants are excluded from Federal brownfield assistance. These contaminants are some of the most difficult problems facing local communities. Abandoned gas stations, housing with severe lead paint hazards, and buildings contaminated with asbestos blight communities across America.

One example can be seen in Kansas City, Missouri. A former YMCA building, a historic site where the Negro Baseball League was founded, is the target of a community effort to create the Negro Baseball League Archives. Kansas City has sought to obtain funding to deal with suspected contamination from asbestos, lead paint, and petroleum leaks from the heating oil tank, but they have been barred from using EPA assessment pilot funds because of the Superfund prohibition. Brownfield sites with these pollutants should be eligible for funding.

Second, I want to reemphasize the importance of bringing together all the Federal agencies that can play a role in local brownfields. Brownfields are not an EPA only issue. HUD, the Economic Development Administration, Department of Transportation, the Army Corps of Engineers, and other Federal agencies have all contributed important resources to local brownfield projects.

Congress should strengthen the ability of these agencies to help communities like East Palo Alto. For Example, East Palo Alto is working with the Corps of Engineers to clean up contamination, restore our ecosystem, and prevent flooding in the Ravenswood brownfield. And I understand that this committee has considered proposals to enhance the role of the Army Corps of Engineers

brownfield clean-up along the Nation's waterways. These are positive and needed proposals and we urge Congress to support them.

In conclusion, East Palo Alto and communities across America call on Congress to support the Federal-State-local partnerships that can put brownfields on a revitalization track. On behalf of NALGEP, I thank the subcommittee for this opportunity to testify, and I would be pleased to answer any questions. Thank you.

Senator CHAFEE. Thank you, Mayor Walker.

Dr. O'Brien?

**STATEMENT OF PHILIP J. O'BRIEN, DIRECTOR, DIVISION OF WASTE MANAGEMENT, NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES**

Dr. O'BRIEN. Thank you. Good morning Mr. Chairman, members of the committee. I am Phil O'Brien, Director of the Division of Waste Management at New Hampshire Department of Environmental Services.

New Hampshire is characterized by a few large cities, Nashua, Manchester, and a populace tier of counties near the southern border. The balance of the State is made up of small-to-modest-size communities and substantially decreased population as one moves north. Old mills are found commonly in both large and small communities and are almost always located in community centers since those were the centers of employment in days when transportation was more limited. Nearly two-thirds of our brownfield sites are located in or near such small town centers.

Our program in the State began in 1996 with State legislation which provided comprehensive liability protection to parties who assumed responsibility for property remediation but did not have a prior liability for clean-up. To date, 11 sites have achieved that eligibility for a "Covenant Not to Sue," and the remaining are making progress toward that goal.

Since 1996 the State has explored and utilized a mix of authorities, including the Superfund Removals Program. The State Covenant Program is a means to provide leverage to private investment. While it is beyond the scope of this legislation, I want to say that the Removals Program has been indispensable to us in a number of clean-up efforts where immediate action was required and where subsequent brownfield works has led to very significant investment and community benefit. Our success to date has been based upon a detailed State Contaminated Site Risk Characterization Management Policy and by effective implementation of that policy.

The State has also received four Brownfield Assessment Demonstration Pilot Grants, and nine municipalities have received Targeted Brownfields Assessment Grants for work at individual sites. The Department that I am a member of is currently working to establish a Brownfield Cleanup Revolving Loan Fund based on a \$1.5 million EPA award granted to a coalition of five New Hampshire recipients.

To date we have had approximately \$30 million worth of redevelopment which has occurred, most notably in a 19-acre site near downtown Concord previously abandoned and vacant where a non-profit organization took over the site, cleaned it up under their



New Hampshire Covenant Program, and it is now a hotel/conference center and two office buildings with an invested value of some \$20 million. I might add that the nonprofit basically said we will trust you New Hampshire that your provision of the Covenant Not to Sue will be durable when it comes to the Federal Government. So the issue that you had discussed earlier came up there and they accepted our word as a matter of faith and I think trust.

Let me underline at this point the success and the excellent cooperation we have received from EPA Region I in accomplishing what we have done to date. The relationship is excellent and we could not have done the work we have done without our Federal partners. I might add that this is a critical factor which is impossible to imbed in legislation, per se, so I am always pleased to have the opportunity to indicate the good working relationship we have with Region I.

We applaud the provisions of Title I that place priority on making grants to sites that will be developed as parks, greenways, or used for other nonprofit purposes. We have six sites in various communities which envision such uses.

We also strongly support Title II liability clarification which mirrors provisions already present in New Hampshire law. In our experience, overhanging liability concerns have and will continue to influence prospective purchasers and developers as well as owners and prospective purchasers of neighboring properties.

Also, New Hampshire strongly supports any assistance to the States to establish or enhance their response programs. We have a mature, risk-based site remediation program which integrates skills of qualified engineers and scientists to produce effective, durable, and protective remedies. Our statutory framework, administrative rules, and legal support from the New Hampshire Department of Justice ensure that the provisions of our program are enforceable. We at the same time are strongly supportive of State accountability and are glad to be held to account.

Finally, we support the provisions that make available the additional uses of funds, including utilization and capitalization of revolving loan funds. We support the provision for deferral of final listing on the National Priority List, with which we have had recent experience.

In closing, I would like to commend Senator Smith, Senator Chafee, and this committee for what they are doing with respect to moving S. 350 forward. Senator Smith, you have always been a very strong advocate and someone we have come to rely on very substantially for your support in matters of this sort and in dealing with environmental matters in general, and we are pleased to say that today. S. 350 promises to be a major step forward in environmental and economic site restoration, and we look forward to helping you in any way that we can to achieve that goal. Thank you.

Senator CHAFEE. Thank you, Dr. O'Brien, and especially for your words of confidence in the EPA and in Region I in particular, and especially coming from the Live Free or Die State, it means a lot.

[Laughter.]

Senator CHAFEE. Any questions from the panel?

[No response.]

Senator CHAFEE. Any comments on some of our earlier lively discussion, Mayor Bollwage or Mayor Walker, on the finality issues?

Mayor WALKER. Well I was very pleased to hear Senator Clinton raise all the issues that she raised, and Senator Boxer. I think it certainly helps to clarify the fact that the States will be in control of the clean-ups and that the Environmental Protection Agency is just there as a backup.

Mayor BOLLWAGE. Mr. Chairman, the most heartening thing is I think there was a will for compromise here. That is probably the most important thing that I heard in the earlier discussion is that there is a will to compromise, and the Nation's mayors really need that.

Senator BOXER. Mr. Chairman, may I just again thank all of the mayors for being here. I just want to say to Mayor Walker, you are on the front lines in a community that really is in fact getting better day by day. I think we can really help you, and you have made that point very clearly. This is an environmental issue, it is also environmental justice. We just happen to have a situation, Mr. Chairman, both my chairmen here, that most of these communities are pretty poor where these brownfields exist in large numbers. So it is something we can do that, as one of my colleagues said, I do not remember which, is a real win-win all the way around. So I wanted to thank you. I know it is a long trip. I do it every week so I know how hard it is.

Last, I just say to my good friend Senator Crapo, whom I respect greatly, that if the fight is over local control, I think it is important to take note that the mayors support this bill. Now they might support it even with further changes. But I do think it is a carefully crafted compromise. We have done the compromise. And I will work with you, because we have some new language here that says you cannot come in EPA unless you have taken into consideration all of the responses that have been made by the State, and you have to prove EPA that if you do come in—and that is on page 45—what you do really is necessary. So I am just hopeful that we can continue to work together.

Having served on this committee ever since I came here, our Superfund situation is so difficult, so difficult. Senator Smith and I sat there through hours and hours of amendments. We thought we were getting somewhere and we never got that off the ground. And breaking off this brownfields is so important to give hope to the people that we are not hopelessly deadlocked.

Again, I just want to thank you all because you come here without partisanship, you come here because you are on the front lines and you support this bill, and I am very glad of that. Thank you.

Senator SMITH. Senator Boxer, in the conversation we had with some of the folks from the Parliament in the Netherlands they indicated a similar situation—and we may also be able to do this I think, Senator Crapo, with NRD. But they experienced the same frustration in not being able to get things in totality and therefore began to use pilot projects and to break things off, and it has been very successful for them. I think it might be a model we may want to follow. That, frankly, is 180 degrees from where I was two or 3 years ago, I think all of us. But if it works, I think we ought to move forward.

I might just make a comment regarding Phil O'Brien. We are very fortunate in New Hampshire to have a tremendous Department of Environmental Services, as many States do. It has been a real pleasure to work with them. One of the items you mentioned in your written testimony, Phil, was the town of Bradford, that here is a community that wants to take a brownfield site and make it into a park and basically has not been able to do that because of the conflicts in the law. So I am assuming that this would free Bradford to move forward with the park that they would like to create.

Dr. O'BRIEN. Yes, it would, Senator. I think again characteristic of New Hampshire—

Senator SMITH. Small town.

Dr. O'BRIEN. A small town. I think that is the key. There are many small towns whose long term viability depend upon an infusion of capital which will become the nucleus for that whole community's survival and thriving and will bring people back into the center of the community. So it has an extraordinary value from that perspective. I think we tend to think of these issues in terms of large cities, which is entirely appropriate since we have large city problems as well. But I think the small community also has to be remembered since it is the core of the country, so to say.

Senator CLINTON. Mr. Chairman, could I followup on what Dr. O'Brien said, because that is one of the big problems that we have in New York is the small and medium-size cities exactly as you described. I had referred earlier to Utica, but there are many other examples of what were mill and manufacturing centers.

With respect to the work that you have done in New Hampshire, have you done the remediation where you have been able to retain the existing structures, or have you had to demolish the structures to do the brownfield work?

Dr. O'BRIEN. It has been a combination of both, Senator Clinton. Unfortunately, sometimes old mills are very vulnerable to fire and vandalism, in other cases they have been preserved and have been rehabilitated and are again a vital part of the community. So, it is some of each. But we have had to piece together many different sources both of funding and authority to do any of them.

Senator CLINTON. And have you had to from the State level pay for the demolition of the structures where that was necessary to get to the underlying land and deal with the problems that were posed?

Dr. O'BRIEN. Again, that has varied. We have even had Community Block Grants that have been used in part for that purpose. Almost every one is a separate case and with a different spin on it.

Senator CLINTON. I think for Senator Smith and I, and Senator Chafee as well, with a lot of these old mill communities, the money for demolition often stands in the way of trying to get to the brownfield issue because nobody can afford to tear the building down, so you cannot make it development ready, you cannot get to the brownfields. So I would hope that we would pay attention to that. I appreciate the work that you have done. I look forward to getting more information about it.

Mayor Walker, I wanted to commend you for representing one of the Nation's few Brownfield Showcase Communities. I know how

much work goes into that. There are two in New York—Glen Cove and Buffalo-Niagara—and it really does take a lot of community effort and partnership. I was heartened to hear that you believe this bill, S. 350, will really help you on the local level continue to make those partnerships so you could see even further work being possible with the infusion of dollars.

But I wanted to ask all three of you just briefly, one of the problems is that if we rely principally on revolving loan funds, there will still be communities left out. And so we have to retain grants and subsidies of a significant nature. Do you see in this legislation the opportunity for both of those approaches in a sufficiently detailed way, that you will be able to get the money that you need to do what you think is necessary in your community?

Mayor WALKER. I think so. In East Palo Alto we have been able to put together a pool of money from various sources in order for us to be able to move forward. I think this bill is just another caveat that will allow us to move forward.

The Ravenswood Industrial Area is an area that was totally contaminated with old wrecking yards, salvage yards, chemical yards. All the things that nobody else wanted was dumped into our community for many, many, many years. Our community is now on the cutting edge of trying to turn ourselves around. So we need all the dollars and all the help from all the agencies that we can possibly pull together in a very creative mode in order for us to make this project work. And it is essential, I want to say it, it is essential that this project work for East Palo Alto, because if it does not, we are going to be in the same condition that we have been in for the past 20 or 30 years.

Mayor BOLLWAGE. Senator Clinton, thank you for that question. The Nation's mayors need both a revolving loan fund and grants because sometimes they can use those tools to combine with other issues such as State tax credits. In New Jersey, we had a State referendum on the ballot 2 years ago that appropriated \$50 million for demolition costs. We can use that with Green Acre funding for the creation of parks or open space. And it would be up to the mayors what tools they could use, whether it be a revolving loan fund or a grant, that would benefit the specific project in question.

Senator CLINTON. So we have to have that whole array of tools?

Mayor WALKER. I agree with that strongly.

Dr. O'BRIEN. I would echo both Mayors. The array I think is important because the flexibility comes from a variety of opportunities and not from necessarily one single source.

I would add as an elaboration to your prior question, Senator, that in one site in Winchester, New Hampshire, the Economic Development Authority of the Department of Commerce provided a \$350,000 grant which will be used for demolition of the buildings that are there.

Senator CLINTON. Thank you.

Senator CHAFEE. Senator Crapo?

Senator CRAPO. Thank you. I will just briefly indicate that with regard to our prior lively discussion about State finality and the true role as to whether the local communities and the States will have the opportunity to implement this program, I appreciated the comment of Mayor Bollwage with regard to the fact that what he

heard in the discussion was that there was a potential for some compromise here to find a good solution, and I saw Mayor Walker nodding. I assume you agree with that.

Mayor WALKER. Yes.

Senator CRAPO. I saw that too. In fact, I have had a number of comments privately made to me by other Senators as they have gone in and out about the fact that it appears that we are all working in generally the same area, we just have maybe a disagreement as to whether the language is exactly right yet to achieve the objectives. And I am quite hopeful about the outcome of this discussion that we have had here.

I just have a brief question so the record is very clear here for both Mayors; and that is, if we are able to reach a compromise on the State finality language in context of what you have heard in the discussion here today, would that have any impact on your support of this legislation, if we were to make any adjustments to assure that there were some more clear definitions of what the circumstances would be when the EPA could step in and apply the safety net?

Mayor BOLLWAGE. Senator, first of all, it is difficult to answer the question unless you know exactly what the language would be and you would have to review the language. But you were talking early with my former Governor about the involvement of the EPA and the definition of imminent health threat and whether the Governor or the State can invite you in before an emergency. Everyone is going to define that language somewhat differently. I can only speak for New Jersey where RDP has been very proactive in dealing with issues of brownfields.

I am also a home to a major Superfund site, a chemical control that blew up in 1980, and apparently there are two acres of cement there and we have no availability of that land for the next 99 years. However, if it were a brownfield site, we could remediate it and clean it and we could create jobs and rateables and economic opportunity. And I think we should keep in context that the times that this may come up throughout the Nation may be minimal. I believe that many of the State DEPs, as Dr. O'Brien said, are very active in dealing with the issues within their States.

Senator CRAPO. I agree.

Mayor BOLLWAGE. Therefore, the compromise in the language should be something that should be worked out. But we should be cognizant of the greater overall good, and that is passing S. 350.

Senator CRAPO. Thank you.

Mayor Walker?

Mayor WALKER. I think we have compromised on the bill from where it first started. We have noted many changes on it as we have watched it go through. But I have to stick with what we have there simply because it states that the EPA does not step in, they do not interfere. I have the utmost confidence in my State that they will do a very stringent job of clean-up. They have been there, they have done that. But I think we just need the EPA hanging out there in the wings where if the State needs them they can call on them to come and assist them. I think that is what the statute says.

Senator CRAPO. And if we can achieve that, then that is good.

Mayor WALKER. If we can achieve that, then I am happy.  
 Senator CRAPO. All right. I agree with you, your State sometimes is tougher than the EPA.

Mayor WALKER. They are tougher than a lot of folks.  
 [Laughter.]

Senator CRAPO. Thank you.

Senator CHAFEE. Thank you panel. As a former mayor myself, I can agree that there is nothing mayors like more than revenue. And by getting some of these sites on the property tax rolls and generating revenues, you can educate your children, you can pave your streets, and provide all the services your constituents require, and that is in all our best interest. So thank you for your time.

Senator CHAFEE. I would like to invite our last panel to come forward. We look forward to your testimony. Mr. Mike Ford, representing the National Association of Realtors; Mr. Alan Front from the Trust for Public Land; Mr. John Arlington from the American Insurance Association; Mr. Grant Cope from the U.S. Public Interest Research Group; and Mr. Robert Fox from Manko, Gold, and Katcher; and Ms. Deohn Ferris of Global Environmental Resources. Welcome.

We will start with Mr. Mike Ford.

**STATEMENT OF MIKE FORD, MIKE FORD AGENCY,  
 REPRESENTING THE NATIONAL ASSOCIATION OF REALTORS**

Mr. FORD. Thank you for the opportunity to present the views of the National Association of Realtors on S. 350, the Brownfields Revitalization and Environmental Restoration Act. I wish to thank Chairman Chafee, Chairman Smith, Senators Reid and Boxer for your leadership in building bipartisan consensus on this very important issue.

My name is Mike Ford. I own a full service residential and commercial real estate company in Clark, New Jersey, and I have been a real estate broker for 27 years. I am also the 2002 Regional Vice President for the National Association of Realtors.

It is often said, and I agree, that realtors do not sell homes, we sell communities. The more than 760,000 members of the National Association of Realtors, real estate professionals involved in all aspects of the real estate industry, are concerned and active members of our communities. We want clean air, clean water, clean soil. We want to see contaminated properties cleaned up and returned to the marketplace. We care about a healthy quality of life as well as a vibrant economy, and we are willing to do our part to maintain such.

NAR supports S. 350 because it will effectively promote the clean-up and redevelopment of the hundreds of thousands of our Nation's brownfield sites through the country. The real estate industry is becoming increasingly comfortable with the idea of redeveloping brownfields sites. Old factories and warehouses are being replaced with cultural facilities, parks, and apartment communities. At the same time they provide a cleaner and safer environment, these revitalized sites increase the tax base, create jobs, and provide new housing.

In my home State of New Jersey, for example, a recent Rutgers University report estimates that within 10 years brownfields rede-

velopment can create 66,000 permanent jobs, new housing for 71,000 people, and \$62 million in new revenues. Under the strong leadership of Governor Whitman, New Jersey has worked closely with the private sector and begun an ambitious program to revitalize our 8,000 brownfield sites. One private developer took advantage of a State program which reimburses up to 75 percent of matching funds to clean up an abandoned factor site into a mixed-use project.

Support for brownfields redevelopment also fits within NAR's Smart Growth Initiative, our new program to advocate public policies which seek to maintain community quality of life while allowing market forces to generate growth.

Brownfields redevelopment is occurring because Federal, State, and local governments have banded together to creatively attack the brownfields problem by providing a variety of incentives and assistance. However, significant hurdles remain. A shortage of clean-up funds and liability concerns continue to impede brownfields redevelopment. S. 350 effectively addresses these issues.

First of all, it provides needed funding to Federal and State brownfields programs.

Second, the bill clarifies the Superfund liability protection for innocent landowners and prospective purchasers who have not caused or contributed to hazardous waste contamination. It is important to get these innocent property owners out of the liability net so that resources can be targeted toward clean-up rather than litigation. When it comes to Superfund clean-up, we must ensure that the real polluters pay so that contaminated sites are returned to productive use as quickly as possible.

Finally, S. 350 recognizes successful clean-ups undertaken under State brownfields programs. Through their programs, most of these States can provide real estate developers with incentives to make brownfields redevelopment more attractive.

Typically, the State will provide some form of liability relief once it has approved a clean-up. In New Jersey, relief comes in the form of a "No Further Action," an NFA letter from the State DEP. Unfortunately, there is no guarantee that the Federal EPA will not assert authority at a future date and require additional clean-up, which has been discussed many times here today. Without some degree of certainty that they are protected from Federal as well as from State liability, developers are reluctant to undertake development of contaminated sites. In conjunction with the creative leadership of Governor Whitman, I am confident that this bill provides the certainty that they need to go forward.

In New Jersey, I have seen what can be accomplished when local, State, and Federal Governments work together with private business interests to make something out of nothing. In my hometown of Clark, General Motors has a contaminated site and they funded the taking down, the clean-up, and they funded a golf course. So now we have a golf course which is not quite on line yet, but the revenue from that will go to local government as soon as it becomes on line, which should be within about 6 months.

S. 350 presents a win-win opportunity for everyone by cleaning up hazardous waste sites, putting them to new and productive

uses, and enhancing community growth. Now is the time for Congress to assert bipartisan leadership and reinforce our nationwide effort to turn brownfields into greenfields. NAR looks forward to working with the committee and the entire Senate to pass a brownfields bill in the 107th Congress.

Thank you again very much, Mr. Chairman, for the opportunity to present the views of the National Association of Realtors.

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

Mr. Front, welcome.

**STATEMENT OF ALAN FRONT, SENIOR VICE PRESIDENT, THE TRUST FOR PUBLIC LAND**

Mr. FRONT. Thank you, Mr. Chairman. I would like to begin this afternoon with a somewhat unusual *deja vu* reflection. It was just a couple of months ago in this very hearing room that I had the opportunity to share with you, Mr. Chairman, The Trust for Public Land's steadfast, full-bore support for truly visionary legislation that was then titled the Brownfields Revitalization and Environmental Restoration Act of 2000. The calendar page has flipped and we are happily back again talking about BRERA 2001. But I do have a fervent request of the subcommittee, and in fact of the committee and of this Congress, that none of us be in the position of considering and discussing BRERA in 2002 or 2003 because this is an extremely time-sensitive issue, as I will discuss.

I very much appreciate, because of the time-sensitivity of this issue, Mr. Chairman, your leadership and the leadership of Senator Boxer, of Senator Smith, and Senator Reid, the early leadership of cosponsors like Senator Clinton, and the willingness of Senator Crapo and others to work together toward something that hopefully will be enacted quickly.

I am Alan Front of The Trust for Public Land, a national non-profit organization that works with landowners, public officials, and communities to protect open spaces. There has been a lot of discussion already today about the benefits of brownfield clean-up and revitalization. And so rather than plowing those old furrows, I would like to agree with much of what has already been said but perhaps to put an open space/land conservation exclamation point on some of the words that have already been offered today.

Open spaces, as you, Mr. Chairman, and as the committee knows, are disappearing at a rapid rate. There is disagreement as to how rapid a rate, but it is going fast. Will Rogers, the home-spun philosopher, said that it was always going to go fast because "they ain't making it anymore." Whatever the reason, every minute acres and acres of open space disappear. In fact, during the 5 minutes of my statement to you today, an open space the size of the footprint of the Dirksen Senate Office Building will be irretrievably lost. There is not time to wait. And brownfields clean-up can be a real tool, a real opportunity not only to reuse idle properties but to lay claim to open spaces before they are gone forever.

At the same time that these open spaces are disappearing, at the same time that undeveloped, previously unserved lands are serviced and developed—there are an estimated 600,000 brownfields across America, dotting the landscape. Every one of those brownfields, every one of those sites is a white elephant that is not



being redeveloped because of uncertainty about environmental liability, because of uncertainty about the potential costs involved. Every one of those sites, left idle, also represents a greenfield that is being developed, a potential alternate site for a strip mall or a home site development that is being raised today instead of greenfields.

In addition to protecting "exurban" land from sprawl, brownfields clean-up can do so much for our urban centers. Now, again, you have heard already from other witnesses some of the economic goods that are associated with brownfields restoration and clean-up and appropriate redevelopment—job creation, housing stock, other economic virtues. In addition to those, there are the especially where brownfields to parks conversions are concerned, when parks are included in the brownfields equation multifold benefits that accrue—not just in terms of quality of life, not just in terms of the compelling additions to the social fabric that brownfield clean-up can bring to areas that are truly park poor, that do not have social programs and recreation on the ground and can—but study after study has demonstrated the economic benefit of parks in inner-cities. In fact restoring brownfields to greenfields can spark a revival, a genuine revitalization of a neighborhood, and it can spawn exponentially more private investment and much more local economic activity than just about anything else.

How then do we tap into that untapped benefit of brownfields? How do we unlock the banged up and slightly soiled community chest of brownfields?

Well, The Trust for Public Land simply believes that S. 350 can do the job. We especially appreciate the flexibility and the fairness and the funding in Title I for brownfields conversions. Those provisions are discussed at greater length in my written statement. We also, as a non-responsible party who is working with community leaders to try to clean up brownfields and restore them to community use, we very much appreciate the liability relief which is going to allow us and our partners around the country to clean up many more brownfields and to do it in a much more expeditious way. Again, though, time is what is at a premium here. Time is of the essence. And so appreciating the dialog about other provisions of the bill, one urgent, fervent request of The Trust for Public Land is that any dialog about modifications of the bill not go on long enough for another 400 acres an hour to disappear off of our open space inventory.

We really appreciate everything, Mr. Chairman, that you have done, that your colleagues have done to move this legislation. We look forward to working with you toward timely, expeditious, hopefully almost immediate enactment. Thank you.

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

Mr. Arlington, welcome.

**STATEMENT OF JOHN ARLINGTON, ASSISTANT VICE  
PRESIDENT, AMERICAN INSURANCE ASSOCIATION**

Mr. ARLINGTON. Mr. Chairman, my name is John Arlington. I am the Assistant Vice President for Federal Affairs for the American Insurance Association. AIA is a trade association of some 350 property/casualty insurance carriers who write a very large percentage

of the commercial insurance available in the United States and elsewhere.

It is indeed a pleasure and an honor to be here today to speak in support of S. 350. For insurers, environmental insurance and environmental risk is a small but growing area of business. AIA member companies have insured now hundreds of brownfields and other environmentally sensitive redevelopment projects from Massachusetts to California. These have varied in scale from former gas stationsites that are now restaurants to the privatization of large military facilities such as the current redevelopment of the Presidio in San Francisco. While we are proud of our work on these projects, they are but a fraction of the tens and hundreds of thousands of brownfield sites around the country.

S. 350, in our view, has the potential to expand the universe of redeveloped sites by providing targeted funding and administrative support to help State and local governments identify and classify and market the more problematic sites, properties that might otherwise go unnoticed. In some cases, with grants to provide direct funding of clean-up activities for local governments, those projects will be able to succeed when the economics of the projects would not otherwise support funding of remedial measures necessary to protect human health and the environment.

There has been a great deal of discussion, Mr. Chairman, earlier this morning about the finality provisions of Title III of the bill and I would like to comment briefly on that. We in the insurance industry recognize that as a matter of public policy, no matter what Title III winds up looking like, no waste clean-up is ever going to be entirely a final in the sense that there will never be an opportunity for future government intervention. This is one of the areas where we believe a combination of risk management techniques, including insurance, can facilitate the redevelopment of contaminated properties notwithstanding this lack of finality. Insurance is currently available to pay the costs of additional clean-up of specified contaminants after the initial clean-ups have been completed and approved by State or Federal regulators. In some cases, insurance policies may also be written to respond to additional clean-up that may be required due to even future changes in environmental laws.

In addition to insurance against the possible reopening of completed clean-ups, insurance is now being written to cover all aspects of clean-ups—cost overruns for specific remedial action plans; the discovery and remediation of new, hitherto unknown contaminants; and third party bodily injury, property damage, and clean-up claims arising from newly discovered contaminants. In some cases, insurance may be available also to all parties to a brownfields redevelopment transaction, including the sellers and the buyers, the banks making the loans for the purchase, and for the engineers and contractors involved in the clean-up, as well as for the clean-up itself.

Mr. Chairman, in sum, we think that S. 350 will help unlock the market value hidden in many now fallow brownfields sites. In so doing, these otherwise valuable properties can reenter and remain in the stream of commerce where they can generate the economic growth on which our communities depend. We applaud your bipartisan efforts to support this emerging marketplace.

Senator CHAFEE. Thank you very much, Mr. Arlington. How far did you travel to get here?

Mr. ARLINGTON. Oh, about ten blocks.

[Laughter.]

Senator CHAFEE. Good. Well, welcome.

Mr. Cope, welcome.

**STATEMENT OF GRANT COPE, ENVIRONMENTAL ADVOCATE,  
UNITED STATES PUBLIC INTEREST RESEARCH GROUP**

Mr. COPE. Thank you, Mr. Chairman. I would like to thank you and the other members of the subcommittee for inviting me to speak about the issue of brownfields. My name is Grant Cope. I am an environmental advocate for the United States Public Interest Research Group. We are an environmental consumer advocacy group with offices in about 38 States across the Nation.

I would like to briefly touch on four main points today. First, the need to redevelop brownfields; second is the beneficial aspects of your bill that accomplish that; third, some serious concerns that we have regarding the legislation; and then fourth, I would like to briefly touch on an issue that one of the panelists spoke of earlier.

First, the need to redevelop brownfields has been spoken of at length. The need to redevelop brownfields is unquestionable. Certainly, it can help everything from funneling funds into inner-city areas to stopping sprawl. Both of those things can help protect public health as well as environmental quality.

Now particularly with your bill, some of the beneficial aspects that we really like are the increased funding and also the way in which it is funded. It focuses the dollars to address both things like promoting greenways, open spaces, and also making certain that the citizens at a local level are there helping to make certain that money is used to facilitate redevelopment in their communities. A third aspect which is extremely beneficial are the program criteria. In all honesty, they are the best set of program criteria that we have seen in a piece of legislation. They are really fantastic. To that end, we would like to commend your office as well as the other offices, and in particular the office of former Senator Frank Lautenberg, in constructing these provisions.

Now with respect to some of the concerns that we have. One would be we believe that technical corrections should be made to the definition of "eligible response sites" just to ensure that that term is consistent with the drafters' intent that only sites with low levels of contamination be included as a brownfield site.

Second, and in somewhat of a departure from past bills, there is no up front State clean-up review by the Federal Government of clean-up programs. That is problematic because, quite frankly, State clean-up programs are really all over the map on their ability to protect public health, integrate communities into local decision-making, monitor sites long term. Let me give you an example. In the State of Ohio, they have a clean-up program where they have supplied financial incentives for redevelopment but that redevelopment has not included any clean-up. Now when you combine that with the increased amount of funds that this bill seeks to provide, which admittedly are needed, you could be facing a situation where

you are really promoting ineffective and unprotective clean-ups across the country. That would be extremely problematic.

The third main concern that we have, and it is a grave concern because it is an extreme departure from past bills, is the bar on Federal enforcement authorities. Now the question about reopeners aside, just the bar itself is a departure. It is really unneeded in the first case. As Mr. Arlington just stated, insurance can cap the liability at some of these sites. There are three very good liability exemption provisions provided within S. 350—prospective purchasers, innocent landowners, and contiguous landowners. For good developers, innocent landowners, and contiguous landowners. For good developers, developers who want to do a good job, this is really all they need. Going any further than that then you are really catering to a different type of developer, somebody who is concerned that they might not do a good job or rather wants to ensure profits over the protection of public health. That is something that the U.S. Senate should not continence.

I would now like to move on to one other issue that was spoken of very briefly concerning gas stations. There is a need to provide funding for these sites in their redevelopment. That is pretty much unquestioned. GAO and Environmental Protection Agency have spoken at length about this need. But importantly, where these sites are part of a franchise, the Government, in our opinion, should not provide a weakening of Federal enforcement authorities or limiting of liability for the parent corporations. That would weaken the polluter pays principle and certainly cut back on public health protections.

Finally, and in conclusion, looking forward to markup, it would be we believe a grave mistake to take the weakening of Federal enforcement authority any further than it has already gone, particularly with respect to the reopeners. Any modification to that language that currently is in the bill would engender a strong amount of opposition from the environmental community. Thank you, sir.

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

Mr. Fox, welcome.

**STATEMENT OF ROBERT FOX, PARTNER, MANKO, GOLD AND KATCHER, LLP**

Mr. FOX. Thank you. Good afternoon, Mr. Chairman. My name is Robert Fox and I am a partner at the Philadelphia area law firm of Manko, Gold, and Katcher. During the past 16 years as an environmental lawyer, I have been fortunate to represent a wide range of clients, including property owners and developers, lenders, land conservancies, citizen groups, local governments, and industrial and economic development agencies. I firmly believe brownfields redevelopment presents a unique and unprecedented opportunity for all such groups not only to find common ground, forged through compromise, but to reach a higher plateau.

During the last 5 years, States have vigorously heeded the call to promote brownfields development. Currently, at least 43 States have some form of brownfields program. I am very proud of my home State of Pennsylvania which since 1995 has been at the forefront of this movement. To date, 918 sites have been remediated through Pennsylvania's brownfields program.

At the same time, Federal environmental statutes typically impose strict liability on parties owning contaminated property, even where those parties did not cause the contamination. It is this perceived threat of EPA intervention under these statutes that significantly inhibits developers from approaching brownfields sites. In this case, perception is reality. Fundamentally then, Federal brownfields legislation must ensure that for those sites where EPA is not currently requiring remediation under Federal environmental statutes, and remediation has been completed under a State program, EPA will not as a matter of law seek further remediation.

S. 350 proposes to fill this need for Federal brownfields legislation. Although it provides certain important elements toward that goal, S. 350 does not go far enough in certain significant and important ways. I would like to suggest some common-sense amendments to S. 350 critical to providing the required certainty, finality, and liability protections while at the same time maintaining an adequate Federal "safety net."

The first issue relates to the Federal "safety net" itself. S. 350 contains four reopeners authorizing EPA to exercise its enforcement authorities under CERCLA. The fourth such reopener allows EPA to require remediation where supposedly new information exists which reveals that a site already remediated under State law continues to pose a threat. This reopener is overly broad and threatens to undermine the finality and certainty that S. 350 seeks to achieve. The mere existence of any "new" information that presents any "threat" is a standard without boundaries.

Assume that a report issued by an organization, whether or not peer reviewed, alleges that a particular contaminant at a site poses a marginally greater risk than previously thought. In that circumstance, the reopener potentially applies notwithstanding the validity of the report or whether the risk posed by that contaminant remains well within the range documented as part of the approved State clean-up. Even migrations of contaminants within a site where expected seasonal fluctuations in sampling results could potentially subject a site to this reopener. In sum, under this reopener the quality, reliability, authority, and environmental significance of new information is unconstrained. As such, this reopener should be deleted.

The next issue relates to who is entitled to receive the liability protections under S. 350. Section 129 applies only to a person who is "conducting" or "has completed" a response action under a State brownfields program. This language potentially excludes both current developers of a brownfields site as well as future owners and tenants of that site. For example, where a property owner completes required remediation under State law prior to closing, a developer will not be a person "conducting" or "completing" the required response action. Second, where a developer conducts and completes the clean-up and sells the property to another developer who leases the property to a tenant, again, neither the second developer nor the tenant fall within the language of Section 129. Therefore, Section 129 should expressly apply to future owners or tenant's.

The next issue concerns S. 350's application to CERCLA alone and therefore its failure to provide any liability protection regard-

ing petroleum contaminated sites. The absence of any protections for petroleum contaminated sites represents an extremely significant limitation. The General Accounting Office estimates that there are approximately 450,000 brownfields sites nationwide. Out of these sites, EPA estimates that 100,000 to 200,000 sites contain abandoned underground storage tanks or are impacted by petroleum leaks. Since there are numerous petroleum contaminated sites, and these sites present attractive development opportunities, S. 350 should provide at least the same liability protections for petroleum contaminated sites as for sites contaminated with CERCLA hazardous substances.

Finally, since S. 350 applies to CERCLA alone, a person remediating hazardous substance contamination under a State brownfields program remains subject to potential Federal intervention under other Federal statutes, such as RCRA and TSCA, for the exact same hazardous substances. Accordingly, S. 350 should be amended to include enforcement limitations under RCRA and TSCA as well.

I appreciate your consideration of the specific comments I have raised to S. 350 and thank the committee for this opportunity to testify.

Senator CHAFEE. Thank you. Very well said.

Ms. Ferris, welcome. You are the last batter.

**STATEMENT OF DEEOHN FERRIS, PRESIDENT, GLOBAL ENVIRONMENTAL RESOURCES INC.**

Ms. FERRIS. Well, that would be the clean-up hitter, wouldn't it be?

Again, my name is Deeohn Ferris. I am President of Global Environmental Resources Inc. We are a professional services firm. We provide management consulting, technical support and training to clients on environmental, natural resources, and public health issues. Among other things we concentrate on, we have a particular emphasis in the areas of environmental justice and community involvement, stakeholder engagement, and public participation. My personal bona fides in the environmental justice and sustainable communities arena is about a mile deep, so with your permission I will skip the personal plaudits and get right to the point.

I have testified before this august body many, many times and have been in the trenches with you on Superfund and many other pieces of legislation. Frankly, I am just tickled pink to be up here talking about a bill that has the possibility of moving. So thanks for inviting me to be here.

[Laughter.]

Ms. FERRIS. I will begin by saying revitalizing and redeveloping abandoned, often contaminated properties defined as brownfields demonstrate the convergence of complex environmental, social, and economic issues. For example, compared to their numbers in the general population, minority and low-income communities experience brownfields to a high degree in their neighborhoods. As a result, equity, race and class discrimination, the diminishing tax base in municipalities, and suburban sprawl are inseparable from the blight and marginalized communities that accompany brownfields. Clearly, in urban and rural communities experiencing under-in-

vestment and other consequences associated with environmental contamination, economic development and neighborhood revitalization are issues of grave concern. Equally important, since they have been most affected by these consequences and will live with the consequences of future decisions, communities are urgently demanding inclusion in shaping development outcomes.

As a result, I am here today in favor of S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001. Essentially, and we have heard it lots of times today, S. 350 is a compromise bill that would achieve protection of human health and the environment by balancing the goals of accelerating clean-ups, expanding economic development opportunities, increasing governmental flexibility, and reducing disincentives to brownfields reuse. Communities that have heretofore experienced difficulties finding funds to redress orphan sites and other sites which, according to brownfields jargon, do not qualify as the low-hanging fruit will be encouraged by the authorization levels in the bill. In the forthcoming budget process, I encourage the Senate to match the authorization to the appropriation.

Expanding the number of sites eligible for action by a State response program should result in increased flexibility to clean up and reuse properties. Decoupling certain qualified sites from the stringency of the National Priority List process, and the language in the bill which clarifies liability should also help to accelerate brownfields redevelopment in areas specifically where such activity has languished.

The linkage between conferring this flexibility upon the States and increased community and public involvement is crucial. Community involvement and public participation assurances in the bill, such as the language in Title I and Title III, elevate the significance of meeting community needs and inclusion in the decision process. Furthermore, by asserting that community involvement, training, research, and technical assistance are activities eligible for funding, grants issued pursuant to the bill should help build the capacity of communities to participate in redevelopment planning. I also favor the provisions in Title I which authorize waiver of the 20 percent match and the permission to leverage grant funds which should assist nonprofit entities, many of which operate with limited resources.

I also appreciate the requirement in the bill that the States do a timely survey and inventory of brownfields sites as an element of their State response programs. There are estimates very broadly up to 500,000 of these brownfields sites around the Nation. The advantages that such inventories provide are at least threefold: First, the inventories will broaden available data; second, they will provide information about environmental and other conditions in our communities; and third, they should result in a more thorough catalogue of under-utilized sites nationwide that are eligible for productive reuse. With regard to communities, governmental decisionmakers, and prospective developers, the inventory should supply useful knowledge on an array of potential development opportunities.

Much has been said today about what I consider to be a crucial safeguard in S. 350, and that is preservation of the Federal role in

the event that threats emerge to human health or the environment. I tend to side with the opinion of Senator Clinton on this. What is a threat? If it is not a threat, you are either maimed or you are dead. So we need to do something affirmatively to ensure that people are not going to experience those results.

Comparable to the Federal safety net provided by civil rights laws in the event that equal protection under law is jeopardized, Title III of the bill provides an oversight role and would reserve the right of the Federal Government to act, for example, in the event of significant threats or imminent hazards. Now probably like everybody else that has appeared on this panel, I would torque the bill this way or change and modify the bill another way. But for the sake of moving forward, I would say let's get it on. It appears that with this Federal safety net we can at least ensure that citizens and the environment are protected where problems with State programs could occur.

In view of the efforts of communities to preserve already the limited greenspaces, I would like to concur with my colleague from The Trust for Public Land about the scope of the bill that seeks to encourage preservation of greenspace and creation of new greenspaces where it is possible. It is encouraging that the bill favors grants that facilitate, among other activities, creation and preservation of parkland. While economic development in certain areas is certainly highly desirable, quality of life is greatly enhanced by neighborhood beautification and amenities.

In closing, again I would like to express my support for the bill and suggest that it should facilitate brownfields redevelopment. Moreover, we appreciate the potential for positive results in underserved minority and low-income communities. As an expert in sustainable communities and environmental justice fields and a proponent of brownfields revitalization, we conclude that the bill advances many critical goals and objectives. We applaud the subcommittee's leadership and look forward to working with you in the future.

Senator CHAFEE. Thank you very much, Ms. Ferris.

Thank you all for your perseverance here this morning, this afternoon. The chairman has informed me that he will be marking up the bill a week from Thursday, March 8, at 10.

Thank you once again, and let's hope for success.

The hearing is adjourned.

[Whereupon, at 12:53 p.m., the subcommittee was adjourned, to reconvene at the call of the chair.]

[Additional statements submitted for the record follow:]

STATEMENT OF HON. CHRISTINE TODD WHITMAN, ADMINISTRATOR, ENVIRONMENTAL PROTECTION AGENCY

Good morning, Mr. Chairman, and members of the subcommittee. It is my pleasure to appear before you in my first hearing as Administrator of the U.S. Environmental Protection Agency to discuss an important priority for President Bush and this Administration brownfields legislation.

I commend Subcommittee Chairman Chafee and Senator Boxer, as well as Chairman Smith and Senator Reid for their leadership in introducing S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001. I am pleased to report that the Administration supports S. 350. As we continue a more thorough review of the legislation, we would appreciate the opportunity to offer refinements that would be consistent with the President's principles and budget. I look forward



to working with all members of this committee to move this important legislation to the Senate floor as soon as possible.

Brownfields clean-up is an important urban redevelopment tool that provides an alternative to development of greenfields. The Administration believes that brownfields legislation is important enough to be considered independently from other statutory reform efforts, such as Superfund. I know that some members of this committee are interested in reforming Superfund and I am committed to working with them, but I would urge that Superfund reform issues not hold up passage of S. 350. As you may know, President Bush is committed to strengthen State and local brownfields programs based on the following principles which he put forth during last fall's campaign:

- Brownfields legislation should remove a significant hurdle to brownfields clean-up by providing redevelopers with protection from Federal Superfund liability;
- Brownfields legislation should ensure that States have the authority and resources to run their own brownfields programs while ensuring those clean-ups are protective of human health and the environment;
- Brownfields legislation should direct EPA to work with the States to ensure that they employ high, yet flexible clean-up standards, and allow EPA to step in to enforce those standards when necessary;
- Brownfields legislation should streamline and expedite the process by which grants are given to States, and in turn to local communities, so that they have maximum flexibility to use the funds according to their unique needs;
- The Federal Government should focus additional research and development efforts on new clean-up technologies and techniques to clean up brownfields; and
- While not under the jurisdiction of this committee, the brownfields tax incentive should be made permanent. The Administration supports legislative efforts to make the tax incentive permanent.

The States and the U.S. Environmental Protection Agency have been at the forefront of encouraging the clean-up and economic redevelopment of brownfields. EPA has awarded more than 360 assessment pilots of up to \$200,000 each to States, Tribes, and local governments to assist them with brownfields redevelopment. Grantees report that EPA assistance helped leverage more than \$2.8 billion in economic development and generated more than 10,000 jobs.

In addition, EPA has awarded \$32 million for Targeted Brownfields Assessments at more than 550 properties and has promoted local job training by awarding 37 Job Training and Development Grants.

However, much remains to be done to facilitate the rapid, high-quality assessment, clean-up and sustainable economic development in communities across the nation. With your help, this Administration is committed to providing the tools that communities need to address the problems posed by brownfield properties, and it is committed to encouraging redevelopment while fully protecting human health and the environment.

S. 350 is a major step forward in encouraging the clean-up and development of a full range of contaminated brownfields properties. S. 350 authorizes grants and loan programs to identify, assess, and clean up brownfields properties, and provides more flexibility to implement these programs.

In addition, S. 350 clarifies Superfund liability for contiguous property owners, prospective purchasers, and innocent landowners. These provisions have achieved broad bi-partisan support in Congress, and they represent an excellent way of encouraging brownfields redevelopment. S. 350 also preserves the Federal safety-net to ensure that clean-ups fully protect the environment and public health.

This legislation also relieves the current program of unnecessary regulatory procedures for the Brownfields Cleanup Revolving Loan Fund, and clears the path for expedited funding of clean-up of contaminated properties by providing grants to States and local governments. In addition, this legislation provides needed grant funding to the States, local communities, and Tribes, to support assessment, clean-up and oversight of brownfields properties. The legislation provides flexible authority to fund State programs in ways that will enhance the already impressive achievements of the 47 State programs that address brownfields currently. States with emerging programs such as Nevada and Wyoming will gain valuable support in their use of creative approaches in encouraging protective assessment, clean-up and redevelopment of property. States with established brownfields programs, such as Pennsylvania, Rhode Island, Ohio and New Jersey, will benefit from provisions that will enhance successful brownfields redevelopment work.

S. 350 also supports funding for technical assistance, training, and technology to encourage the best methods and approaches to cleaning up brownfields. New tools that improve the ability to conduct protective and safe clean-ups while reducing cost can speed the redevelopment of brownfields across the nation.

Whether States and localities receive Environmental Protection Agency grants for assessment and clean-up, Housing and Urban Development grants for redevelopment, Economic Development Administration grants, Department of Energy research support—or whether redevelopment is encouraged by the Federal Brownfields tax incentive—this Administration is committed to providing the tools necessary to address the problem of derelict brownfields properties.

Thank you for the opportunity to appear before you today and to describe the President's support for brownfields legislation. I look forward to working with you to achieve swift passage of brownfields legislation. Mr. Chairman, I will be happy to answer any questions you or the committee members may have.

RESPONSES BY EPA ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

*Question 1.* How many times has the Environmental Protection Agency taken an enforcement action at a brownfield site that was being addressed under a State voluntary clean-up program without the concurrence of the State?

Response. I am not aware of any instance in which EPA has taken a Superfund enforcement action without a request from the State at a brownfield site that was being addressed under a State voluntary clean-up program.

*Question 2.* Finality is a frequent topic of discussion in the brownfields debate and I believe we have gone a long way toward addressing that issue. However, finality must be balanced with protection of human health and the environment. In your opinion will S. 350 protect human health and the environment?

Response. I believe S. 350 has struck an appropriate balance. The bill encourages States to develop programs that result in protective clean-ups, and the enforcement bar only applies to clean-ups conducted in compliance with State programs that govern response actions for the protection of human health and the environment. S. 350 provides incentives for States to develop programs with a primary goal of protecting human health and the environment. Furthermore, the bill provides a Federal "safety net" to help ensure protective clean-ups.

*Question 3.* What percentage of the total brownfields program funding in fiscal year 2000 were dedicated to administrative costs?

Response. A breakdown of the administrative costs for fiscal year 2000 is:

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Salaries, overhead costs, and benefits for EPA employees .....	\$7.0M
Inter-Agency agreements with other Federal agencies .....	\$0.5M
Contract support for data management, etc .....	\$2.1M
Other EPA Offices .....	\$3.2M

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This is a total of \$12.8M, or 14 percent of the fiscal year 2000 brownfields budget of \$91.6M

RESPONSES BY EPA ADMINISTRATOR CHRISTINE TODD WHITMAN TO AN ADDITIONAL QUESTION FROM SENATOR SMITH

*Question.* Do you agree that EPA grants, including Assessment and Clean-up grants, outlined in Title I and III of S. 350, to local and States can be used by those entities to purchase environmental insurance, including clean-up cost cap and pollution liability insurance, to facilitate the clean-up and development of a brownfield site?

Response. Yes. We have found that insurance can be a valuable tool in the clean-up and redevelopment of brownfields properties. EPA believes that Titles I and III of S. 350, in conjunction with the general grant provisions in OMB Circular A-87, which establishes principles and standards for grants, contracts, and other agreements with State and local governments will allow for the purchase of environmental insurance.

RESPONSES BY EPA ADMINISTRATOR CHRISTINE TODD WHITMAN TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

*Question 1.* States like New Jersey have successfully developed brownfields programs that determine clean-up standards, assess attainment of standards, and over

comprehensive liability protections. Yet EPA has often questioned the adequacy of these programs and the technological expertise of the States to develop and enforce State clean-up standards. As EPA Administrator, what steps will you take (or recommend that Congress take) to ensure that States have the authority to establish and enforce clean-up standards and determine the final closure status of local brownfields sites?

Response. EPA has encouraged and supported States in the development of brownfields programs that facilitate economic redevelopment while protecting public health and the environment. EPA has provided over \$80M in funding for State voluntary programs over the last 5 years in order to encourage brownfields assessment and clean-up. This Administration is committed to strengthening State brownfields programs by supporting legislation that clarifies limits on Federal liability and promotes high, yet flexible, clean-up standards. S. 350 embodies these principles by granting States flexibility to develop innovative approaches to brownfields clean-up and redevelopment. In accordance with S. 350, EPA will play a minimal role in the development of State programs. However, while States are not required to follow any particular approach under S. 350, EPA has the authority to reward States that strive to meet program criteria identified in the bill. I support this use of incentives to promote protective clean-ups and economic growth. I do not believe in mandating how States should structure their programs.

*Question 2.* Do you support brownfields legislation, including a standard Federal definition of what constitutes a Brownfields site? Also, would you support including petroleum (and other common pollutants like asbestos, lead, and PCBs) in the definition of brownfields? Would you offer Federal liability protections that mirror State liability protections? And, would you allow States to determine clean-up standards for brownfields sites?

Response. The Administration supports legislation that defines brownfields sites, as in S. 350. Many of the sites that you describe are eligible under the bill. S. 350 also provides EPA with the flexibility, site-by-site, to support brownfields clean-up and redevelopment at brownfields sites with contaminants or sites not otherwise included in the S. 350 definition of "brownfields." EPA would like to work with the committee to ensure that brownfields legislation applies to all appropriate sites.

With regard to appropriate liability protections, I would like to address these concerns as a part of other legislative priorities. Questions related to the reform of statutes other than CERCLA should not hold up the passage of bipartisan brownfields legislation.

The Administration supports legislation that directs EPA to work with States to ensure that they employ high, yet flexible, clean-up standards, and allows EPA to provide a "safety net" when necessary to protect human health and the environment.

*Question 3.* The General Accounting Office estimates that there are approximately 450,000 brownfields sites nationwide. Out of these sites, EPA estimates that 100,000 to 200,000 sites contain abandoned underground storage tanks or are impacted by petroleum leaks. Because S. 350 only provides a liability exemption for CERCLA contaminants and not petroleum, given EPA's own statistics that almost half of the sites contain petroleum, isn't it possible that half of the brownfields sites in this country may go undeveloped because of the lack of Federal liability protection for petroleum pollutants? How would you address petroleum contamination and leaking underground storage tanks?

Response. We agree with the estimates that between 100,000 and 200,000 of the nation's brownfields contain abandoned, leaking underground storage tanks (USTs). S. 350 provides EPA with the flexibility site-by-site, to support brownfields clean-up and redevelopment of properties with leaking underground storage tanks. Questions related to the reform of other statutes should not hold up the passage of brownfields legislation.

As you may know, in partnership with the States and communities, EPA recently initiated a pilot program to encourage the clean-up and reuse of sites with abandoned, leaking underground tanks. The Agency has selected ten initial pilots and anticipates naming 40 more. One suggestion to provide funding to further clean-up and reuse abandoned gas stations and other underground tank sites would be to authorize the use of the Leaking Underground Storage Tank Fund to address these brownfield sites.

*Question 4.* S. 350 allows EPA to "reopen" a site, even if that site has been approved or completed under a State program, if EPA "determines that information . . . not known to the State . . . has been discovered regarding contamination or conditions at a facility." Isn't this standard overly broad? What exactly constitutes new information?

Response. As I understand it, EPA may use the “new information” reopener only when several specific conditions are met. First, new information means that the information was not known to the State at the time a clean-up was approved or after the clean-up was complete. Second, the information must demonstrate that conditions or contamination at the site pose a threat. Third, the conditions or contamination that poses a threat must require additional remediation to protect human health and the environment. Finally, EPA must make a “determination” which suggests that the facts must support the decision.

*Question 5.* One of my concerns that I outlined in my opening statement is the issue of an administrative cap on the amount of funds that can be used by the Federal EPA to administer the brownfields program. I believe that this administrative cost cap is essential to ensure that the majority of funds go to actual brownfields redevelopment. Can I have a commitment from you to address this issue?

Response. I am committed to working within EPA to minimize the administrative costs of the brownfields program. The Brownfields program’s total estimated administrative costs for fiscal year 2001 are \$14.6 million, which is only 16 percent of the total \$91.4M brownfields budget. Salaries, overhead costs and benefits for employees accounts for less than 50 percent of the \$14.6M. Contract support is predominantly to provide data management on behalf of the city and State pilots so that EPA can provide to OMB, Congress and other stakeholders the outputs and outcomes of the program as required under the Government Performance and Results Act. The figure for contract support increased from the fiscal year 2000 budget in direct relationship to the number of pilots awarded by EPA. A break down of the administrative costs is:

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Salaries’ overhead costs’ & benefits for EPA employees .....	\$7.0M
Inter-Agency agreements with other Federal agencies .....	\$0.5M
Contract support for data management, etc .....	\$5.3M
Other EPA Offices .....	\$1.8M

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*Question 6.* EPA has never overfiled on a State-approved brownfields clean-up under CERCLA or any other statute. Yet, it is the perceived threat that impedes brownfields development. S. 350 only provides developers with a safety net for CERCLA. Experts, such as Robert Ford—a witness at the hearing—stated that if the power of EPA to force clean-ups under Superfund is taken away, then the Federal EPA could sidestep the Chafee bill by using other statutes (e.g RCRA or TSCA) to force parties to clean up sites. Therefore, shouldn’t Congress provide a similar safety net for other statutes, such as RCRA and TSCA ?

Response. S. 350 provides States maximum flexibility to develop clean-up programs by not mandating criteria or requiring EPA review and approval of stare programs. EPA supports this approach and believes it will encourage innovative programs for the clean-up and redevelopment of brownfields. At the same time, S. 350 ensures protection of human health and the environment by maintaining a Federal “safety net.”

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STATEMENT OF HON. J. CHRISTIAN BOLLWAGE, MAYOR, ELIZABETH, NJ

I am J. Christian Bollwage, Mayor of Elizabeth, New Jersey. I am pleased to appear today on behalf The United States Conference of Mayors, a national organization that represents more than 1,050 U.S. cities with a population of 30,000 or more.

Within the Conference of Mayors, I now serve as a member of the organization’s Advisory Board, and I am a co-chair of the Brownfields Task Force.

Mr.Chairman, let me first express the appreciation of the nation’s mayors to you, members of this Subcommittee, and Chairman Smith and Ranking Minority Member Reid for your leadership in introducing S. 350 and for making this legislation a priority in the Senate.

We are pleased to appear here this morning to convey our strong support for S. 350 and to appeal to you to act promptly on this bipartisan legislation.

There is an opportunity to move this legislation forward and finally secure the many benefits of recycling brownfields all across this nation.

This committee has previously sought testimony from the Conference and others involved in brownfields redevelopment and related issues. As such, I would like to simply add to this record by focusing my remarks on a couple of key areas.

*Conference of Mayors' Support for S. 350*

Prior to introduction of S. 350, Conference President and Boise Mayor H. Brent Coles wrote to you, Mr. Chairman, committee Chairman Smith and Senators Reid and Boxer to convey the Conference's strong support for this legislation.

This weekend, the Conference's top leaders met to review the top legislative priorities for this Congress, further emphasizing S. 350 as one of the top priorities for the nation's mayors. We also had the opportunity to meet and discuss the need for action on S. 350 with senior Bush Administration officials.

The mayors are excited about your plans to move promptly on this priority legislation. We believe S. 350 provides the new Congress with a unique opportunity to make vital policy changes and deliver much needed resources directly to cities and other local areas in support of the many public and private efforts to reclaim brownfields all across this nation.

We also believe that is most appropriate for this committee and the Senate to place particularly priority on S. 350, the same legislation that had garnered 67 Senate cosponsors in the 106th Congress. Mr. Chairman, I would also like to emphasize that this legislation enjoys broad support among the mayors and other public and business parties.

*Brownfields Survey*

Mr. Chairman, let me again share some of the findings of the Conference's studies on the scope of the brownfields problem before this nation to underscore the need for action on this important legislation.

Our survey work clearly shows that brownfields is a national problem and one of significant proportion. Mr. Chairman, one most recent report, Third National Report on Brownfields Redevelopment, was issued last year and is already part of this committee's record.

First, let me summarize some of the key findings—

- 210 cities estimated that they had more than 21,000 brownfield sites; these sites consumed more than 81,000 acres of land.
- Brownfields are also not just a "big" city problem; more than six out of ten respondents from cities with less than 100,000 people.

We found the obstacles to redevelopment are the same for the third consecutive year:

- The number one obstacle was the need for local clean-up funds to bring these properties back into productive use, with 90 percent of the respondents indicating that clean-up funds were needed.
- The second more common impediment issue was dealing with the issue of liability, followed by the need for more environmental assessments to determine the type and extent of the contamination.

And, we also quantified the benefits of redeveloping these sites, underscoring why mayors have been so vocal in advocating support for new Federal policies to assist communities—

- Let's talk money first. Three-fourths of the survey respondents (about 178) estimated that if their brownfields were redeveloped, they would realize between \$902 million to \$2.4 billion in annual tax revenues.
- The second most frequently identified benefit was creating more jobs, with 190 cities estimated that over 587,000 jobs could be created if their brownfield sites were redeveloped.

When you examine the key features of S. 350, you can see how this legislation responds directly to what communities have told us they need to further their efforts to recycle these properties.

And, we know that these efforts to reclaim brownfields have broader implications for other national concerns. For some time, mayors and others have been calling attention to the potential of brownfields as one of the most viable options in the short term in addressing issues related to sprawl, including loss of farmland and open space. The legislation before you will help reverse some of the bias toward the development of pristine land resources as our first choice.

One of the very interesting findings came from survey respondents who were to quantify how many people their communities could absorb without adding appreciably to their existing infrastructure.

- 118 cities estimated they could support an additional 5.8 million people, a capacity that is nearly equivalent to the population of Los Angeles and Chicago.

This capacity is more than 2 years of U.S. population growth.

Mr. Chairman, we believe this and other research helps to underscore the need for a broader Federal effort in this area, with S. 350 responding directly to identified local needs.

*Key Issues in S. 350*

Mr. Chairman, S. 350 takes the next step by putting place Federal policy in line with local and States efforts to get these sites cleaned up and returned to productive use. I want to just emphasize a couple of key points in this regard. First, we have gone as far as we can with the ongoing administrative efforts by the U.S. Environmental Protection Agency. Specific statutory changes are needed now to deal with the many liability concerns and constraints affecting the use of existing Federal resources.

I want to recognize members of this committee, particularly Senator Bond and others who have worked to secure resources for local brownfield efforts in advance of final legislative action by this committee and the Congress. I also want to acknowledge the many efforts by the previous Administration for their work on policy reforms and other initiatives in support of our brownfield efforts. But despite these Congressional and administrative efforts, we believe that as a nation we have not made progress at a rate that is substantial enough given the substantial potential benefits for communities and the nation in moving our efforts to the next level.

Mr. Chairman, I am pleased to note that many of the issues that we had previously raised in testimony before this committee are reflected in provisions of S. 350. The pending proposal provides the opportunity for cities and other local governments to receive funding for their programs directly. It provides these resources for both assessments and clean-ups. S. 350 deals with many of the liability reforms that should stimulate increased private participation in cleaning up and redeveloping these sites. It also provides resources directly to States to strengthen existing State clean-up program efforts, making available resources to the States for these important programs.

*Closing Comments*

Mr. Chairman and members of this committee, the nation's mayors believe that the time has come for bipartisan action on brownfields. We have waited a long time for final Congressional action on brownfields legislation and we are excited that S. 350 is scheduled for immediate action by this committee. This is a carefully crafted legislative package that provides a very strong foundation for an expanded commitment to recycling America's land. In moving forward with S. 350, you can count on the strong and continuing support of the nation's mayors.

On behalf of The United States Conference of Mayors, I thank you for this opportunity to share the views of the nation's mayors on these important issues.

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RESPONSES BY HON. J. CHRISTIAN BOLLWAGE, MAYOR OF ELIZABETH, NJ TO  
ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

*Question 1.* Finality is a frequent topic of discussion in the brownfields debate and I believe we have gone a long way toward addressing that issue. However, finality must be balanced with protection of human health and the environment. In your opinion, will S. 350 protect human health and the environment?

Response. It is the Conference's view that this language will be protective of human health and the environment. It is particularly important to mayors and other municipal officials that this balance as set forth in S. 350 because so many brownfields and other potentially contaminated properties are located within our communities. The Conference also believes that "finality" in S. 350 not only provides a workable standard, but it is one that has been vetted extensively with Federal officials, both on Capitol Hill and within Executive agencies, as well as with many individual public and private sector entities and organizations.

*Question 2.* Can you identify specific projects in your community that may move forward as a result of enactment of S. 350?

Response. The City of Elizabeth currently has an inventory of nearly 40 brownfields. The two major roadblocks to seeing these sites remediated and put back into productive use, are the absence of Federal resources and liability reforms that would stimulate private participation in brownfield clean-up and redevelopment.

A great example of the effect S. 350 could have on a community is Elizabeth's oldest neighborhood, Elizabethport. Elizabethport is just one example of the kind of positive community impact S. 350 could have. There are brownfields all over Elizabeth, New Jersey and this nation, but Elizabethport is certainly a good example of what Federal legislation could do.

Large eyesores in a redeveloping community negatively impact on the residents' quality of life. Right on the Waterfront, what should be prime real estate, are sites such as American Chrome and Borne Chemical. Within a few blocks of the same

neighborhood are such contaminated sites as Johnson Machinery and Iron Oxide. While in this area, we are cutting crime, building new houses, training workers, building parks, and bringing an old neighborhood back to life with the help of the residents, these deteriorating brownfields stand in the way of the communities' potential. We believe this legislation will help Elizabeth tackle these sites.

STATEMENT OF HON. MYRTLE WALKER, MAYOR, EAST PALO ALTO, CALIFORNIA

INTRODUCTION

Mr. Chairman and distinguished members of the Subcommittee, my name is Myrtle Walker, and I am the Mayor of the City of East Palo Alto, California. Thank you for inviting me to testify today on behalf of the National Association of Local Government Environmental Professionals, or "NALGEP." I especially thank Senator Barbara Boxer for her invitation to be here. NALGEP appreciates the opportunity to present this testimony on the views of local government officials from across the nation on the need for Federal brownfields legislation to support the clean-up, redevelopment and productive reuse of brownfields sites. Today, I wish to convey how S. 350, the "Brownfields Revitalization and Environmental Restoration Act of 2001," would meet the needs of American communities to promote brownfields revitalization.

NALGEP represents local government officials responsible for ensuring environmental compliance, and developing and implementing environmental policies and programs. NALGEP's membership consists of more than 140 local government entities located throughout the United States. NALGEP represents many of the leading brownfields communities in the country such as Los Angeles, San Diego, San Francisco, Anaheim and other communities in California; Providence, Rhode Island; Richmond, Virginia; Enid, Oklahoma; Portland, Oregon; Boise, Idaho; Philadelphia, Pennsylvania; Trenton, New Jersey; Rochester, Glen Cove, North Hempstead, and other communities in New York; and Columbus, Cincinnati, Cuyahoga County and many other communities in Ohio, to name a few.

In 1995, NALGEP initiated a brownfields project to determine local government views on national brownfields initiatives such as the EPA Brownfields Action Agenda. The NALGEP brownfields project culminated in a report, entitled Building a Brownfields Partnership from the Ground Up: Local Government Views on the Value and Promise of National Brownfields Initiatives, which was issued in February, 1997. That report called for new Federal resources to support brownfields revitalization, particularly clean-up. The report also called for new liability clarification, new resources and partnerships for brownfields revitalization, and authority for States to take a lead in voluntary brownfields clean-up. As this committee knows, local governments have sought Federal brownfields law for many years now.

During the past few years, NALGEP has continued its work on brownfields through coordinating projects involving local officials to address the following issues: (1) Brownfields Cleanup Revolving Loan Funds; (2) use of HUD Community Development Block Grants for brownfields; (3) initiatives to reduce sprawl and promote smart growth; (4) training workshops for localities on brownfields revitalization; and (5) implementation of the Administration's Brownfields Showcase Community initiative. As a result of these efforts, NALGEP is well qualified to provide the Subcommittee with a representative view of how local governments, and their environmental and development professionals, believe the nation must move ahead to create long-term success in the revitalization of brownfields properties.

NALGEP's testimony today will focus on the following areas:

(1) the urgent need for increased Federal funding to support the assessment, clean-up and redevelopment of brownfields sites across the country;

(2) the need for liability clarification to encourage States, localities, and the private sector to step forward and revitalize more sites, while preserving the safety net of U.S. EPA involvement in exceptional circumstances;

(3) the need for Federal brownfields legislation to provide funding for the clean-up of brownfields blighted by lead, asbestos and petroleum; and

(4) the need to facilitate the participation of other Federal agencies, such as the Army Corps of Engineers and the Department of Housing and Urban Development, in local brownfields initiatives.

Overall, our view of the opportunity created by S. 350 is straightforward—this bill provides critical, positive support to local governments who badly need resources and regulatory incentives for the revitalization of America's brownfields. S. 350 is one of the most important environmental initiatives undertaken by the U.S. Congress, and there is no better time or opportunity to enact this important legislation.

The clean-up and revitalization of brownfields represents one of the most exciting, and most challenging, environmental and economic initiatives in the Nation. Brownfields are abandoned, idled, or under-used properties where expansion or redevelopment is hindered by real or perceived contamination. The brownfields challenge faces virtually every community; experts estimate that there may be as many as 500,000 brownfields sites throughout the country.

The brownfields issue illustrates the connection among environmental, economic and community goals that can be simultaneously fostered through a combination of national leadership, State incentives, and the innovation of local and private sector leaders. Cleaning up and redeveloping brownfields provides many environmental, economic and community benefits including:

- expediting the clean-up of thousands of contaminated sites;
- renewing local economies by stimulating redevelopment, creating jobs, expanding the local tax base, and enhancing the vitality of communities; and
- limiting sprawl and its associated environmental problems such as air pollution, water pollution, traffic and the development of rapidly disappearing open spaces.

#### EAST PALO ALTO'S BROWNFIELDS INITIATIVES

The City of East Palo Alto is a community that demonstrates the great challenges and opportunities presented by brownfields. East Palo Alto is a small community of 25,000 people that has never enjoyed the economic prosperity of its neighboring communities in Silicon Valley. The City has the highest levels of unemployment and poverty and lowest median income in San Mateo County. In addition, the City has struggled to significantly reduce its crime rate, which was one of the highest in the nation in the early 1990s. A major stumbling block to overcoming these problems is the brownfields contamination that impacts a substantial portion of our land, left behind from decades of industrial waste, illegal dumping and pesticide pollution. Because of this brownfields contamination, East Palo Alto suffers from a lack of investment in the transportation, utility and economic infrastructure necessary to revitalize abandoned and unproductive areas in our community.

However, the City is successfully moving forward to revitalize our community. East Palo Alto was selected by a partnership of 20 Federal agencies as one of the first Brownfields Showcase Communities nationwide. As part of the Showcase initiative, we are working with Federal and State agencies to promote sustainable environmental clean-up and economic development.

Our focus is the Ravenswood Industrial Area and the adjacent Four Corners redevelopment area. The Ravenswood Industrial Area, a large, contiguous region of approximately 130 developable acres in a historically mixed agricultural, commercial and industrial area, was designated as a U.S. EPA Brownfields Assessment Pilot in 1996. The property is affected by a multitude of toxic substances, including arsenic, chromium and other heavy metals, pesticides and herbicides, chlorinated solvents and petroleum contamination. The City partnered with U.S. EPA Region 9 and the San Francisco Bay Regional Water Quality Control Board to assess the site. The value of these brownfields assessment resources is demonstrated by East Palo Alto's experience. For many years the private sector avoided the Ravenswood Industrial Area because its past history led many to believe that clean-up costs could top \$30 million. With the help of environmental assessment resources, we now know that remediation costs are likely to be \$2 to \$5 million, a much lesser amount that could be incorporated into redevelopment costs.

The City has developed a strategic plan and design to redevelop this area into a mixed-use development and employment center, with up to 2 million square feet of commercial and high-technology offices and light manufacturing. New, medium-density housing is also planned nearby. The City will seek to promote the location of environmentally-sensitive businesses, the use of green building practices, and development that enhances and protects the beauty of adjacent resources such as San Francisco Bay, wetlands, and open space areas. The Four Corners portion is slated for the establishment of a new town center including government buildings, civic space and commercial establishments. The overall design will enhance the community and its livability. The City expects that redevelopment of the entire Ravenswood Industrial Area will create 4,000 new jobs and generate more than \$1 million per year in new tax revenues.

The redevelopment of Ravenswood will also benefit the broader region. Silicon Valley is rapidly running out of office space and developable land. This leaves the Ravenswood Industrial Area poised to take advantage of a tight real estate market and finally enjoy the prosperity of the booming regional economy. Moreover, there



is a housing crisis in Silicon Valley that East Palo Alto can help alleviate with the development of new housing in the Ravenswood area.

However, revitalizing this area will not be easy. Our challenge will be to obtain the \$2 to \$5 million required to clean up the site. Currently, there are few available sources at any level of government to fill this gap. Moreover, the uncertain liability scheme that hovers over brownfields under the current State of the law discourages the private sector from taking on these expensive clean-up challenges. Consequently, East Palo Alto's last remaining developable area remains underutilized.

In addition, we will need to secure funds to upgrade the infrastructure in the area, including expanding and improving the major entrance road to Ravenswood, enhancing flood control and prevention along the San Francisco Bay, and upgrading our utilities. East Palo Alto's challenges clearly demonstrate the need for innovative partnerships and increased Federal funding if California is to fully reap the many benefits from redeveloping brownfields like the Ravenswood area.

The Federal Government, particularly the U.S. EPA, has played an important role in helping East Palo Alto develop and advance our brownfields redevelopment efforts. Specifically it has:

- provided critical funding and a staff person to enable us to institutionalize a local program and to help investigate and clean up specific sites. East Palo Alto stresses the importance of the EPA staffperson working in our City under the Inter-governmental Personnel Act. The challenges in East Palo Alto cannot be solved simply by providing Federal money. Success requires the expertise, transfer of success stories from other communities, and the local/Federal partnership that a Federal on-site manager can provide;
- provided technical assistance and other resources through the Brownfields Showcase Community initiative that have helped us learn from other communities and take on the many challenging obstacles to brownfields revitalization;
- connected us with other Federal agencies that have resources and technical expertise;
- helped East Palo Alto create the first brownfields job training program in America, which has now been established as a full pre-apprenticeship and environmental jobs program to train workers in the scientific, technical and clean-up skills needed in our brownfields; and
- most importantly, EPA provided the critical leadership needed to educate the many stakeholders and the general public that redeveloping brownfields can be done and that it can provide significant economic and environmental benefits for communities across the nation.

Other Federal agencies are also playing a critical role in revitalizing local brownfields in communities like East Palo Alto. The brownfields challenge cannot be viewed in isolation as merely an environmental clean-up problem. Brownfields revitalization must bring together environmental clean-up with economic and infrastructure development, transportation planning, housing, education and public health, and many other community development components. Brownfields is not an "EPA-only" issue, but must be a partnership among local and State government, the private sector, and an array of Federal agencies like the 20-plus agencies leading the Brownfields Showcase Community Initiative. For example, East Palo Alto's revitalization of the Ravenswood brownfield area will not be successful without the help of the Army Corps of Engineers to address flooding and ecosystem issues, without the support of the Department of Transportation to develop workable transportation options, without the resources of the Department of Commerce's Economic Development Administration, without the help of HUD for affordable housing and economic development, and without the help of other Federal and State agencies.

#### THE PROPOSED LEGISLATION WILL MEET LOCAL GOVERNMENT NEEDS FOR FEDERAL BROWNFIELDS INCENTIVES

Local governments across America need Federal incentives and assistance for brownfields revitalization. Localities are a key player in brownfields revitalization: as owners of contaminated municipal properties, localities need resources and regulatory incentives for revitalization; as the lead for local economic development and environmental programs, localities view brownfield redevelopment as a top priority; and as a catalyst for efforts by the private sector to turn brownfields into productive places, localities support liability clarification incentives. As explained below, priority brownfields needs for localities include funding for assessment and clean-up, liability clarification for parties who can foster the clean-up of brownfields, clear authority for State-led brownfields clean-ups, and the partnership of other Federal agencies to put brownfields on a revitalization track.

### *I. Ensuring Adequate Resources for Brownfields Revitalization*

As East Palo Alto's efforts to revitalize the Ravenswood Industrial Area clearly demonstrate, local governments need additional Federal funding for site assessment, remediation and economic redevelopment to ensure long-term success in revitalizing our brownfields. The costs of site assessment and remediation can create a significant barrier to the redevelopment of brownfields sites. In particular, the uncertainty associated with brownfields sites pose an initial obstacle that drives development away from brownfields sites. With this initial obstacle removed, localities eliminate uncertainty, save time, and are much better able to put sites on a redevelopment track. In addition, the allocation of public resources for site assessment can provide a signal to the private sector that the government is serious about resolving liability issues at a site and putting it back into productive reuse. In fact, the resources provided to East Palo Alto through the EPA brownfield assessment pilot program enabled the City to get serious about the redevelopment of our priority brownfield sites. Without this EPA help, many brownfields will continue to blight communities across America and encourage sprawling patterns of development.

Likewise, resources for clean-up are the missing link for many brownfield sites—a link that keeps brownfields from being redeveloped into productive areas in many communities like East Palo Alto. Although the private sector has a key role to play in brownfields clean-up, the catalyst of Federal clean-up dollars is needed at many sites to leverage private clean-up funds and to help level the development playing field between brownfields and our precious open spaces. The use of public funds for the assessment and clean-up of brownfields sites is a smart investment. Public funding can be leveraged into substantial private sector resources. Investments in brownfields yield the economic fruit of increased jobs, expanded tax bases for cities, and urban revitalization.

The \$150 million in annual Federal funding for brownfields revitalization provided in S. 350 would go a long way toward helping communities make progress on this daunting brownfields problem. Furthermore, S. 350 properly recognizes a wide variety of local entities as eligible entities for Federal brownfields funding, including not only local governments, States and tribes, but also local development agencies, regional economic development districts, and other entities that play key roles in local brownfields revitalization. The following types of Federal funding will help local communities continue to make progress in revitalizing our brownfields sites:

- Grants for Site Assessments and Investigation: EPA's Brownfields Assessment Pilot grants have been extremely effective in helping localities to establish local brownfields programs, inventory sites in their communities, investigate the potential contamination at specific sites, and educate key stakeholders and the general public about overcoming the obstacles to brownfields redevelopment. Additional funding for site assessments and investigation is needed to help more communities establish local brownfields programs and begin the process of revitalizing these sites in their communities. S. 350 recognizes the value of Federal funding for brownfields assessments, and appropriately provides money for the development of local assessment programs, as well as for targeted brownfields assessment activities.

- Grants for Clean-up of Brownfields Sites: There is a strong need for Federal grants to support the clean-up of brownfields sites across the country. The U.S. Conference of Mayors' recent report on the status of brownfields sites in 223 cities nationwide indicates that the lack of clean-up funds is the major obstacle to reusing these properties. For many brownfields sites, a modest grant targeted for clean-up can make the critical difference in determining whether a site is redeveloped—creating new jobs, tax revenues and return on investment—or whether the site remains polluted, dangerous and abandoned. The approach in S. 350 recognizes this critical funding need, and appropriately provides direct grants for clean-up, based on considerations including the protection of green space and parks, and the re-use of existing infrastructure.

- Grants to Capitalize Brownfields Cleanup Revolving Loan Funds: In addition to grants, Federal funding to help localities and States to establish revolving loan funds (RLFs) for brownfields clean-up is another effective mechanism to leverage public and private resources for redevelopment. EPA deserves credit for championing brownfields RLFs as a mechanism for helping communities fill a critical gap in clean-up funding. However, under current law the Brownfields Cleanup RLF program is needlessly burdened by bureaucratic requirements of the Superfund law. These burdens include conformance with the Superfund National Contingency Plan and unworkable requirements for the dedication of personnel to run local RLF programs. East Palo Alto has been stymied by these obstacles, and communities across the nation have been unable to move RLF resources into brownfields projects because of these concerns. NALGEP therefore commends S. 350 for providing needed improvements to the RLF program by enabling EPA to separate clean-up grants for

loan funds from the burdensome and unnecessary requirements of the Superfund National Contingency Plan that have hindered the effective use of RLF funds.

NALGEP also emphasizes the important recognition in S. 350 between brownfields revitalization and smart growth. The investment of public resources in brownfields areas will help revitalize established communities with existing infrastructure, and avoid sprawling growth on the fringe of metropolitan areas. Such a smart growth approach can help defer the environmental and economic costs that can result from unwise, sprawling development outside of our urban centers. In NALGEP's report Profiles of Business Leadership in Smart Growth, we highlighted the efforts of businesses who seek to reduce business costs, retain qualified workers, and maintain quality of life by redeveloping brownfields and avoiding sprawl. Likewise, NALGEP's recent report Profiles of Local Clean Air Innovation recognizes the air quality benefits that can come from brownfields redevelopment and smart growth. Now, NALGEP is working with a coalition of partners on a Smart Growth for Clean Water project that will demonstrate how smart growth tools like land conservation and brownfields redevelopment can help protect and improve the nation's surface, ground and drinking water.

#### *II. Liability Clarification at Brownfields Sites*

On the issue of Federal Superfund liability associated with brownfields sites, NALGEP has found that the Environmental Protection Agency's overall leadership and its package of liability clarification policies have helped establish a climate conducive to brownfields renewal, and have contributed to the clean-up of specific sites throughout the nation. Congress can enhance these liability reforms by further clarifying in legislation that Superfund liability does not apply to certain "non-responsible" parties such as innocent landowners, prospective purchasers and contiguous property owners. S. 350 would clearly address these issues, and overcomes a hurdle that has kept innocent parties from voluntarily cleaning brownfields sites.

#### *III. Enhancing the Role of the States in Brownfields Clean-up, Improving State Programs, and Keeping the Safety Net of EPA Protection*

Addressing the American brownfields problem will require Federal law that provides effective State brownfields clean-up programs with the authority to foster clean-ups and clarify liability at these sites. Moreover, resources and support are needed to improve the effectiveness of many State brownfields clean-up programs. At the same time, the law must preserve the ability of U.S. EPA to protect citizens and local governments from the extraordinary situation of bad clean-ups and ineffective State programs. The approach proposed by S. 350 would put forth a well-crafted, workable approach that can help foster increased brownfields revitalization.

It is clear that effective brownfields revitalization is most likely to take place in States with effective voluntary clean-up programs. NALGEP has also found that States are playing a critical lead role in promoting the revitalization of brownfields. More than 40 States have established voluntary or independent clean-up programs that have been a primary factor in successful brownfields clean-up, including my home State of California. The effectiveness of State leadership in brownfields is demonstrated by those 15 States that have taken primary responsibility for brownfields liability clarification pursuant to Superfund "Memoranda of Agreement" ("MOAs") with U.S. EPA. These MOAs defer liability clarification authority to those States, and have resulted in increased brownfields activities in local communities that can make use of these State-EPA agreements.

The Federal Government should further encourage States to take the lead at brownfields sites. States are more familiar with the circumstances and needs at individual sites. A State lead will increase local flexibility and provide confidence to developers, lenders, prospective purchasers and other parties that brownfields sites can be revitalized without the specter of Superfund liability or the involvement of Federal enforcement personnel. Parties developing brownfields want to know that the State can provide the last word on liability, and that there will be only one "policeman," barring exceptional circumstances. Moreover, it is clear that U.S. EPA lacks the resources or ability to provide the assistance necessary to remediate and redevelop the hundreds of thousands of brownfields sites in our communities.

S. 350 provides that EPA will not take Superfund enforcement or cost recovery action against a person who is conducting or has completed a response action, with regard to a specific release that is addressed by the response action that is in compliance with a State program. This liability protection applies under any State program which governs response actions for the protection of public health and the environment. The approach taken by S. 350 would help effective State brownfields programs to take a lead in brownfields clean-up, and give confidence to brownfields developers that they can get the job done. NALGEP commends the bill's sponsors for

an approach that can work well and overcome the long-time stalemate on the issue of “finality.”

At the same time, local officials are also concerned that citizens need to be protected from inadequate brownfields clean-ups, in which a State program does not effectively protect public health or in other exceptional circumstances. States vary in the technical expertise, resources, staffing, and commitment necessary to ensure that brownfields clean-ups are adequately protective of public health and the environment. If brownfields sites are improperly assessed, remediated or put into reuse, it is most likely that the local government will bear the largest impact from any public health emergency or contamination of the environment. Moreover, NALGEP believes that EPA’s supportive approach to brownfields over the last 6 years demonstrates that, under S. 350, the Agency can play an appropriate deferential role for local governments and the private sector. Thus, it is important to keep the safety net of U.S. EPA Superfund authority intact for those exceptional circumstances in which a State needs help at a particular brownfields clean-up, the site presents an imminent and substantial threat to health or the environment, or in other limited situations. The approach in S. 350 keeps this important safety net for our citizens and the environment in place, and provides a balanced and workable State-Federal approach.

The approach provided in S. 350 goes even further, by providing resources and assistance to enable States to develop and improve their brownfields clean-up programs, so that brownfield clean-ups are effective and circumstances of public health threat remain truly exceptional. By providing \$50 million in annual grants to States for the enhancement of clean-up programs, and encouraging States to establish adequate provisions for meaningful public participation, enforcement, and mechanisms for the approval of clean-ups, S. 350 would help promote State leadership on brownfields clean-up.

#### *IV. Addressing the Local Need to Clean Up Brownfields with Lead, Asbestos, and Petroleum Contamination*

NALGEP suggests one major improvement for S. 350 which is needed to address a priority local problem—the clean-up of brownfields impacted by petroleum, or by lead and asbestos in the structures of buildings.

Under current law and agency programs, these pollutants are excluded from Federal brownfields assistance. These environmental contaminants are some of the most difficult problems facing local communities. Abandoned gas stations, housing with severe lead paint hazards, and buildings contaminated with asbestos blight communities across America, and represent a top local priority for clean-up. In fact, EPA reports that there are nearly 200,000 abandoned gas stations in the United States.

One example of the problem associated with the petroleum, lead and asbestos exclusion from CERCLA can be seen in Kansas City, Missouri. A former YMCA building, a historic site where the Negro Baseball League was founded, is the target of a community and City effort to create the Negro Baseball League Archives. The City has sought to obtain funding to deal with suspected contamination from asbestos, lead-based paint, and petroleum leaks from a heating oil tank, but has been barred from using EPA Assessment Pilot funds because of the CERCLA prohibition.

Brownfield sites with these pollutants should be eligible for funding. Local governments should be granted the flexibility to direct their brownfields resources, including Federal funds provided by S. 350, to their priority brownfields projects, including those that are blighted by petroleum, lead or asbestos. NALGEP urges the Congress to empower localities to make the choice to focus brownfields resources on contaminated properties where they are most needed.

Further, NALGEP urges the Congress to support the clean-up of abandoned gas stations in ways that go beyond the incentives of S. 350. EPA’s Office of Underground Storage Tanks (“UST”) has launched a pilot program to clean up and revitalize abandoned gas stations across America. This “USTFields Redevelopment Initiative” has already picked ten pilot localities, and seeks to choose 40 more partnerships with local governments to clean up and revitalize properties marred by leaking underground storage tanks. Congress should support and fund this initiative to address a top environmental priority for nearly every local community. V. Facilitating the Partnership of Other Federal Agencies in Brownfields Revitalization

The clean-up and redevelopment of a brownfields site is often a challenging task that requires coordinated efforts among different government agencies at the local, State and national levels, public-private partnerships, the leveraging of financial resources from diverse sources, and the participation of many different stakeholders. Many different Federal agencies can play a valuable role in providing funding, technical expertise, regulatory flexibility, and incentives to facilitate brownfields revital-

ization. For example, HUD, the Economic Development Administration, the Department of Transportation, and the Army Corps of Engineers have all contributed important resources to expedite local brownfields projects. The U.S. EPA has provided strong leadership through the Brownfields Showcase Community Initiative that is demonstrating how the Federal Government can coordinate and leverage resources from many different Federal agencies to help localities solve their brownfields problems.

Congress can help strengthen the national brownfields partnership by further clarifying that the various Federal partners play a critical role in redeveloping brownfields, increasing funding for agency brownfields programs, and by encouraging the agencies to meet local needs and to create innovative new approaches. For example, Congress should be commended for legislation passed in 1998 to clarify that HUD Community Development Block Grant funds can be used for all aspects of brownfields projects including site assessments, clean-up and redevelopment. This simple step has cleared the way for communities across the country to use these funds in a flexible fashion to meet their specific local needs. In addition, Congress has provided \$25 million in each of the past 2 years for HUD's Brownfields Economic Development Initiative. NALGEP understands that HUD Secretary Mel Martinez has indicated his intention to promote brownfields revitalization and smart growth policies through that Department. These HUD brownfields initiatives should be supported and expanded.

Similarly, Congress should clarify that it is appropriate and desirable for the Army Corps of Engineers to use its resources and substantial technical expertise for local brownfields projects. In East Palo Alto, for instance, we need the Corps of Engineers' help to succeed in our revitalization of the Ravenswood Industrial Area, and are working with the Corps toward this goal. East Palo Alto is severely impacted by flooding, environmental contamination, and the need for restoration of the local aquatic ecosystem. Without the assistance of the Corps of Engineers, we simply do not have the capacity or resources to overcome these challenges. NALGEP is also aware of Corps of Engineers involvement in more than 50 local projects across the nation that involve the challenges of brownfields. In these projects, Corps expertise and resources conducted under continuing authorities or congressional directive are making a critical difference.

However, the role of the Corps of Engineers in brownfields projects that are connected to the nation's waterways should be clarified and enhanced by the Congress. For instance, last year Senator Chafee introduced legislation which would provide the Corps with clear authority and additional resources to conduct brownfields activities along America's waterways. NALGEP believes that these approaches could make a big difference for East Palo Alto and many other communities, and we urge this committee to support these proposals.

Congress also should work with EPA and the Administration to determine how other agencies can help facilitate more brownfields revitalization. For example, the Department of Transportation, headed by a Secretary who hails from my hometown area in California, Secretary Norman Mineta, should be playing a key role in directing transit and transportation infrastructure into the nation's established communities impacted by brownfields. As this committee begins to think about the reauthorization of TEA-21, NALGEP urges you to keep the challenge of transportation and brownfields in mind. By taking these steps, Congress can give communities additional tools, resources, and flexibility to overcome the many obstacles to brownfields redevelopment.

NALGEP also emphasizes the importance of the Federal Government staying involved in the brownfields challenge for the long haul. You can not turn around a brownfield—or a local community—in one quarterly reporting period. Success requires local, Federal, State and private partners to work together to achieve a long-term community vision. S. 350 is so important because it provides a long-term commitment to community brownfields revitalization.

#### CONCLUSION

Senator Robert Kennedy once declared "give me a place on which to stand, and I shall move the earth." The people of America, the people of our local communities, and people in this Congress are standing up on our brownfields and in our streets and in our neighborhoods and we are saying, let's move the earth! Let us take these places that have been abandoned, and let us turn them back to jobs and business and parks and homes. Let us show that we can bring business people and environmental groups and City Hall and the Federal agencies together toward a common, exciting goal. Let us take this notion that jobs and the environment are a tradeoff,

and recycle it into a new notion of better communities where these goals are linked and supportive of each other. And let's do it now.

In conclusion, local governments are excited to work with the Federal Government to promote the revitalization of brownfields, through a combination of increased Federal investment in community revitalization, further liability clarification, and other mechanisms to strengthen the Federal/local partnership to clean up and redevelop our communities. On behalf of NALGEP, I thank the Subcommittee for this opportunity to testify, and welcome your requests to provide further input as the process moves forward.

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STATEMENT OF PHILIP J. O'BRIEN, PH.D., DIRECTOR, DIVISION OF WASTE MANAGEMENT, NEW HAMPSHIRE DEPARTMENT OF ENVIRONMENTAL SERVICES

Good morning Mr. Chairman, members of the committee, I am Philip J. O'Brien, Director of the Division of Waste Management of the Department of Environmental Services, State of New Hampshire. I am here today to represent the State of New Hampshire's views on S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001. Thank you for this opportunity.

BACKGROUND AND CONTEXT

When the topic is brownfields clean-up and redevelopment, New Hampshire may not be a State that readily comes to mind. Most people think of New Hampshire as a rural State? not a place where contaminated industrial sites lead to urban sprawl and the economic decline of communities. And while New Hampshire enjoys a strong and growing economy, and an overall high quality of life, our towns and cities have not escaped the ill effects of brownfields.

Our State was one of the first States in the nation to feel the effects of the dawn-industrial age. During the 19th and early 20th centuries, its cities and small towns grew up around textile and other manufacturing mills, which drew their power from New Hampshire's many rivers. For a time, the old mills were adapted to accommodate a changing industrial base. However, over the last few decades, as New Hampshire's economy evolved to rely more heavily on high-tech manufacturing, the mills were largely abandoned in favor of newly constructed facilities located outside of our town centers. Despite their prime downtown locations, redevelopment and reuse of these facilities has been hindered by concerns about the liability and costs associated with environmental contamination. As they fall into disrepair, many have become fire hazards and dangerous attractions. On an economic scale, they exact a heavy toll on our communities. Local jobs are lost; property taxes often go unpaid; and the mere presence of dilapidated, abandoned buildings depresses neighboring property values, and generally gives the appearance of a community in economic decline. In our larger cities, this can be a serious, and difficult problem to solve. In our smaller towns, it can mean local economic disaster. Nearly two-thirds of our brownfields sites are located in or near the centers of these small towns.

NEW HAMPSHIRE'S BROWNFIELDS PROGRAM

In order to meet the formidable challenge posed by our State's brownfields sites, New Hampshire has built an active, flourishing brownfields program. The program began in 1996 with the passage of State brownfields legislation. The legislation established the NH Brownfields Covenant Program, which provides incentives for brownfields clean-up and redevelopment in the form of liability protection. New Hampshire's brownfields initiatives include the covenant program and other State incentives, as well as initiatives funded at the Federal level under CERCLA. Taken together, these programs form an integrated approach to brownfields redevelopment, which is to utilize resources available through local, State, and Federal sources, as a means to leverage private investment in brownfields revitalization. This approach is implemented against a backdrop of sound brownfields clean-up policy and the need to make judicious use of public funds.

New Hampshire has received four EPA Brownfields Assessment Demonstration Pilot Grants over the last 4 years to perform site investigation, remedial action planning, and to generally promote brownfields redevelopment in the State. New Hampshire grant recipients include the Department of Environmental Services (DES), the Office of State Planning Coastal Program, the City of Concord, and the City of Nashua. In addition, nine municipalities have received EPA Targeted Brownfields Assessment Grants for site investigations at individual sites, four of which were administered by DES using State contractors. DES is currently working

to establish a Brownfields Cleanup Revolving Loan Fund (BCRLF), under a \$1.45 million EPA grant awarded to a coalition of five New Hampshire grant recipients. The recipients include DES (the lead agency), the Office of State Planning, the City of Concord and the towns of Durham and Londonderry.

Under these federally funded initiatives, more than 100 sites have had baseline environmental assessments performed. Seventeen sites have had full site investigations and associated clean-up planning performed. DES expects that an additional eight to ten site investigations will be performed during 2001. Of this universe of sites, approximately ten (10) sites have begun or completed clean-up and redevelopment.

The NH Brownfields Covenant Program mentioned above is an integral component of our brownfields redevelopment initiatives. It is designed to provide incentives for both environmental clean-up and redevelopment of brownfields sites by persons who did not cause the contamination. The program provides a process by which eligible persons can undertake site investigation and clean-up in accordance with DES requirements, and in return receive liability protections in the form of a "Covenant Not to Sue" from the N.H. Department of Justice. To date, 20 (20) sites have participated in our covenant program. Eleven (11) sites have achieved eligibility for a covenant, and the remaining sites are making progress toward that goal.

Taken together, sites that have received assistance under New Hampshire's brownfields initiatives have benefited from approximately \$30,000,000 worth of redevelopment investments. In the most notable case, a 19-acre site located near downtown Concord, our capital city, has been cleaned up and redeveloped. This site was abandoned and vacant for over 10 years due to concerns about environmental contamination. A local non-profit redevelopment corporation investigated and cleaned up the site under the NH Brownfields Covenant Program. The site now hosts a hotel/conference center, and two office buildings. When completely built out, redevelopment investments in the site will exceed \$20 million. This project would not have gone forward without the liability protections afforded by the covenant program.

I should also note that New Hampshire law contains specific provisions addressing liability protections for lenders, municipalities taking properties by tax deed, contiguous property owners, and innocent landowners. While the adoption of these provisions preceded our formal brownfields legislation, they play a key role in our work to revitalize brownfields sites.

#### SUPPORT OF KEY PROVISIONS OF S. 350

##### *Title I—Brownfields Revitalization Funding*

S. 350 provides significant resources to States, municipalities, and other eligible entities that may be used to provide direct grants for site clean-up. This represents a significant improvement over the existing brownfields grant programs, which provide money only for assessment and remedial planning. New Hampshire believes that these resources would facilitate revitalization of brownfields sites in our State that have languished under the existing framework. In addition, these funds will serve to augment the existing brownfields initiatives in place in New Hampshire and across the country.

Our brownfields revitalization efforts have benefited tremendously from the Federal assistance that New Hampshire has received, for which we are very grateful. However, to date, resources for actual clean-up of brownfields sites have been limited to the BCRLF programs, which initially provided money to be used only for making loans. For many brownfields sites, the clean-up costs are of such magnitude that redevelopment of the site solely by the private sector is not financially feasible, regardless of whether the clean-up is financed using a low interest BCRLF loan or a conventional commercial loan. Accordingly, assistance beyond the traditional brownfields assessment and BCRLF funding is needed in order to leverage private redevelopment investment at many sites.

New Hampshire is particularly pleased with the provisions of Title I that place a priority on making grants for sites that will be developed as parks, greenways, or used for other nonprofit purposes. We have at least six sites participating in our brownfields program where the communities envision creation of public parks and greenspaces, and many others where nonprofit uses are being contemplated. One site in particular, in the small town of Bradford, is an 18-acre parcel that is located virtually in the center of town, near the main street. In their master planning process, the citizens of Bradford have identified redevelopment of the site as a park, which the town currently lacks, as the No. 1 priority. The Town took the bold step of acquiring the property, which has a long history of environmental abuse by the previous owner. However, given the formidable environmental problems posed by

the site and modest resources of the town, financing the remediation will be a very difficult task. Greenspace development typically provides no future income with which to service debt. Accordingly, the use of loans to finance the remediation becomes impractical. The ability to provide direct grants to facilitate projects like this will provide New Hampshire with a powerful and effective tool for preserving and enhancing the quality of life in our State.

*The Success of Current Federal Assistance for Clean-up*

I would like to take this opportunity to comment on the great success that New Hampshire has had in integrating its brownfields initiatives with the efforts of the EPA Emergency Removals Program to address some of our worst sites. Currently, the Removals Program represents the only available direct EPA grant assistance for clean-up of non-NPL sites. The resources and expertise of this important CERCLA program are sometimes needed, in combination with traditional brownfields assistance, to protect the public and revitalize brownfields sites. In our experience, the Removals Program, when properly utilized, is the most effective and efficient tool available under CERCLA for achieving timely and protective site clean-up. While it may be beyond the direct scope of this legislation, I would offer that additional funding support, and expansion of the Removals Program's mission would be an efficient and cost effective way to substantially improve the performance and success of the Superfund program.

For some of our brownfields projects, use of the Removals Program has been the indispensable first step toward successful clean-up and redevelopment. In some cases, sites have significant environmental problems that pose imminent threats to human health and the environment. Immediate action must be taken to abate those threats. In many instances, we have called upon the expert assistance of the Removals Program to address such hazards. Subsequent to an appropriate removal action, significant environmental problems may still remain, leaving a traditional brownfields site. New Hampshire then uses its brownfields program, including Federal brownfields assessment monies and our State Brownfields Covenant program to work with municipalities and private developers to successfully clean-up and redevelop these sites.

Two examples of sites where the Removals Program was needed are described below. They illustrate how direct assistance with clean-up can leverage redevelopment of sites with very significant environmental problems.

*Lamont Laboratories Site, Londonderry, New Hampshire*

This 5-acre site is located in the Manchester/Grenier Industrial Air Park and was most recently used by a chemical distributor for blending, packaging and storage of finished chemical products. In 1992, the business ceased operations and later filed for bankruptcy. Left behind was a plethora of environmental problems, including numerous containers of hazardous materials that posed an imminent threat to public health and the environment. In 1994, at the request of the Town and DES, the U.S. EPA Region 1 conducted an Emergency Removal Action to remove and properly dispose of abandoned chemicals from the facility, expending nearly \$700,000. That same year, the Town of Londonderry acquired the property by tax foreclosure.

With soil and groundwater problems remaining, DES and EPA teamed up to perform site investigation and remedial action planning using the Targeted Brownfields Assessment program and DES's Brownfields Assessment Pilot Grant. Armed with this information, the Town of Londonderry paid for and performed the soil and groundwater clean-up and sold the property to the Londonderry Housing and Redevelopment Authority (LHRA). LHRA has invested more than \$1 million to construct a facility for a long-term lessee (a nationwide car rental company). This tenant will provide local jobs and significant revenues to the Town for car registration fees for its fleet. This success would not have been possible without the assistance of the New Hampshire and EPA brownfields programs, and the significant financial assistance for actual clean-up provided by the EPA Removals Program.

*Surette America Battery Site, Northfield, New Hampshire*

This 7-acre parcel is the site of a 19th century textile mill that was more recently used to manufacture lead-acid batteries. The site abuts the Winnepesaukee River and local residences. It is located in close proximity to an elementary school, a private secondary school, and downtown Tilton, New Hampshire. The activities of the battery company, which ceased operations at the site in 1994, resulted in extensive contamination of the building, manufacturing equipment, and soil on the site with lead oxide. In 1994, after the closure and virtual abandonment of the facility by its owners, DES and EPA began working to clean up the site and abate the threats posed by the contamination.



EPA performed an Emergency Removal Action at the facility in 1995, to address abandoned chemicals and lead-contaminated soil at the facility. Following a catastrophic fire in 1998, EPA performed a second Emergency Removal Action to address heavily contaminated fire debris and additional lead-contaminated soils. Total EPA contractor clean-up costs were approximately \$2.6 million. Upon completion of the removal action last fall, DES began site investigation activities under its Brownfields Assessment Pilot Grant to evaluate groundwater quality at the site, and prepare a comprehensive remedial action plan, pursuant to New Hampshire's site remediation program requirements.

The Town of Northfield has acquired the property by tax deed, and is working to sell the property for redevelopment by private developers. The Town envisions the construction of privately owned and operated elderly housing/assisted living facility, and is currently performing a reuse study using a small HUD CDBG grant. Northfield is also participating in the Brownfields Covenant program, and when the final remedy is implemented, the purchaser will also enjoy the protections of the covenant.

Given the significant environmental problems that existed at this property, the cost of clean-up far outweighed the property's value when clean. It is clear that site clean-up and redevelopment could not have been achieved without the direct assistance provided by the EPA Emergency Removal Program.

The examples described above illustrate how effective direct assistance for clean-up costs can be in leveraging private investment in site clean-up and reuse. We extend our full support for the provisions of Title I, and encourage the committee to consider our recommendation to expand the role of the EPA Emergency Removals Program in facilitating brownfields redevelopment.

#### *Title II—Brownfields Liability Clarifications*

New Hampshire strongly supports the liability clarifications provided in the bill. These reliefs in many ways mirror liability provisions that already exist in New Hampshire law. Accordingly, the clarifications will make it simpler and clearer for site owners and prospective purchasers to determine their liability exposure for a site under both State and Federal law. In our experience, Federal liability concerns are an important issue for prospective purchasers and developers of brownfields sites. Similarly, they are an important issue for owners and prospective purchasers of neighboring properties. We applaud these new provisions, and believe that they will help to remove a significant barrier to brownfields redevelopment in our State and across the nation.

#### *Title III—State Response Programs*

##### *Sec. 301. State Response Programs*

New Hampshire strongly supports the provisions of S. 350 that provide for assistance to States to establish or enhance their response programs. New Hampshire has a mature, risk-based site remediation program, which integrates the skills of qualified engineers, geologists, and health risk assessors to ensure that site remedies are effective, durable, and protective of human health and the environment. Further, our statutory framework, administrative rules, and legal support from the NH Department of Justice ensure that the provisions of our program are enforceable. Nonetheless, the very success of our brownfields initiatives can tax our ability to respond in a timely and effective fashion to the needs of our stakeholders. The ability to apply for additional funding to support our efforts will be extremely valuable.

New Hampshire also supports the provisions that make additional uses of this money available, including capitalization of revolving loan funds, and development of alternative mechanisms to finance response actions. We have not yet investigated the use of a risk sharing pool, indemnity pool, or insurance mechanism to finance site clean-ups, but will evaluate these options to see if they would be effective in our State.

New Hampshire believes that the elements of a State response program that are outlined in Sec. 301 are reasonable and do not pose an undue hardship on the States. We strongly support the provisions that would prevent a Federal enforcement action in cases where the State is appropriately exercising oversight authority. Federal liability concerns are an important issue for prospective purchasers and developers of brownfields sites. Concerns that site closure by the State alone is not enough, and that the site will be reopened by EPA, remain at the forefront of many developers' minds. While we have often been able to address such concerns using the CERCLA archive process, comfort letters, or prospective purchaser agreements, there have been many projects that have faltered due to residual uncertainty associated with liability under Superfund and the lack of finality. Replacement of these

administrative approaches to the problem with definitive changes to the law should go a long way toward resolving these concerns.

*Sec. 302. Additions to National Priorities List*

New Hampshire supports the provision for deferral of final listing on the National Priorities List for sites that States wish to address using their voluntary clean-up programs. We recently attempted to defer such a listing in our State when we were approached by a private developer interested in performing the clean-up. After several months of negotiations with both EPA and the developer, it became clear that the project would not work financially, and we requested that EPA proceed with listing. Nonetheless, the lack of a clear process for deferral made our discussions with EPA difficult and the path unclear. While EPA Region 1 worked diligently and cooperatively with DES to address the issue, the proposed legislation would have made clear New Hampshire's right to request the deferral, and the criteria that would need to be met to sustain a deferral. Accordingly, we fully support the provisions of Sec. 302.

In closing, I would like to commend Sen. Smith and the committee members for crafting an excellent Brownfields bill. Thank you again for the opportunity to provide New Hampshire's perspective. We will follow the progress of this legislation with great interest and will be happy to respond to further questions or to provide clarification of the comments contained in this testimony. Testimony of Philip J. O'Brien, Ph.D. N.H. Department of Environmental Services Hearing on S. 350 February 27, 2001 Page 8

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STATEMENT OF MIKE FORD, NATIONAL ASSOCIATION OF REALTORS

Thank you for the opportunity to present the views of the National Association of Realtors (NAR) on S. 350, the Brownfields Revitalization and Environmental Restoration Act. I wish to thank Chairman Chafee, Chairman Smith, and Senators Reid and Boxer for your leadership in building bi-partisan consensus on this very important issue.

My name is Mike Ford. I own a full service residential and commercial real estate company in Clark, New Jersey, and I have been a real estate broker for 27 years. I am also the 2002 Regional Vice President for NAR Region 2.

It is often said—and I agree—that realtors don't sell homes, we sell communities. The more than 760,000 members of the National Association of Realtors, real estate professionals involved in all aspects of the real estate industry, are concerned and active members of our communities. We want clean air, clean water and clean soil. We want to see contaminated properties cleaned up and returned to the marketplace. We care about a healthy quality of life as well as a vibrant economy, and we are willing to do our part to maintain that important balance.

NAR supports S. 350 because it will effectively promote the clean-up and redevelopment of the hundreds of thousands of our nation's brownfields sites. Throughout the country, the real estate industry is becoming increasingly comfortable with the idea of redeveloping brownfields sites. Old factories and warehouses are being replaced with cultural facilities, parks and apartment communities. At the same time that they provide a cleaner and safer environment, these revitalized sites increase the tax base, create jobs and provide new housing.

In my home State of New Jersey, for example, a recent Rutgers University report estimates that—within 10 years—brownfields redevelopment can create 66,000 permanent jobs, new housing for 71,000 people, and \$62 million in new tax revenues. Under the strong leadership of Governor Whitman, New Jersey has worked closely with the private sector and begun an ambitious program to assess and remediate our 8,000 contaminated sites. One private developer took advantage of a State program which reimburses up to 75 percent of remediation and clean-up costs to turn an abandoned factory site into a mixed-use project which includes commercial, retail and housing.

Support for brownfields redevelopment also fits within NAR's Smart Growth Initiative, our new program to advocate public policies which seek to maintain community quality of life while allowing market forces to generate growth.

Brownfields redevelopment is occurring because Federal, State and local governments have banded together to creatively attack the brownfields problem by providing a variety of incentives and assistance. However, significant hurdles remain. A shortage of clean-up funds and liability concerns continue to impede brownfields redevelopment.

S. 350 effectively addresses these issues. First of all, it provides needed funding to Federal and State brownfields programs.

Secondly, the bill clarifies the Superfund liability protection for innocent land-owners who have not caused or contributed to hazardous waste contamination. It's important to get these innocent property owners out of the liability net so that resources can be targeted toward clean-up rather than litigation. When it comes to Superfund clean-up, we must ensure that the real polluters pay so that contaminated sites are returned to productive use as quickly as possible.

Finally, S. 350 recognizes successful clean-ups undertaken under State brownfields programs. Through their programs, most of these States provide real estate developers with incentives to make brownfields redevelopment more attractive.

Typically, the State will provide some form of liability relief once it has approved a clean-up. In New Jersey, relief comes in the form of a "No Further Action" letter from the State DEP. Unfortunately, there is no guarantee that the Federal EPA will not assert authority at a future date and require additional clean-up. Without some degree of certainty that they are protected from Federal as well as from State liability, developers are reluctant to undertake development of contaminated sites. This bill provides the certainty they need to go forward.

In New Jersey, I've seen what can be accomplished when local, State and Federal Government work together with private business interests to make something out of nothing. In my hometown of Clark, General Motors cleaned up a contaminated property and funded construction of a golf course. The local government runs the course and makes a healthy profit.

S. 350 presents a "win-win" opportunity for everyone by cleaning up hazardous waste sites, putting them to new and productive uses, and enhancing community growth. Now is the time for Congress to assert bi-partisan leadership and reinforce our nationwide effort to turn "brownfields" into "greenfields." NAR looks forward to working with this committee and the entire Senate to pass a brownfields bill in the 107th Congress.

Thank you again for the opportunity to present the views of the National Association of Realtors. I'm happy to answer any questions.

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RESPONSES BY MIKE FORD TO ADDITIONAL QUESTIONS FROM SENATOR CHAFEE

*Question 1.* Would enactment of S. 350 improve upon the current brownfields program?

Response. Yes. By clarifying the liability protection for innocent owners and prospective purchasers, increasing funding assistance for brownfields assessment and clean-up, and limiting EPA's authority to "re-open" clean-ups completed under State brownfields programs, S. 350 significantly improves the current program.

*Question 2.* In your opinion, will enactment of S. 350 provide business persons in the real estate community with the comfort necessary for them to redevelop brownfields sites?

Response. Yes. The "finality" language in S. 350 improves upon the current situation. The provision's limitation on EPA's authority to "re-open" sites will provide business persons with sufficient certainty that they are protected from Federal liability. As EPA Administrator, Governor Whitman will work closely with the States to ensure that their brownfields clean-ups are adequately protective of human health and the environment.

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RESPONSES BY MIKE FORD TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

*Question 1.* States like New Jersey have successfully developed brownfields programs that determine clean-up standards, assess attainment of standards, and offer comprehensive liability protections. Yet EPA has often questioned the adequacy of these programs and the technological expertise of the States to develop and enforce State clean-up standards. As EPA Administrator, what steps will you take (or recommend that Congress take) to ensure that States have the authority to establish and enforce clean-up standards and determine the final closure status of local brownfields sites?

Response. As the former Governor of New Jersey, Governor Whitman is very familiar with the relationship between Federal and State government on the issue of brownfields clean-up.

S. 350 provides funding to States to establish and enhance their clean-up programs. EPA has authority to undertake administrative initiatives, such as Memoranda of Agreement, to recognize strong State brownfields programs and limit Federal authority to require further remediation of sites cleaned up under such programs. We're confident that Governor Whitman will work closely with the States to

ensure, to the maximum extent possible, that their brownfields clean-ups are adequately protective of human health and the environment and therefore "final."

*Question 2.* Do you support Federal brownfields legislation, including a standard Federal definition of what constitutes a brownfields site? Also, would you support including petroleum (and other common pollutants like asbestos, lead and PCBs) in the definition of brownfields? Would you offer Federal liability protections that mirror State liability protections? And, would you allow States to determine clean-up standards for brownfields sites?

Response. The NATIONAL ASSOCIATION OF REALTORS supports Federal brownfields legislation which includes a standard brownfields definition, such as is provided by S. 350. We do not support the expansion of S. 350 to include petroleum and other common pollutants in the definition of brownfields. We feel that the Federal liability protections in S. 350 provide adequate assurance that the Federal Government will not step in at some future date and require additional remediation.

*Question 3.* The General Accounting Office estimates that there are approximately 450,000 brownfields sites nationwide. Out of these sites, EPA estimates that 100,000 to 200,000 sites contain abandoned underground storage tanks or are impacted by petroleum leaks. Because S. 350 only provides a liability exemption for CERCLA contaminants and not petroleum, given EPA's own statistics that almost half of the sites contain petroleum, isn't it possible that half of the brownfields sites in this country may go undeveloped because of the lack of Federal liability protection for petroleum pollutants? How would you address petroleum contamination and leaking underground storage tanks?

Response. As introduced, S. 350 is of great value to the real estate industry. By addressing funding and liability concerns, it will spur brownfields redevelopment throughout the country. It effectively balances economic, health and environmental issues to ensure that all considerations are addressed. It should not be expanded to include petroleum sites.

*Question 4.* S. 350 allows EPA to reopen a site, even if that site has been approved or completed under a State program, if EPA "determines that information . . . not known by the State. . . has been discovered regarding the contamination or conditions at a facility." Isn't this standard overly broad? What exactly constitutes "new information?"

Response. We feel that the finality language of S. 350 provides business persons with sufficient certainty that they are protected from Federal liability. It provides greater certainty than under current law, and this will make developers feel more comfortable in moving forward with brownfields redevelopments. We're confident that, under Governor Whitman's leadership, EPA will work closely with the States and form a workable partnership to accelerate the pace of brownfields redevelopment. We expect that EPA will respect the successful clean-up efforts that are underway at the State level and only exercise its re-opener authority when absolutely necessary to protect human health or the environment.

*Question 5.* EPA has never filed on a State-approved brownfields clean-up under CERCLA or any other statute. Yet, it is the perceived threat that impedes brownfields redevelopment.

Response. S. 350 only provides developers with a safety net for CERCLA. Experts, such as Robert Fox—a witness at the hearing—stated that if the power of EPA to force clean-ups under Superfund is taken away, then the Federal EPA could sidestep the Chafee bill by using other statutes (e.g., RCRA or TSCA) to force parties to clean up sites. Therefore, shouldn't Congress provide a similar safety net for other statutes, such as RCRA and TSCA?

S. 350 is the product of a bi-partisan compromise among the leadership of the Senate Environment and Public Works Committee. It represents a significant step forward for the real estate industry, and the NATIONAL ASSOCIATION OF REALTORS strongly supports it. S. 350 should not be expanded to address issues related to other statutes such as RCRA and TSCA.

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STATEMENT OF ALAN FRONT, SENIOR VICE PRESIDENT, THE TRUST FOR PUBLIC LAND

Mr. Chairman, my name is Alan Front, and it is my pleasure to appear once again before the Subcommittee to share with you the unqualified support of The Trust for Public Land, and of a broad spectrum of conservation and environmental groups, for the vision and the specific provisions of S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001.

*Brownfields—the Perils, and the Possibilities*

S. 350 is a carefully crafted, critically needed response to a pernicious problem that affects countless communities across America. Brownfields—those once-productive properties now left idle because of actual or perceived low-level hazardous material contamination—hang like albatrosses around the necks of thousands of urban and not-so-urban neighborhoods. Irrespective of their true potential, these sites often remain unloved and unused due to the inconvenience, uncertainty, and liabilities that clean-up responsibility entails.

Public and private land-use decision-makers often find it simplest to bypass brownfields, focusing their attention instead on virgin properties and other lands that do not pose the same challenges. As a consequence, even as intensifying development pressures migrate elsewhere, communities with these land-use white elephants miss out on economic opportunities; moreover, the very existence of derelict properties shrouded in possibly toxic mystery squelches land use and community spirit neighborhood-wide. And the ripple effect extends far beyond, since housing, commercial, or community facilities construction frequently shifts instead to “path of development” lands at the leading edge of urban sprawl.

In our work with municipal governments, community groups, private landowners, and other local partners, the Trust for Public Land (TPL) has seen the withering effect that unremediated brownfields can have on community landscapes. Conversely, we have witnessed first-hand how reclamation of these challenged sites—as economic engines, or as parklands with incalculable quality-of-life rewards—can bring new life not only to old properties, but to local economies and esprit as well. In short, our on-the-ground work affirms the desperate need for precisely the helping-hand approach and practical land-reclamation tools that S. 350 provides.

*TPL, Green Spaces, and Brownfields*

Since 1972, TPL has worked to protect land for people, helping government agencies, property owners, and local interests to establish and enhance public spaces for public use and enjoyment. By arranging conservation real estate transactions, TPL has facilitated the protection of well over a million acres of park, forest, agricultural, and other resource lands. Through these “win-win” partnerships, many communities have woven an appropriate open-space thread into their overall land-use fabric. In the process, they have recognized the interdependence of the built environment and the natural one, and have reaped the benefits of balanced growth.

At the same time, land-use trends on a national scale are raising new concerns about whether this tenuous balance can be maintained. We have seen the rate of open space conversion more than double in the past decade; according to recent U.S. Department of Agriculture statistics, farmland and other open space is yielding to development at an average rate of nearly 400 acres every hour. And from the wilderness to the inner city, even as these open spaces are being lost, Americans are more and more urgently expressing their need for more parks, greenways, wildlife areas, community gardens, and scenic protection.

From TPL’s earliest days, it has been clear that brownfields—even before the word was coined—have been a necessary, integral component of any full-fledged strategy to meet the needs of both development and conservation. Left unremediated, these idled properties pose a serious, often-insurmountable threat to neighborhood stability, economic development, public health and safety, and quality of life. Conversely, brownfields reclamation—through new commercial or residential development, or through creation of new community parks or playgrounds, or through a combination of these land uses—can spark a true neighborhood renaissance.

In some of TPL’s first projects, in the inner cities of Oakland, CA and Newark, NJ, we watched just this sort of redemption as community groups turned trash-strewn, contaminated lots into gardens and pocket parks. Since then, we have participated in a wide range of brownfields-to-parks conversions. In Atlanta, new visitor facilities at the Martin Luther King National Historic Site have replaced an old Scripto Pen factory. In Chicago, mothballed railroad property was transformed into playgrounds and ballfields at the city’s Senka Park. And along the Los Angeles River—that desolate concrete channel best known as a film location for “Terminator” movies—new parks and recreation areas are rising up on previously contaminated factory sites.

There is ample historical precedent for these powerful symbols of neighborhood renewal. In Kansas City, for example, abandoned industrial sites were the foundation for the city’s entire park system. Chicago’s long-admired lakefront park system sits on the site of the city’s former tannery district; New York’s Bryant Park and Boston’s Charles River greenway have similarly challenged pedigrees. And in each

case, the greening of abandoned lands brought new private investment, new economic opportunity, and new urban vitality.

Moreover, just as newspaper recycling saves trees, brownfields recycling saves undeveloped landscapes. The simple fact is that there is not enough “new” land in our urban areas and rapidly growing suburbs to provide for the mix of open space and development upon which healthy communities depend. Each of the estimated 600,000 brownfields in America is a missed opportunity for a public recreation facility, a housing complex, or an office park that likely will be built elsewhere. Consequently, unrestored brownfields serve only to ramp up the competing land-use pressures on the ever-shrinking inventory of pristine lands.

Plainly put, brownfields recovery can green neighborhoods, resolve development-versus-preservation conflicts, promote economic expansion, and inhibit sprawl. For all of these reasons, TPL encourages the Subcommittee to add some much-needed arrows to the brownfields-conversion quiver by considering and reporting S. 350, a bill that brings the Federal Government, as an appropriate partner, into the mix. As you well know, we are far from alone in this request: this legislation enjoys an unprecedented spectrum of support that ranges from public officials to private industry to the public-interest community.

S. 350’s vitally important brownfields solutions attracted a broad bipartisan sponsorship—a total of 67 Senators—in the 106th Congress, and momentum is again building. With far-reaching support in Washington and across America, we believe this bill could be the first major environmental statute enacted by the 107th Congress, so long as it is not amended in any way that diminishes this unparalleled balance of enthusiastic public and private support. For this reason, and for the more specific community-empowering reasons spelled out below, we urge prompt approval of S. 350 as introduced.

#### *S. 350—New Tools to Renew Lands*

The Trust for Public Land is particularly appreciative of the programs for community revitalization included in Title I of the Brownfields Revitalization and Environmental Restoration Act. These provisions will provide a much-needed new Federal commitment to brownfields reclamation and reuse, and will leverage considerable nonfederal partnership funding. As a direct result, S. 350 will exponentially increase the canon of restoration success stories and will vastly improve economic and environmental vitality nationwide.

TPL is especially encouraged by the inclusion of the following specifics in S. 350:

- The criteria for entities eligible to receive grants and loans are appropriately inclusive, allowing a diversity of conservation and/or redevelopment partners—including Indian tribes and State-created conservancies—to participate.
- The bill’s Site Characterization and Assessment Grants are similar to the successful model of EPA’s assessment demonstration pilot program, which already have been an important component in brownfields-to-parks conversions.
- The proposed revolving loan funds offer a tailored seed-money approach regarding remediation funding, including the authorization of grants where recipients are unable to draw upon other funding sources. This provision ensures that those who can pay back will, and that the underserved communities with some of the greatest need for brownfields revitalization will also benefit.
- The bill explicitly encourages grants for parks, greenways, and other undeveloped public uses. This provision, which recognizes the importance of improving quality of life in brownfields-affected neighborhoods, places open-space and community recreation appropriately in the equation alongside revenue-producing economic redevelopment
- EPA will have important flexibility to apply resources to areas where the need is greatest. The bill allows for increased assessment grants for more critical and difficult projects; additional support for communities best able to leverage nonfederal commitments; assistance for development of site remediation programs; and the potential waiver of the program’s matching requirement for communities truly unable to meet this obligation.
- The bill’s grant-ranking criteria include further encouragements for environmental justice projects, economic stimulus, brownfields-to-parks conversion, synergy with nonfederal funds, and use of existing infrastructure
- Last and certainly not least, the meaningful annual funding levels for these programs will allow the Federal Government to become a true partner to State and local entities working to reclaim their landscapes.

With all these benefits, the Brownfields Revitalization and Environmental Restoration Act of 2001 will enable urgently needed, place-specific Federal participation in efforts across the country to foster recreation, open space opportunities, and rede-

velopment on appropriate sites, and by extension will help to conserve undeveloped resource lands that might otherwise be built upon.

Mr. Chairman, please accept the thanks of the Trust for Public Land for your commitment to and craftsmanship of S. 350. We eagerly look forward to working with you, Chairman Smith, Senators Reid and Boxer, and the bill's other cosponsors toward enactment.

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STATEMENT OF JOHN G. ARLINGTON ON BEHALF OF THE AMERICAN INSURANCE ASSOCIATION

Mr. Chairman and members of the Subcommittee: This testimony is submitted on behalf of the American Insurance Association ("AIA"). The AIA is the principal trade association for property and casualty insurance companies, representing more than 370 major insurance companies which provide all lines of property and casualty insurance and write more than one-third of all direct commercial property and casualty insurance in the United States.

We are delighted to have this opportunity to comment on S. 350, the Brownfields Revitalization and Environmental Restoration Act of 2001. We believe the bill constitutes a small, but positive step toward cleaning up hazardous waste sites. We are especially happy to observe that the bill does this through a mechanism other than litigation. Finally, we are pleased to note the bill is the product of a bipartisan consensus of the leadership of the Senate Environment Committee and we congratulate the sponsors of this bill for this achievement.

Mr. Chairman, we believe S. 350 will help facilitate the clean-up and redevelopment of hazardous waste sites throughout the country. Brownfields redevelopment—facilitated, encouraged, and stimulated by this bill—is undeniably good environmental policy and it is also good business. In fact, insurance related to the redevelopment of old industrial sites and even Federal facilities is a small, but growing area of business for the insurance industry. Thus we are seeing a welcome conjunction between the interests of cities and towns in need of revitalization and the interests of businesses seeking new markets.

The brownfields problem this bill helps address is being faced by cities throughout the country. The contaminated properties we call "brownfields" are typically abandoned industrial or commercial properties that are no longer owned by the parties who were responsible for the contamination. Usually these properties have been obtained by local governments through foreclosure on mortgages, taxes, or other assessments that were in arrears. In other cases the sites are owned by trusts or estates that are financially unable to clean up the contamination. Local governments, trusts, and estates are rarely in a position to indemnify potential purchasers against environmental liability for known or unknown contamination. Some cities now own hundreds of such properties and simply cannot afford to hire consultants to characterize the environmental condition of these sites and certainly cannot afford to pay for cleaning up the contamination. If cities offer some limited form of indemnity for purchasers or developers of these properties, they risk a downgrading of their financial ratings due to the requirement to report contingent liabilities to auditors and rating organizations. For most cities this would be disastrous.

The predicament for many cities is that they don't have the resources to address the brownfields problem, but they can't develop the resources without addressing the brownfields problem. This would seem to provide an appropriate opportunity for Federal legislation, such as S. 350.

Title I authorizes grants to State and local governments, and to various redevelopment agencies for site assessment and remediation. While we will leave detailed comments on this provision to the mayors who are testifying today, we would point out that "grants" as opposed to "loans" are exactly what is needed. That's because as one might expect, the cities and towns most in need of brownfields redevelopment activity are often those that can least afford it, by definition. A loan simply digs the financial hole they are already in a little deeper. Therefore, grants are often the only practical way for these cities to begin to address the problem.

Title II makes modest amendments to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or commonly referred to as "Superfund") by exempting from liability innocent contiguous property owners; innocent prospective purchasers; and innocent landowners. All of these exemptions would apply only under very limited circumstances, detailed with great specificity in the bill. It is uncertain whether many parties would be affected by the contiguous property and innocent landowner provisions; no doubt the few who may be affected will certainly be enthusiastic supporters of these exemptions. It should be noted, however, that there are a number of risk management techniques, including insur-

ance, currently available to prospective purchasers. Some of the types of insurance available to prospective purchasers and others involved in these transactions are mentioned below. Title III sets standards for Federal intervention during or after a State-supervised clean-up. We realize this issue has been a source of significant controversy. In any event, we also recognize that as a matter of public policy no clean-up is ever going to be entirely "final" in the sense that there will never be an opportunity for future government intervention. This is one of the areas where a combination of risk management techniques, including insurance, can facilitate the redevelopment of contaminated properties notwithstanding this lack of "finality." Insurance is currently available to pay the costs of additional clean-up of specified contaminants after the initial clean-ups have been completed and approved by State or Federal regulators. In some cases, insurance policies may also be written to respond to additional clean-up that may be required due to future changes in the environmental laws.

Insurance is now emerging as a useful tool for managing environmental liability risk in the redevelopment of contaminated properties. In addition to insurance against the possible re-opening of completed clean-ups (as discussed above), insurance is now being written to cover: cost overruns for specific remedial action plans; the discovery and remediation of new contaminants; and third party bodily injury, property damage, and clean-up claims arising from newly-discovered contaminants. In some cases, insurance may be available to all parties to a brownfields redevelopment transaction, including the sellers and buyers, the banks making the loans for the purchase, and for the engineers and contractors involved in the clean-up, as well as for the clean-up itself.

S. 350 will provide necessary relief to many cities struggling with the problem of abandoned, contaminated properties. Significantly, we note that no attempt has been made to reinstate the Superfund taxes as part of this bill and no attempt has been made to add other special liability exemptions for favored parties. We heartily endorse this approach. But we must emphasize that, while we think this bill is beneficial in its current form, we will very strongly oppose any attempt to reinstate the expired Superfund corporate taxes without the enactment of comprehensive liability and remedy selection reform. Likewise, we will oppose any special liability exemptions that may be added for sympathetic groups of responsible parties if the costs of those exemptions are shifted to the remaining parties.

Mr. Chairman, once again we congratulate you on this consensus bill and we sincerely hope this is the first in a long line of consensus legislation to come.

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#### TESTIMONY OF GRANT COPE ON BEHALF OF THE U.S. PIRG

Good morning Mr. Chairman and distinguished members of the Senate Subcommittee on Superfund, Waste Control, and Risk Assessment. I would like to thank you for the opportunity to speak about the important issue of brownfields legislation, in particular, "The Brownfields Revitalization and Environmental Restoration Act of 2001." (S. 350).

My name is Grant Cope. I am an Environmental Advocate for the United States Public Interest Research Group. U.S. PIRG is a nonprofit, nonpartisan environmental and consumer organization with offices in 38 States across the nation.

Today, I will address four issues: first, the need to safely and expeditiously redevelop brownfields; second, the beneficial aspects of S. 350; third, the main deficiencies of the legislation; and fourth, deficiencies in other proposals that may come before the committee.

##### I. THERE IS A GREAT NEED TO CLEAN UP AND SAFELY REDEVELOP BROWNFIELDS

There is a serious need in thousands of communities across our nation to safely and expeditiously clean up brownfields. While there is no definite tally on the number of contaminated sites across our nation, there may be as many as 450,000 such sites. Regardless of the ultimate number of sites, there is a clear consensus that the nation needs to clean up and safely redevelop brownfield sites.

The adverse effects of failing to meet this charge are clear. The health of women, men, and particularly children that live or work near contaminated sites will continue to be put at risk. Developers will continue to seek out greenfields, rather than helping to redevelop blighted inner-city areas in need of reinvestment. Of course, this will lead to sprawl, which contributes to numerous health and environmental problems, including increased contamination of our nation's water resources, air pollution, and fragmentation of wildlife habitat. Clearly, good brownfields redevelopment needs to occur across our nation.



Good brownfields redevelopment programs, that include strong clean-up standards, provisions to ensure that polluters pay to clean up their contamination, and meaningful involvement of citizens in clean-up decisions are essential to help combat the dangers associated with contaminated sites.

The Federal Government can help facilitate these types of programs by providing common sense criteria for State clean-up programs and Federal funds to help spur beneficial redevelopment efforts.

Over the years, members in both the House and Senate have put forward responsible bills that sought to address the brownfield issue head on. S. 350 has incorporated some of the best ideas from these bills. Unfortunately, on three key issues, S. 350 also departs from important provisions of bills introduced in previous sessions of Congress.

I would now like to briefly highlight three benefits and three areas of concern associated with S. 350.

## II. THREE BENEFITS OF S. 350

### *A. Good State Program Criteria*

First, S. 350 lays out very good State program criteria. Unfortunately, unless further clarifications to the bill are made, these great program criteria may be not be enforceable. That being said, U.S. PIRG supports S. 350's provisions for State surveys and inventories of brownfield sites, public notice and comment on proposed clean-up plans, public access to all documents used to develop a clean-up proposal, State lists of institutional controls (including the types of such controls and the parties responsible for enforcing the institutional controls used at brownfield sites), strong State oversight and enforcement programs and activities that ensure the long-term operation and maintenance of contaminated sites.

U.S. PIRG suggests one other program criteria. States should give any person the right under State law to ensure developers comply with clean-up plans and, for the sake of consistency and increased safeguards, also provide for such a right under Federal law. Some States can be enormously unreliable in ensuring that business interests comply with the law. In these States, informed citizens, acting in their proper role as private attorneys generals, are often the last best hope for adequate enforcement of public health and environmental laws.

### *B. Increased Funding Will Help Spur Redevelopment*

Second, S. 350 provides much needed Federal funds to help promote the already ongoing process of redeveloping brownfields. In fact, a 1999 Report by the National Conference of Mayors, based on a survey of 231 city officials from across the nation, found that the lack of money to clean up sites was the number one factor inhibiting redevelopment.<sup>1</sup> S. 350 appropriately addresses this need.

### *C. Funding Focused On The Appropriate Issues*

Third, S. 350's funding structure concentrates on preserving and promoting parks and open spaces while also responding to the needs of local community, which sets an appropriate, and very beneficial, focus for such legislation.

We commend the many hours of hard work by your offices, and the office of former Senator Frank Lautenberg, in crafting a bill with these and other beneficial provisions.

## III. THREE AREAS OF CONCERN WITH S. 350

I would now like to briefly highlight three areas of concern regarding S. 350.

### *A. Clarification Needed On Ambiguous Term*

First, the drafters of S. 350 crafted a bill that is intended to apply only to sites with low levels of contamination. We request that your staff make a technical correction to the definition of "eligible response sites" that unambiguously clarifies this fact. We have supplied your staff with suggested language that we believe accurately reflects the drafters' intent.

### *B. Lack of Upfront Review of State Programs Eschews a Preventative Approach For Protecting Public Health*

Second, unlike past bills, S. 350 fails to require an upfront Federal review of State clean-up programs. The lack of this upfront review process could result in Federal funds increasing the capacity, but not the quality, of State clean-up programs. This could dramatically accelerate ill-planned and unprotective redevelopment activities.

<sup>1</sup>National Conference of Mayors, *Recycling America's Land*, 11 (Feb. 2000).

If this occurs, our nation could face a new public health crisis in the coming decades. After all, lead, arsenic, and mercury will be toxic long after the last developer leaves a brownfield site and the first homeowner moves in. Therefore, it is vital that States ensure developers thoroughly clean up sites.

Put another way, prevention is the best approach when protecting public health and environmental quality. Therefore, U.S. PIRG strongly supports an upfront Federal review of State programs prior to the distribution of any Federal funds or transfer of oversight authorities. A front-end review process is a preventative measure that helps to ensure peoples' lives are not put at risk by inadequate and unprotective State programs.

#### *1. Upfront Review is Commonplace Under Other Programs*

An upfront review is commonplace in other environmental programs, including the Resource Conservation and Recovery Act and the Clean Air and Water Acts.<sup>2</sup> Despite this type of review, experience with these programs demonstrates that States are extremely varied in their ability and commitment to strongly enforce these laws that protect public health and environmental quality.<sup>3</sup> Simply put, some States do a better job of protecting public health than do others. However, because there are minimum standards, citizens can both work to ensure their States meet these minimal standards and, realizing the true benefits of federalism, push their States to go beyond these minimal protections.

#### *2. Upfront Review Is Needed Because Some States Have Inadequate Clean Up Programs*

It is clear that not all State programs are alike. However, some broad themes are evident from the available data. For example, initial data on State clean-up programs demonstrates that some States do an inadequate job of protecting public health, meaningfully involving the public in clean-up decisions, ensuring that polluters pay to clean up contamination, enforcing the law, managing contained sites over the long-term, funding their clean-up programs, and retaining and developing sufficient technical expertise to remediate very contaminated sites.

These failings highlight the need to ensure that State programs meet minimum, commonsense criteria that protect public health and environmental quality.

#### *a. Some States heavily Rely On Institutional Controls To Decrease Human Exposure, Rather Than Cleaning Up Contamination*

For example, one of the most controversial issues regarding the clean-up of contaminated sites is the use of institutional controls to decrease human exposure to toxic substances that are left on-site after clean-up activities are complete. Institutional controls are legal instruments, such as a deed restriction, that restricts the use of land as a way of controlling exposure to toxic substances.

In 1997, the Association of State and Territorial Solid Waste Management Officials (ASTSWMO) conducted a survey of 40 States to determine how they used institutional controls when remediating toxic waste sites.<sup>4</sup> The survey found that 31 States required the use of institutional controls, while 8 States allowed them as an

<sup>2</sup>Resources Conservation and Recover Act, 42 U.S.C. §6926; Clean Air Act, 42 U.S.C. §7410; and Clean Water Act, 33 U.S.C. § 1342(b).

<sup>3</sup>E.g., United States Public Interest Research Group, *Poisoning Our Water* (2000) (finding a lack of State and Federal enforcement actions against significant noncompliers under the Clean Water Act); Environmental Working Group, *Prime Suspects: The Law Breaking Polluters America Fails To Inspect* (2000) (finding weak State monitoring and enforcement measures against sources of pollutants under the Clean Air Act); General Accounting Office, *More Consistency Needed Among EPA Regions in Approach to Enforcement*, GAO/RECD-00-108 (2000); Inside EPA has printed a number of articles on State enforcement of environmental laws and EPA enforcement and oversight of State programs that implement such laws. Articles include Vol. 20, No. 19 and Vol. 20, No. 21. Articles are based on internal EPA reports from the Office of Enforcement and Compliance Assurance that Inside EPA obtained through Freedom of Information Act requests. (Documents can be downloaded at <http://www.iwpextra.com>); Environmental Protection Agency, Office of Enforcement and Compliance Assurance, *Enforcement and Compliance Evaluation of Region 5, Final Evaluation Report*, (Dec. 1998) (finding general decreases in State enforcement of environmental programs); Environmental Protection Agency, Office of Enforcement and Compliance Assurance, *Enforcement and Compliance Evaluation of Region 9, Final Evaluation Report*, 29, 31 (May, 1998) (same); Office of Inspector General, Environmental Protection Agency, *Superfund, State Deferrals: Some Progress, But Concerns For Long-Term Protectiveness Remain*, (Sept. 10, 1998) (finding that EPA administration of policy that allows States to clean up hazardous waste sites that would otherwise qualify as Superfund sites to result in less than adequate protections for public health); and Office of Inspector General, *Region 6's Enforcement and Compliance Assurance Program* (1997) (noting that stronger State enforcement is needed to ensure effective deterrent against polluters breaking the law).

<sup>4</sup>ASTSWMO, *Survey of State Institutional Control Mechanisms* (Dec. 1997).

option in clean-ups. Of the 40 States, only 16 States required public notification or participation when there is a restriction put on the use of the land and only 11 required public notification and involvement when there was restriction placed on the use of contaminated groundwater.

Importantly, limiting the use of land or groundwater in an area can adversely impact a community. For example, cleaning up areas to only industrial or commercial standards may decrease the amount of residential development in a neighborhood, while vastly increasing the amount of industrial development. This could increase pollution, depress property values and degrade the residential quality of nearby communities. These types of issues affect the entire community; therefore, States should reach out and attempt to integrate the public into the decision-making process for cleaning up contaminated sites.

The ASTSWMO study also surveyed States about their enforcement of institutional controls.<sup>5</sup> Only 9 States provided for fines or penalties for a failure to comply with institutional controls. Further, many types of institutional controls rely on local government for enforcement. However, 20 States noted that local governments generally lack adequate funding to enforce institutional controls.<sup>6</sup> The ASTSWMO survey also found problems with enforcing institutional controls, as well as raft of problems that inhibit the successful use of these controls.

Another study, by the Environmental Law Institute, examined the effectiveness of institutional controls at Superfund sites.<sup>7</sup> This study found problems with enforcement at a local level, even at these highly contaminated sites. One problem noted was the failure to implement some institutional controls, as required in clean-up plans. Other failures included the lack of a public education program regarding the dangers of waste left on-site and the failure to pass local regulations restricting the use of contaminated sites. The study also documents instances of possible human exposure to contaminated waste as a result of noncompliance with institutional controls.

Importantly, a report published by Northeast-Midwest Institute in 2000 found that States are encouraging residential development on brownfields.<sup>8</sup>

For example, California reported that 5,200 new housing units had been built on brownfields, and Colorado reported the construction of 2,855 such units. The report goes on to site numerous incentives that States have implemented to encourage residential development on brownfields. Particularly at residential sites, if developers use institutional controls, it is vital that the controls are effective.

However, even if a site is initially cleaned up and developed for commercial or industrial development, it is still vital that authorities monitor for any changing land use and the adequacy of protections over the long term. Land use is a dynamic process of economic and social growth, not static endpoint. Commercial developments can hold day care centers and industrial areas can be transformed into housing developments. Therefore, it is essential that authorities monitor the adequacy and enforce the requirements of institutional controls.

*b. The Effectiveness of States Clean Up Programs Vary A wealth of data indicates a variety of problems with States clean-up programs.*

(1) Ohio Public notice and involvement in clean-up decisions is critical for ensuring the long-term protection of public health, particularly when contamination is left on-site. When the public is informed about the risks of a site and understands the tools used to decrease those risks, they are uniquely situated to help enforce those controls, whether by telling children not to play in certain areas or by informing new residents or businesses not to undertake certain actions.<sup>9</sup>

<sup>5</sup> Id.

<sup>6</sup> Other reports have noted similar problems. Resources for the Future, *Linking Land Use and Superfund Clean-ups* (1997) (The report noted that an ICMA focus group had indicated "many State and local officials do not fully appreciate the long-term demands—including oversight and enforcement—that institutional controls may place upon local governments."); and Robert Hersh, et. al., *Linking Land Use and Superfund Clean-ups, Uncharted Territory*, at 91 (1997) (citing International City/Council Management Association, *ICMA Draft Preliminary Summary of Findings of Institutional Controls Study* (Washington, DC, Nov. 1996) (the survey "suggested that fewer than 10 percent of the local government respondents have experience implementing and enforcing institutional controls at former hazardous waste sites.") (emphasis added).

<sup>7</sup> Environmental Law Institute, *Protecting Health at Superfund Sites: Can Institutional Controls Meet the Challenge?* (1999).

<sup>8</sup> Northeast-Midwest Institute (on behalf of the National Association of Homebuilders), *Brownfields and Housing: How are State VCPs Encouraging Residential Development?*, (May 2000).

<sup>9</sup> Robert Hersh, et. al., *Linking Land Use and Superfund Clean-ups, Uncharted Territory* (1997).

However, a study by the Northeast-Midwest Institute on Ohio's Voluntary Action Program (VAP) found that the public might not be notified of a clean-up plan until after a clean-up occurs and the State has issued a covenant not to sue.<sup>10</sup>

A coalition of groups recently reviewed Ohio's VAP.<sup>11</sup> Their findings are rather disturbing. Under Ohio's VAP, if the Ohio EPA agrees that a site meets the standards set forth in the VAP, Ohio EPA will issue a Covenant Not to Sue, which releases the owner from State civil liability. By releasing developers from liability, the State largely forecloses its primary tool to ensure that landowners or developers pay to clean up dangerous contamination left on-site. This means that taxpayers may bear the costs of any future clean-ups.

The report lists a number of other disturbing findings regarding Ohio's VAP. For example, Ohio provided financial incentives for some sites to participate in the VAP, but the sites were never cleaned. Additionally, the report notes that the VAP process did not address offsite contamination concerns, as required by Ohio statutes, and that "[s]ome sites were located on or near critical resource aquifers, wells, and/or municipal water supplies. On- and offsite [contamination] threatened these critical resources, [and] potentially [threatened] human health."<sup>12</sup>

The VAP program also strongly relies on institutional or engineering controls as a form of clean-up, rather than requiring contamination to be remediated or removed. For example, deed restrictions on land use or groundwater use, the most common form of institutional control employed, were applied at 49.5 percent of the 111 surveyed sites. Additionally, Ohio's program has an Urban Setting Designation that allows developers to avoid cleaning up contaminated groundwater. Thus far, the Ohio Program has issued 57 "Covenants Not to Sue" at VAP sites; of these sites, 17,526 acres of groundwater have been defined as Urban Setting Designators, while another 525 acres of groundwater and 828 acres of land have also been restricted through institutional controls.

Currently, citizens across Ohio are urging their State government to improve their program by meeting EPA's standards that would allow for a Memoranda of Agreement. Thus far, the State has failed to make the required program improvements.

### *(2) New York*

Problems have also been found with New York's State clean-up program. In February 2001, the New York comptroller published an audit of the State clean-up program.<sup>13</sup> The audit found that since 1979, 167 sites have been taken off of the State contaminated site list. Of those sites, only two met the goal of being as clean as they were before being polluted. Of the 221 treated sites that were still on the list, 30 did not meet the State's minimum standards for protecting public health. At five other sites, State workers had failed to meet their own clean-up goals. At 141 other sites, the comptroller found that State records did not demonstrate whether the State's clean-up goals were met. The audit also noted that gaps in the system could have left the public unaware of the continuing dangers or the restrictions on some sites. Finally, the State administration has recently projected that the State clean-up fund will be exhausted by March, with a projected deficit of about \$50 million.

### *(3) California*

In 1999, the California legislature failed to reauthorize the State's Superfund clean-up law.<sup>14</sup> On November 19, 1998, a State agency had to adopt emergency clean-up regulations, which were effective for only 120 days.

In 1998, the Los Angeles Daily News reported that at least nine Los Angeles schools were built on sites that school district officials knew might be contami-

<sup>10</sup>Northeast-Midwest Institute (on behalf of the National Association of Homebuilders), *Brownfields and Housing: How are State VCPs Encouraging Residential Development?*, 5 (May 2000).

<sup>11</sup>Greene Environmental Coalition, *The State of Ohio's Voluntary Action Program: Findings and Recommendations* (Jan. 2001).

<sup>12</sup>*Id.* at 7.

<sup>13</sup>H. Carl McCall, New York State Comptroller, Dept. of Environmental Conservation, *Selected Operating Practices Related to the Remediation of Inactive hazardous Waste Disposal Sites* (99-S-33) (Feb. 2001) (discussing audit); New York Times, *McCall Faults Pataki's Record on Clean-up of Toxic Waste* (Feb. 9 2001); and Times Union, *Superfund Clean-up Record Hit In Audit* (Feb. 9 2001) (discussing audit).

<sup>14</sup>Legislative Analyst's Office, *State Superfund Reauthorization Expediting Hazardous Substance Site Clean-up*, <http://www.lao.ca.gov/011199—superfund—reprint.html>, 1 (January 11, 1999) (noting sunset of law on January 1, 1999).

nated.<sup>15</sup> These findings came from a study prepared by California's Joint Legislative Audit Committee.

*(4) Pennsylvania*

The Philadelphia Inquirer reported that "many States [including Pennsylvania], under the banner of so-called brownfields, have dramatically loosened clean-up regulations and standards in recent years to spur the development, or sales, of contaminated lands."<sup>16</sup> The story quotes Rick Gimello, assistant commissioner at New Jersey's Department of Environmental Protection as stating, "I don't think any State is as busy as we are. . . . Our pace [of putting properties through the program] is off the charts."

*(5) Washington*

On April 16, 1999, the Seattle Post-Intelligencer reported that the State fund which pays for the clean-up of toxic spills and environmental contamination is facing a \$5.9 million shortfall, about a seventh of the program's annual budget.<sup>17</sup> The story noted that clean-up work could be halted or delayed at a minimum of 12 highly contaminated, high-priority sites. The shortfall could also severely limit monitoring and testing operations. The paper referenced Jim Pendowski, manager of the State toxic clean-up program, as stating that the "shortfall would compromise the department's ability to detect emerging toxic problems in the environment and deal with existing ones."

A series of reports by the same paper present compelling evidence that the State's Department of Ecology failed to protect 635 Hispanic migrant workers from drinking contaminated groundwater, while providing other (mostly Caucasian) people with bottled drinking water.<sup>18</sup> The migrant workers lived for "several years at a camp with a well that had ethylene dibromide levels 17 times higher than Federal regulators considered safe." The paper quotes agency memos from 1988 and 1989 that describe agency debate about whether to provide bottled water to workers. The memos also express concern about the public reaction if people learned that the agency was providing water to white residents, but not Hispanic workers.

*(6) New Jersey*

In a series of stories, the Bergen Record reported that the Mayor of Secaucus, New Jersey failed to notify citizens and city council members about the migration of contamination from a nearby Superfund site, under the homes of nearby residents.<sup>19</sup> The paper also reported that the Mayor ordered engineers to locate test wells on municipal property where there was no requirement to notify the public. The Mayor stated that since the waste did not pose a danger to the residents, release of the information would have unnecessarily alarmed the public. While some city council members agreed with the Mayor's decision, the paper reported that homeowners and other city council members insisted that they should have been included in the decision making process.

*c. Problems May Be National In Scope*

These problems do not appear to be relegated to the few State programs highlighted above. A 1999 report by the National Conference of Mayors surveyed officials in 231 cities across the nation. The survey asked the officials to rank their State's voluntary clean-up program.<sup>20</sup> Only 23 percent of the officials reported that their State programs were excellent, while almost one out of every five officials reported that their State program was not very good. Perhaps more troubling, 34 percent could not rank their States program, pointing to a large gap in knowledge or a lack of any coherent efforts at education, oversight, and implementation.

*d. Inadequate State Clean Up Programs Threaten Vital Public Resources*

Recent EPA reports on the quality of our nation's groundwater document the extremely high value of this resource and startling statistics on groundwater contami-

<sup>15</sup> David Baker, Nine Schools on Possibly Toxic Ground, Los Angeles Daily News, <http://democrats.assembly.ca.gov/members/a43art98.htm> (Aug. 28, 1998).

<sup>16</sup> Bob Fernandez, Rules let contaminants be covered, not cleaned, The Philadelphia Inquirer (April 13, 1999).

<sup>17</sup> Heath Foster, \$5.9 million shortfall for toxic clean-up, Seattle Post-Intelligencer Reporter, <http://www.seattle-pi.com/pi/local/eco16.shtml> (Fri., April 16, 1999).

<sup>18</sup> Heath Foster, Migrant workers heard nothing of pesticide danger, Seattle Post-Intelligencer Reporter, <http://www.seattle-pi.com/pi/local/migr22.shtml> (Mon., March 22, 1999).

<sup>19</sup> Peter Sampson, Something foul is spreading in the ground, The Bergen Record (Fri., May 14, 1999); Peter Sampson, Council clears air on toxic plume, The Bergen Record (Fri., May 21, 1999).

<sup>20</sup> National Conference of Mayors, Recycling America's Land (Feb. 2000).

nation.<sup>21</sup> These reports find that groundwater use is of fundamental importance to human life and is of significant importance to our nation's economic vitality.<sup>22</sup> Groundwater supplies drinking water to half of the nation and virtually all people living in rural areas. Some States obtain more than 50 percent of their total water supply from ground water. Groundwater supports billions of dollars worth of food and industrial production. It also supplies the majority of streamflow in large areas of the nation and provides much of the water in our country's lakes and wetlands.<sup>23</sup>

*e. Hazardous Waste Sites Threaten Our Nation's Groundwater Resources*

A variety of agricultural, *industrial*, commercial, and *waste disposal practices* contaminate our nation's ground water supply.<sup>24</sup> Some of the most frequently cited major sources of potential ground water contamination are landfills, *hazardous waste sites*, impoundments, industrial facilities, and hazardous waste generators.<sup>25</sup> "Spills [of industrial contaminants] are a source of grave concerns among States."<sup>26</sup> Unfortunately, because of existing data gaps, inaccurate data submitted by States, and a lack of appropriate analytical tools, the problem of groundwater contamination may be far worse than currently estimated.<sup>27</sup>

*(1) More Vigorous Oversight and Enforcement Is Needed To Clean Up Contaminated Ground Water*

A wide variety of public health and environmental concerns accompany groundwater contamination from hazardous waste sites.<sup>28</sup> Only through the expense of millions of dollars to clean up contaminated groundwater have "people [been protected] from exposure to ground water contaminants released from sources such as hazardous waste sites and leaking underground storage tanks."<sup>29</sup> However, despite these clean-up efforts, the reports recognize that more Federal, State and local coordination is needed to prevent future contamination and to clean up contaminated ground water resources.<sup>30</sup>

*f. Conclusion*

In order to protect public health and environmental quality, U.S. PIRG supports an upfront Federal review of State programs prior to giving these programs the resources to ramp up their redevelopment activities. This position is supported by data that indicates a wide disparity between the protections afforded by State programs. Certainly, absent an upfront review, it is critical that EPA ensures States will adhere to S. 350's "reasonable steps standards" by implementing all of the bill's program criteria within 2-3 years.

Looking at clean-up programs along a continuum, upfront Federal review protects public health by ensuring that State programs meet common sense criteria, while EPA's order authority protects public health at the back end. Because there is no upfront review, it is even more critical to maintain EPA's current authority to order people to clean up contamination.

I would like to address this issue next.

*C. Federal Government Should Preserve Protections For Public Health*

Unlike past bills, S. 350 contains a bar on EPA's authority to order people to clean up contaminated sites. As established under currently law, EPA's order authority provides a vital Federal safety net that is the last line of defense for protecting public health and environmental quality. EPA's order authority actually has numerous beneficial effects. For example, State clean-up officials rely on EPA's order authority to force intransigent parties to negotiate in good faith, or risk involvement by Fed-

<sup>21</sup> Safe Drinking Water Act, Section 1429 Ground Water Report to Congress, (1999) (Section 1429 Report); Environmental Protection Agency, National Water Quality Inventory, 1998 Report to Congress, (2000) (National Inventory).

<sup>22</sup> National Inventory, 187.

<sup>23</sup> Section 1429 Report, ii, 5-6 and National Inventory, 157-58, 162-23.

<sup>24</sup> Section 1429 Report, ii, 15-16 (emphasis added); National Inventory, 161-64.

<sup>25</sup> Section 1429 Report, 12 (emphasis added) and National Inventory, 164, 166, 168 (emphasis added).

<sup>26</sup> National Inventory, 168.

<sup>27</sup> National Inventory, 187, 189; Section 1429 Report, iii, 25, 35-36; and U.S.G.S., Strategic Directions for the U.S. Geological Survey Ground-Water Resources Program: A Report To Congress, 4, 11-12 (1998) (hereinafter U.S.G.S. Strategic Direction).

<sup>28</sup> National Inventory, 191; Section 1429 Report, 5-6, 19-20, 35.

<sup>29</sup> Section 1429 Report, 11.

<sup>30</sup> Section 1429 Report, iii, 11, 35-36. National Inventory, 158.

eral authorities.<sup>31</sup> Similarly, concerned citizens can go to the EPA and request that they facilitate clean-up efforts.

EPA's order authority ensures that people have the choice to seek protections from both the State and Federal Governments. U.S. PIRG believes that the Federal Government should not degrade the public's choice on a fundamentally vital issue, and risk weakening vital protections.

*1. There Is No Need To Modify EPA's Enforcement Authorities*

Proponents of barring or modifying EPA's order authority fail to present coherent arguments for such actions. The main rationale generally given is the need to ensure developers get "finality." A brief examination of S. 350, EPA's historic use of its order authority and a growing market for environmental insurance demonstrate that there is no need for this increased "finality."

In fact, by applying the bar and failing to initiate any upfront review process, S. 350 could weaken EPA's current process of developing Memoranda of Agreement (MOA) with States. Under the MOA process, EPA agrees to limit its enforcement activities in States that meet minimum criteria that protect public health and environmental quality. Unfortunately, S. 350 would actually eliminate incentives for States with inadequate clean-up programs to participate in the MOA process. This is unfortunate because citizens are already using this process as a tool to leverage increased protection under inadequate State programs.<sup>32</sup>

*a. S. 350 Already Gives Responsible Developer Exemptions From Liability*

S. 350 contains three different provisions that exempt responsible developers from liability. These provisions include exemptions for prospective purchasers, innocent landowners and contiguous landowners, which provide ample finality for responsible developers.

*b. EPA Has Not Abused Its Order Authority*

Development interests and other that call for finality beyond these three exemptions fail to point to any instance where EPA has abused its order authority. In fact, a 1999 study by the Northeast-Midwest Institute that surveyed 42 State clean-up programs found that "virtually all of the States [confirmed] that U.S. EPA is not involved or only minimally active in monitoring the State's [voluntary clean-up programs]." Yet another 1999 study by the Northeast-Midwest Institute found that most State voluntary clean-up programs offer "Covenants Not to Sue" or "No Further Action Letters" to developers that complete the clean-ups under State programs. With these documents, a State largely forecloses its ability to make developers civilly liable for the costs of future clean-ups.

*c. Insurance Policies Also Provide Developers With Protection*

There is an already established and growing environmental insurance market for brownfields redevelopment. The Northern Kentucky University and The E.P Systems Group, Inc. published a 1999 report of such products that is based, in part, on a survey and interviews with insurance carriers and brokers, including AIG Environmental and Kemper.<sup>33</sup> The report found that developers already widely use such policies; further, the types of coverage, occurrences covered, dollar limits, and coverage periods of policies are expanding, while costs and preconditions to coverage are decreasing. The report quotes one insurance carrier representative, "The market now provides very broad coverage, which it didn't 5 years ago."<sup>34</sup>

These insurance policies, which are no different from any other type of real estate insurance coverage, provide real estate buyers and developers with certainty. These policies cap liability, thereby enabling buyers and developers to better assess the impacts of market forces. Ultimately, these market forces dictate when, where, and how redevelopment occurs.

*d. Conclusion*

With minimal or no Federal oversight, and bars on State civil liability for future clean-up costs, developers actually enjoy broad guarantees of "finality," so long as they do one simple thing: ensure that clean-ups adequately protect public health.

<sup>31</sup> General Accounting Office, *Superfund, Stronger EPA-State Relationship Can Improve Clean-ups and Reduce Costs*, GAO/RECD-97-77, 4-5 (1997). (The GAO surveyed Minnesota, Washington, Wisconsin, New Hampshire, and Texas. The report chose these States because they "are among the most experienced in leading clean-ups as NPL sites").

<sup>32</sup> E.g., Greene Environmental Coalition, *The State of Ohio's Voluntary Action Program: Findings and Recommendations* (Jan. 2001).

<sup>33</sup> Northern Kentucky University, *The E.P Systems Group, Inc., Environmental Insurance Products Available for Brownfields Redevelopment* (Nov. 1999).

<sup>34</sup> *Id.* at 52.

Indeed, the only people that would need additional “assurance” are developers that do an inadequate job of cleaning up contamination. Importantly, this is the very situation where the Federal Government should retain—unencumbered—its ability to protect public health.

There is an old saying, “If it ain’t broke, don’t fix it.” Nowhere is this adage more true than with the fundamental protection for public health that is currently embodied in EPA’s order authority.

#### IV. CONCERNS WITH OTHER PROPOSALS TO MODIFY EPA’S ABILITY TO PROTECT PUBLIC HEALTH

I would like to address a few concerns that we have with other proposals that may come before the committee. Some parties, including the National Association of Homebuilders, have proposed limiting EPA’s order authority under numerous statutes, not just Superfund.<sup>35</sup> This request for “relief” is a slippery slope that has led some parties to even suggested language to bar criminal fines and penalties. U.S. PIRG strongly urges the government to eschew eroding EPA’s ability to protect public health and environmental quality in this fashion.

##### *A. Numerous Statutes Provide People With Protection Against Particular Contaminants*

EPA and other Federal agencies rely on these authorities to protect public health under a variety of circumstances. For example, EPA currently uses its order authority under the Resource Conservation and Recovery Act to protect children from lead based paint. Similar provisions also exist under the Toxic Substances Control Act (TSCA). TSCA and RCRA orders also apply to polychlorinated biphenyls, dioxin and a variety of other highly toxic substances. There is no justifiable reason to weaken EPA’s authority with respect to such dangerous substances.

Any attempt to modify EPA’s enforcement authorities under numerous statutes is fraught with peril. Different statutes apply differing standards to a variety of regulatory requirements that pertain to hundreds of highly toxic substances. Modifying EPA’s authority under numerous statutes risks not only creating massive confusion, but also an across the board weakening of EPA ability to protect public health and environmental quality.

The same is true when modifying EPA’s order authority under one statute. For example, EPA’s order authority under RCRA includes the ability to enforce a variety of different requirements at different types of sites regulated under the program. Varying standards provide flexibility while protecting human health. Modifying this structure would create an adverse ripple effect across the RCRA program.

##### *B. At Gas Stations, Large Corporate Polluters Should Pay To Clean Up Contamination*

Some parties also claim that the government should limit EPA’s ability to issue clean-up orders at sites contaminated with petroleum, such as old gas stations. While the government can and should contribute funds to help redevelop these sites, there is absolutely no need to restrict EPA’s enforcement authorities at gas stations or petroleum sites. Many gas stations, while independently run, operate under franchise agreements with large oil and gas companies. Since these companies financially gained from the polluting activity, they should pay to clean up the contamination.

##### *C. “Substantial and Continuous” State Activities Should Not Bar EPA Authorities*

Parties have also suggested that EPA’s clean-up enforcement authorities should be barred if there is “substantial and continuous” clean-up activities or if a response action is in compliance with a clean-up plan that a State has certified is complete. As demonstrated above, not all State programs are alike. And, even if they were all equally good, mistakes happen.

##### *D. Owners And Operators That Benefit From Profits Should Also Shoulder Risks*

Parties have suggested language that would shift liability for clean-up from property owners and developers onto the back of innocent taxpayers. For example, one

<sup>35</sup>Numerous statutes authorize EPA to issue clean-up orders and assign liability, including 42 U.S.C. §§ 9606 (Superfund); 6973 (RCRA); 33 U.S.C. §§ 1321(c) (Clean Water Act); 15 U.S.C. §2606 (TSCA: standard is “unreasonable risk”); 30 U.S.C. §1271 (SMCRA: standard is “imminent danger to the health or safety of the public, or is causing, or can reasonably be expected to cause significant, imminent environmental harm.”); 42 U.S.C. §107(a) (Superfund: must pay clean-up costs); 42 U.S.C. §§7003 (RCRA: penalties for violating orders) and 6991b (RCRA: order and penalty authority for releases of petroleum); and 42 U.S.C. 404 (TSCA: Federal enforcement authority under Federal programs concerning lead abatement).



party has suggested modification that could give liability exemptions to owners and operators of contaminated sites who fail to supply the government with all legally required notices. People or corporations that financial profit from a polluting activity, and will likely experience financial gain from redevelopment, should shoulder the financial burden of their actions and pay for clean-ups.

*E. Conclusion*

The government should not conduct a fire sale on the last 30 years of environmental protections to placate fears that are based more on fiction than fact. Developers are currently redeveloping brownfield sites, earning profits, and contributing to economic growth. The Federal Government should increase funding and provide commonsense criteria for State clean-up programs.

V. CONCLUSION

In conclusion, with respect to S. 350, the areas of concerns that I outlined earlier could weaken both upfront and backend protections during the clean-up process. For these reasons, we believe it is vital that the sponsors make certain clarifications to the bill that will protect public health and environmental quality. However, any modification to the substance of the bill that weakens protections would certainly engender strong opposition from the environmental community. In particular, this includes the elimination of any reopener or the modification to any reopener that would weaken protections. Eliminating or modifying any of these provisions in this fashion would surely undo the many hours spent by your offices fine-tuning the language.

Thank you very much for opportunity to testify today. I will be happy to answer any questions that you may have.

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STATEMENT OF ROBERT D. FOX, PARTNER, MANKO, GOLD & KATCHER, LLP

I am pleased to testify today as you consider S. 350, entitled "The Brownfields Revitalization and Environmental Restoration Act of 2001 ("S. 350"). This legislation proposes to promote the clean-up and reuse of brownfields, to provide financial assistance for brownfields revitalization and to enhance State response programs. My testimony is based on my 16 years of experience as an environmental attorney representing a wide range of clients, including industry, developers, local governments, economic and industrial development agencies, land conservancies and citizen groups, that are interested or involved in brownfield development and environmental issues. My testimony focuses on the following issues relating to S. 350:

1. The benefits of brownfields development;
2. State initiatives supporting brownfields development;
3. The need for Federal brownfields legislation; and
4. An evaluation of certain limitations in S. 350 along with suggested amendments.

I. THE BENEFITS OF BROWNFIELDS DEVELOPMENT

Brownfields are agricultural, commercial or industrial properties which have been impacted by contaminants, including hazardous substances as defined under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq. ("CERCLA" or "Superfund") and petroleum products. Developers historically avoided such properties because of several legitimate concerns primarily relating to the uncertain environmental liabilities at those properties under State and Federal environmental laws.

Because of these concerns, brownfields properties were typically overlooked in favor of previously undeveloped "greenfields" sites, such as farmland or woodland, where potential contamination and the related liability and costly remediation would not present obstacles. These environmental and financial policies that lead developers to pursue previously undeveloped properties, rather than to rehabilitate abandoned agricultural, commercial and industrial sites, caused deleterious results. On the one hand, contaminated sites were left as blights on the surrounding communities and, in some cases, threats to public health and the environment, while contributing little or nothing to the local economy. On the other hand, pressures mounted to develop more and more open space.

To the extent these obstacles to brownfields development can be minimized or mitigated significant benefits will surely follow. First, redevelopment of brownfields property has the potential to slow the development of open space and farmland. Second, redevelopment of brownfields property creates a potential "win, win, win" situation: property owners and developers will gain access to brownfields sites located in

desirable locations, with existing infrastructure and affordable pricing; contaminated properties will be remediated; and local governments will receive increased real estate tax revenue (assuming no tax abatements are granted). Third, brownfields redevelopment is consistent with the notion of reestablishing our communities. Many brownfields sites are located in areas within walking distance or in close proximity to existing amenities (restaurants, shops, the arts). This proximity both fosters the sense of community and satisfies the increasing needs of our aging population (including the growing number of young "empty-nesters").

## II. STATE BROWNFIELDS INITIATIVES

During the last 5 years, State legislatures and environmental protection agencies have acted vigorously to promote brownfields development through legislative and regulatory initiatives. Currently at least 43 States have some form of brownfields legislation or voluntary clean-up programs that actively encourage the remediation, reuse or redevelopment of environmentally impaired property. Brownfields and Housing: How Are State VCPs Encouraging Residential Development?, Bartsch and Dorfman, Northeast-Midwest Institute, April, 2000. See also, Hazardous Waste Sites—State Clean-up Practices, GAO/RCED-99-39. These State programs encourage brownfields redevelopment through a combination of techniques including (1) credible financial incentives for investigating, remediating and reusing contaminated properties; (2) flexible, yet certain remediation standards which allow clean-ups to reflect the actual risk posed by the contamination at a site; and (3) transferable liability protection to property owners and tenants once these remediation standards have been attained. In essence, developers of contaminated property want to know that the cost of clean-up will not render the development financially untenable, and, as or more importantly, that once remediation is completed to the satisfaction of the State environmental agency, they and future owners and tenants will not be subject to further remediation liability.

## III. THE NEED FOR FEDERAL BROWNFIELDS LEGISLATION

State brownfields programs provide liability protection under State law only. The question, then, becomes what protections exist under Federal environmental statutes for owners and tenants of brownfields sites after cleaning up the property in compliance with State remediation standards? It is with respect to this last question that Federal brownfields legislation becomes essential.

Federal environmental statutes which require remediation of contaminated property [e.g., CERCLA; the Resource Conservation and Recovery Act, 42 U.S.C. § 9609 et seq. ("RCRA") and the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq. ("TSCA")] typically impose strict liability on those parties owning contaminated property, even where those parties did not cause the contamination. As an empirical matter, the United States Environmental Protection Agency ("EPA") rarely requires additional remediation of brownfields properties under these Federal authorities once a property has been remediated to State clean-up standards. However, nothing forecloses EPA from doing so. Therefore, it is the perceived threat of EPA intervention, rather than EPA's actual enforcement activities to date, that significantly inhibits developers from approaching candidate brownfields sites. In this case, perception is reality. Developers rightfully ask: "Why should I acquire a brownfields site, remediate it to the satisfaction of a State environmental agency and still face the potential for EPA enforcement?"

Recognizing this fact and seeking to create incentives to develop brownfields property, EPA actually has adopted a series of brownfields policies and guidelines. These programs provide, among other things, funding for brownfields assessment and remediation, job training, tax incentives, and guidance on those circumstances where EPA may exercise its discretion not to impose liability on a developer of a brownfields site under Federal environmental statutes.

EPA is to be commended for these regulatory initiatives; however, EPA's policies simply do not go far enough. In short, they do not provide any binding liability protection for developers or owners of contaminated property under Federal environmental statutes who remediate property to State standards,<sup>1</sup> and therefore do not remove the perception that EPA may seek to impose additional remediation requirements at brownfields sites. Indeed, even where a developer has remediated contami-

<sup>1</sup> EPA has entered into Memoranda of Agreement ("MOA") with certain States (approximately 14) whereby EPA agrees not to take enforcement action against an owner of contaminated property who has remediated its property to the satisfaction of a State environmental agency under State law. However, these MOAs contain broad reservations of rights for EPA which do not fully insulate property owners against liability under Federal environmental statutes.

nation at a brownfields site to the satisfaction of a State environmental agency under a well established, well funded, stringent State brownfields program, EPA retains its authority to independently require further remediation under Federal environmental statutes.

Fundamentally, then, Federal brownfields legislation must ensure that for those sites where (a) EPA is not currently requiring remediation under Federal environmental statutes, and (b) remediation has been completed to the satisfaction of a State environmental agency, EPA will, as a matter of law, not seek further remediation under Federal statutes. This framework provides the essence of needed Federal brownfields legislation: creating the requisite certainty to developers of brownfields property, removing the perception of EPA overfiling, and providing finality in the form of statutory liability protection. At the same time, this framework necessarily must retain appropriate enforcement authority for EPA, a so-called Federal "safety net," under clearly defined circumstances.

#### IV. EVALUATION OF S. 350

S. 350 proposes to fill the above-referenced need for Federal brownfields legislation. S. 350 provides certain important elements to satisfy the framework identified above. First, S. 350 provides substantial grants and loans for brownfields assessment and remediation. Second, S. 350 establishes clarifications to CERCLA's liability provisions providing potential exemptions (subject to lengthy qualifying criteria) for bona fide prospective purchasers, contiguous property owners and innocent landowners. Third, S. 350 provides a limited bar to EPA enforcement, under CERCLA only, at sites remediated to the satisfaction of a State agency.

Despite these useful provisions, S. 350 does not go far enough in significant and important ways. Accordingly, set forth below is an evaluation of six provisions of S. 350 along with suggested amendments aimed at providing the required certainty, finality and liability protection while at the same time maintaining an appropriate Federal "safety net." By no means is this an exhaustive evaluation of all issues raised by S. 350, but rather represents an attempt to highlight certain salient issues.

##### *A. S. 350 Should Be Amended To Remove Reopener Provisions With Insufficient Standards*

As set forth above, Federal brownfields legislation must provide not only certainty and finality for site developers and owners, but also an appropriate Federal "safety net" authorizing EPA to exercise its enforcement authorities under Federal environmental statutes in clearly defined circumstances. These provisions, sometimes referred to as reopeners, are contained in Section 129(b)(1)(B) of S. 350. The specific reopener provided for in Section 129(b)(1)(B)(iv) of S. 350 is overly broad and as a result threatens to significantly undermine the finality and certainty that S. 350 correctly seeks to achieve.

Specifically, Section 129(b)(1)(B)(iv) provides that EPA may bring an enforcement action if:

The Administrator determines that information that on the earlier of the date on which clean-up was approved or completed, was not known by the State, as recorded in documents prepared or relied on in selecting or conducting the clean-up, has been discovered regarding the contamination or conditions at a facility *such that the contamination or conditions at the facility present a threat* requiring further remediation to protect public health, welfare or the environment. (emphasis added)

There are two fundamental problems with this provision. First, information known to the State "on the earlier of the date on which clean-up was approved or completed" forms the baseline for determining whether "new" information has been discovered subsequently. In many instances, a State environmental agency approves a clean-up plan and the remediator thereafter continues to generate data during the course of designing and implementing the approved clean-up. Pursuant to Section 129(b)(1)(B)(iv), any and all data generated during remedial design and remedial action will be newly discovered and potentially subject the remediator to EPA enforcement. Accordingly, Section 129(b)(1)(B)(iv) should be amended to read "on the later of the date on which clean-up was approved or completed. . ."

Second, and more significantly, the mere existence of any new information such that the contamination or conditions present any "threat" is a standard without boundaries. Several examples illustrate this point. First, assume a report issued by an organization, whether or not peer reviewed, alleges that a particular contaminant at a site poses a marginally greater risk than previously thought. In that circumstance, the reopener contained in Section 129(b)(1)(B)(iv) potentially applies notwithstanding the validity of the report or whether the risk remains within the range

documented as part of the State approved clean-up. Second, any migration of contaminants within a site, a normal occurrence, would potentially be subject to this same reopener. Finally, any fluctuation in sampling results, within the same order of magnitude (even expected seasonal fluctuations) could potentially subject a particular site to a reopener.

In sum, there is no standard contained within Section 129(b)(1)(B)(iv) which constrains the quality, reliability, authority or environmental significance of the new information. As such, this reopener is potentially so broad as to eliminate the very protections S. 350 seeks to create. It should therefore be deleted.

*B. S. 350 Should Be Amended To Expand The Enforcement Protections To Future Owners and Tenants*

The enforcement limitations provided by Section 129(b)(1)(A) of S. 350 apply only to a person who "is conducting or has completed a response action regarding the specific release" under a State brownfields program. See 129(b)(1)(A)(ii). Read literally, this language potentially excludes from S. 350's enforcement protections both current developers of a brownfields site as well as future owners and/or tenants of that site. Two examples illustrate this problem.

First, assume a property owner seeks to sell contaminated property and agrees with the proposed buyer/developer that the property owner will complete the required remediation under State law prior to closing. In that circumstance, the developer will not be a person "conducting" or "completing" the required response action and would fall outside the protections of Section 129(b)(1)(A).

Second, now assume that the proposed developer, not the property owner, conducts and completes the response action. Subsequently, the developer sells the property to another developer who leases the property to a tenant. Again, neither the second developer nor the tenant fall within the language of Section 129(b)(1)(A) because they did not "conduct" or "complete" the response action. For these reasons the provisions of S. 350 should be amended to expressly apply to all parties who participate in the response action and all future owners or tenants of that property.<sup>2</sup>

*C. S. 350 Should Be Amended To Apply To Petroleum Contaminated Sites*

Proposed Section 129(b)(1)(A) of S. 350 provides that the President may not use the authorities under sections 106(a) or 107(a) of CERCLA against any person conducting or completing a response action regarding a specific release in compliance with a State brownfields program. This section represents the cornerstone of S. 350's attempt to restrict EPA's enforcement authority where a brownfields property is remediated under a State brownfields program.

However, Section 129(b)(1)(A) restricts EPA's enforcement authority under CERCLA alone. CERCLA expressly applies to remediation of a release or threatened release of hazardous substances. 42 U.S.C. §§ 9604, 9606(a), 9607(a). Hazardous substances, as defined under CERCLA, expressly exempts petroleum products, including crude oil or any fraction thereof, natural gas and natural gas liquids. 42 U.S.C. § 9601(14). Therefore, S. 350 does not provide any liability protection regarding petroleum contaminated sites.

The absence of any protections for petroleum contaminated sites represents an extremely significant limitation to S. 350. The General Accounting Office estimates that there are approximately 450,000 brownfields sites nationwide. Out of these sites, EPA estimates that 100,000 to 200,000 sites which contain abandoned underground storage tanks or are impacted by petroleum leaks. EPA USTfields Initiative, [www.epa.gov/swerosps/bf/index.html](http://www.epa.gov/swerosps/bf/index.html). In addition, petroleum contaminated sites are obvious targets for redevelopment because of their prime locations and the well-known and cost-effective remediation technologies available for petroleum contamination.

As a matter of policy and logic, there is no apparent basis for treating hazardous substance contamination under CERCLA more favorably than petroleum contamination. On the contrary, since there are numerous petroleum contaminated sites and these sites present attractive development opportunities, Federal brownfields legislation should provide at least the same liability protections for petroleum contaminated sites as for sites contaminated with CERCLA hazardous substances.

<sup>2</sup> It could be argued that future owners and tenants are protected by the new provisions relating to prospective purchasers. See Section 202 of S. 350. However, the new prospective purchaser provisions contain detailed requirements and prerequisites not contained in Section 129(b)(1)(A). Therefore, as currently written, S. 350 provides that an innocent future owner or tenant would be subject to more stringent requirements than the initial seller or developer of the property. There is no basis for this distinction.

S. 350 can be amended easily to rectify this problem. Petroleum contamination is subject to liability under RCRA's general enforcement authority, 42 U.S.C. § 6973, and under RCRA's provisions relating to a release of petroleum from underground storage tanks, 42 U.S.C. § 6991b(h). Therefore, S. 350 should be amended to include protection for petroleum contaminated sites by including RCRA Sections 6973 and 6991b(h) within the provisions of Section 129(b)(1)(A).<sup>3</sup>

*D. S. 350 Should Be Amended To Provide More Complete Finality*

The clear intent of Section 129(b)(1)(A) of S. 350 is to provide a strong measure of finality for persons remediating hazardous substance contamination in compliance with State brownfields programs. By limiting EPA's enforcement authorities under CERCLA, S. 350 partially accomplishes this goal. However, without similar limitations on EPA enforcement authorities under RCRA and TSCA, S. 350 lacks the certainty and finality necessary to overcome the perception of EPA intervention which currently inhibits brownfields development.

Simply stated, by limiting Section 129(b)(1)(A) to CERCLA, a person remediating hazardous substance contamination under a State brownfields program will be subject to potential Federal intervention under both RCRA and TSCA for the exact same hazardous substances. As an example, assume that a site is contaminated with benzene in soil and groundwater and that a developer remediates that contamination to the satisfaction of a State environmental agency. Section 129(b)(1)(A) provides a developer with certain protections from CERCLA enforcement. The developer does not, however, receive any protections against an enforcement action under RCRA, 42 U.S.C. § 6973<sup>4</sup> or TSCA, 15 U.S.C. § 2606(a)(1)(B).<sup>5</sup>

For this reason, providing a limitation on EPA's CERCLA enforcement authority alone does not resolve the concerns regarding EPA intervention that gave rise to Section 129(b)(1)(A) of S. 350 in the first instance. Accordingly, Section 129(b)(1)(A) of S. 350 should be amended to include enforcement limitations under Section 6973 of RCRA and Section 2606(a)(1)(B) of TSCA.<sup>6</sup>

*E. Sites Impacted By Polychlorinated Biphenyls ("PCBs") Should Not Be Excluded From the Definition of Brownfields Sites*

Section 101(a) of S. 350 provides a new definition for brownfields sites by adding Section 101(39) to CERCLA's definitions. Proposed Section 101(39)(B)(viii) states that brownfields sites subject to the protection of S. 350 do not include facilities where there has been a release of PCBs that is subject to remediation under TSCA. Presumably, PCB sites have been specifically excluded because EPA has, unlike for other hazardous substances under CERCLA, promulgated specific clean-up standards for PCB clean-ups under TSCA. However, EPA's clean-up standards under TSCA are in no way inconsistent with including PCB impacted sites within S. 350.

Specifically, S. 350 should provide that EPA cannot exercise its enforcement authority under TSCA at PCB impacted sites, except where (1) PCB contamination is subject to TSCA and the State approved or completed remediation does not meet TSCA's clean-up standards, or (2) where the reopener conditions in Section 129(b)(1)(B) of S. 350, as amended, are satisfied. Under this approach, PCB sites would be on equal footing with other sites, subject to caveat that where applicable, the TSCA PCB clean-up standards must be satisfied.

*F. The Savings Provision Relating To Existing MOAs Should Be Amended*

Section 129(b)(2)(B) provides that:

Nothing in Section 129 modifies or affects the memorandum of agreement, memorandum of understanding or any other similar agreement relating to this Act between a State agency . . . and the Administrator that is in effect on or before the date of enactment of this Section. . . .

As noted above, there are at least 14 existing MOAs between EPA and the States. Each of these MOAs has unique and distinctive provisions. Most significantly, these MOAs do not provide the full enforcement protections provided for by S. 350 as it

<sup>3</sup>Of course, this proposed amendment to S. 350 is not intended and should not be constructed to modify, amend or alter the petroleum exclusion under CERCLA.

<sup>4</sup>Section 6973 of RCRA authorizes EPA to bring suit requiring remediation against any person who has contributed to or is contributing to storage, handling, treatment, transportation or disposal of any solid waste or hazardous waste, (which term is included within CERCLA's definition of "hazardous substances"), that may present an imminent and substantial endangerment to human health or the environment.

<sup>5</sup>Section 2606(a)(1)(B) of TSCA authorizes EPA to bring suit requiring remediation against any person who uses or disposes of an imminently hazardous chemical or mixture (which term is also included within CERCLA's definition of "hazardous substances").

<sup>6</sup>Any such limitation explicitly should not affect EPA's ability or authority to enforce other regulatory requirements of RCRA or TSCA, including those discussed in Section IV.E. below.

currently stands and/or as suggested for amendment herein. Accordingly, Section 129(b)(2)(B) undermines the more complete liability protections offered by S. 350. For this reason, Section 129(b)(2)(B) should be amended to state that the existing MOAs should provide no less complete enforcement prohibitions than that provided by S. 350 as amended.

#### V. CONCLUSION

Brownfields developments provides a unique opportunity for a wide variety of interest groups, government, developers, site owners, community groups and environmentalists to reach common ground. While S. 350 provides certain important elements toward that end, the specific suggested amendments herein, including inclusion of petroleum contaminated sites, inclusion of protections under RCRA and TSCA, explicit recognition of protections for future owners and tenants, elimination of ambiguous reopeners and inclusion of PCB contaminated sites, would strike an appropriate balance between providing certainty, finality and liability protection to brownfields developers and maintaining the Federal "safety net."

Respectfully submitted,

ROBERT D. FOX, *Esquire*  
Manko, Gold & Katcher, LLP

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#### STATEMENT OF DEEJOHN FERRIS, PRESIDENT, GLOBAL ENVIRONMENTAL RESOURCES INC.

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today in support of S. 350, "The Brownfields Revitalization and Environmental Restoration Act of 2001."

#### BACKGROUND

I am President of Global Environmental Resources Inc. (GERI), a professional services firm that provides management consulting, technical support services and training to clients on environmental, natural resources and public health programs and projects. Concentrating on community involvement and environmental justice, stakeholder engagement and public participation, GERI's assists clients in improving environmental performance, achieving smart growth and sustainability.

Revitalizing and redeveloping abandoned, often contaminated properties, defined as brownfields, demonstrate the convergence of complex environmental, social and economic issues. For example, compared to their numbers in the general population, many of these properties are in minority and low-income neighborhoods. Thus, equity, race and class discrimination, the diminished tax base in municipalities and suburban sprawl are inseparable from the blight and marginalized communities that accompany brownfields.

In the past decade, a coherent holistic vision has emerged, which addresses the relationship of these issues to the health and vitality of a community. Commonly referred to as sustainable communities, this vision recognizes the significance of meeting community needs and aspirations, and positions those who live within it as integral partners in decision-making. The sustainable communities approach is the junction of equity, economics and the environment. It's focused on building the capacity of communities to participate in decisions, creating partnerships with other stakeholders, mobilizing resources and producing sustainable results.

My background, spanning twenty-three years, reflects GERI's commitment to a sustainable communities approach to environmental decision-making. Among other responsibilities, I have served as an enforcement official at the U.S. Environmental Protection Agency addressing compliance in communities around the nation. I've worked to advance the tenets of equal protection, including equal environmental protection, as Program Director of the Environmental Justice Project at the Lawyers' Committee for Civil Rights, and as the founding Executive Director of the Washington Office on Environmental Justice, a multi-cultural national organization representing community-based groups, on legal and policy issues, in the nation's capitol.

I am pleased to share with members of the Subcommittee that I introduced and led the grassroots campaign that resulted in Presidential Executive Order 12898 on Environmental Justice, and other public policy tools such as the National Environmental Justice Advisory Council (NEJAC) and the Federal Inter-Agency Workgroup

on Environmental Justice.<sup>1</sup> To help illumine the nexus between environmental impacts in minority and low-income neighborhoods and impediments to community development, I am Vice Chair of the Partnership for Sustainable Brownfields Redevelopment and direct the Partnership's national research project on multi-stakeholder involvement in brownfields decision-making.

Clearly, in urban and rural communities experiencing under-investment and other consequences associated with environmental contamination, economic development and neighborhood revitalization, are issues of grave concern. Equally important, since they have been affected most by those consequences and will live with the consequences of future decisions, communities are urgently demanding inclusion in shaping development outcomes. As a result, I am here, today, in favor of S. 350, "The Brownfields Revitalization and Environmental Restoration Act of 2001."

#### ANALYSIS OF S. 305

Essentially, S. 350 appears to be a compromise bill, which would achieve protection of human health and the environment by balancing the goals of accelerating clean-ups, expanding economic development opportunities, increasing governmental flexibility and reducing disincentives to brownfields reuse. Communities that have, heretofore, experienced difficulties finding funds to redress orphan sites or sites which, according to brownfields jargon, don't qualify as low-hanging fruit, will be encouraged by the appropriation levels in the bill. In the forthcoming budget process, I encourage the Senate to match the authorization to the appropriation.

Expanding the number of sites eligible for action via State response programs should result in increased flexibility to clean up and reuse properties in minority and low-income communities. De-coupling certain qualified sites from the stringency of the National Priority List process and the language in S. 350, which clarifies liability,<sup>2</sup> should help to accelerate brownfields redevelopment in areas where such activity has languished. The linkage between conferring this flexibility upon the States and increased community and public involvement is crucial.

Community involvement and public participation assurances in the bill, such as the language framing the Loans and Grants Considerations and the Ranking Criteria in Title I, and the provisions contained in Title III under State Response Programs, elevate the significance of meeting community needs and inclusion in the decision process. Furthermore, by asserting that community involvement, training, research and technical assistance are activities eligible for funding, grants issued pursuant to the bill should help build the capacity of communities to participate in redevelopment planning. The provisions in Title I, which authorize waiver of the twenty-percent match and leveraging grant funds, will assist nonprofit entities operating with limited resources.

S. 350 would require States<sup>3</sup> to timely survey and inventory brownfields sites as an element of the State response program. Some experts have suggested more than 500,000 sites nationwide fall within the brownfields category.<sup>4</sup> The advantages of such inventories are at least threefold. First, the inventories will broaden available data; second they will provide information about environmental and other conditions; and, third, they should result in a more thorough catalogue of under-utilized sites nationwide that are eligible for productive re-use. With regard to communities, governmental decision makers and prospective developers, the inventories should supply useful knowledge and an array of potential development opportunities.

Another crucial safeguard provided by S. 350 is the preservation of the Federal role in the event that threats emerge to human health or the environment. Comparable to the Federal safety net provided by civil rights laws in the event that equal protection under law is jeopardized,<sup>5</sup> Title III of the bill provides an oversight role and would reserve the right of the Federal Government to act, for example, in the event of significant threats or imminent hazards. Although requiring a State to demonstrate the effectiveness and equity of its voluntary clean-up plan, prior to delegation of the brownfields program, would provide additional assurances (via a

<sup>1</sup> I served as a charter member of NEJAC and the first Chair of the Enforcement Subcommittee.

<sup>2</sup> Title II appears to clarify liability without abrogating CERCLA's strict, joint and several liability standard.

<sup>3</sup> States and Tribes would be required to develop a brownfields site inventory.

<sup>4</sup> See e.g., "Industrial Site Reuse and Urban Development: An Overview," Collaton and Bartch, *Cityscape: A Journal of Policy Development and Research*, Volume 2, No. 3, U.S. HUD (September 1996).

<sup>5</sup> See e.g., Title VI of the Civil Rights Act of 1964.

showing of a successful track record), it appears that citizens and the environment are protected where problems with State programs could occur.

In view of efforts of communities to preserve already limited green spaces within, in particular, the urban environment, it's encouraging that the bill favors grants that facilitate, among other activities, creation and preservation of parkland. While, economic development in certain areas is highly desirable, quality of life is greatly enhanced by neighborhood beautification and amenities.

#### PRINCIPLES OF BROWNFIELDS REDEVELOPMENT

GERI has established 10 Principles for Cooperation Between Communities and Developers in Brownfields:<sup>6</sup> They are shared, here, with the Subcommittee to assist with future work on brownfields and community involvement.

Principle No. 1: Planners and developers must develop a policy that includes people and small businesses already located in brownfields areas. They have been most affected by adverse neighborhood conditions and they will be most affected by proposed changes. Residents have the most at stake in redevelopment and including them should be fundamental.

Principle No. 2: Recognize that community involvement means helping neighborhood residents and businesses take part in the brownfields dialogue. Stakeholders must invest in education and training to create a common language that leaves no one at a communications disadvantage.

Principle No. 3: Honor communities and neighborhoods as whole places, not solely as brownfields sites, where people want to live, learn, work and play.

Principle No. 4: Honor diversity. In undertaking brownfields redevelopment, it will be necessary that all concerned respect diversity of races, cultures, and perspectives, even if their various viewpoints challenge the status quo. A community's contributions inevitably improve redevelopment plans and make for a more thorough, informed process.

Principle No. 5: The goal of brownfields redevelopment is beneficial land reuse. Land reuse can either replicate the economic and environmental consequences that created brownfields, or it can lead to changes that will benefit all stakeholders. Further, race, class and poverty issues are intricately intertwined with the history of land use and under-investment in certain communities. This history must be considered in today's decision-making affecting neighborhoods.

Principle No. 6: Every effort must be made to avoid displacing residents. Neither tax increases, nor escalating property values, nor rising rents, shall force families, workers and small businesses to unwillingly flee their neighborhoods.

Principle No. 7: Economic and environmental advantages that come from brownfields redevelopment must benefit the communities, which have suffered and survived through years of blight, degradation and under-investment.

Principle No. 8: Health and the environment must be considered on a par with the importance of the brownfields real estate deal. Thirty States have passed laws on liability releases and investment tax incentives and they should not obscure this cardinal point.

Principle No. 9: Recognize the intersection of the three Es: Equity, Economics and the Environment. This is the path to sustainable development.

Principle No. 10: Invest sufficient resources to accomplish the community involvement objective. This is an area where the public and private sectors expend the fewest resources and expect to get the most bang for the buck. Community involvement is not public relations and it is more than public participation. It is resource-intensive relationship building that is sensitive and pursued over the long term. It demands that low-income and under-served people have a place at the table.

#### CONCLUSION

Enactment of S. 350, "The Brownfields Revitalization and Environmental Restoration Act of 2001," should facilitate brownfields redevelopment. Moreover, we appreciate the potential for positive results in under-served minority and low-income communities. The new funding sources, increased flexibility and elevation of the significance of community inclusion in the decision process are favorable goals. As an expert in the sustainable communities and environmental justice fields and a proponent of brownfields revitalization, GERI concludes that the bill advances many critical goals and objectives. We applaud the Subcommittee's leadership and look forward to working with you in the future.

<sup>6</sup>"10 Principles for Cooperation Between Communities and Developers in Brownfields," Ferris, D., The Brownfields Report, October 26, 2000.



## RESPONSES BY DEEOHNN FERRIS TO ADDITIONAL QUESTIONS FROM SENATOR INHOFE

*Question 1.* States like New Jersey have successfully developed brownfields programs that determine clean-up standards, assess attainment of standards, and offer comprehensive liability protections. Yet EPA has often questioned the adequacy of these programs and the technological expertise of the States to develop and enforce State clean-up standards. As EPA Administrator, what steps will you take (or recommend that Congress take) to ensure that States have the authority to establish and enforce clean-up standards and determine the final closure status of local Brownfields sites?

Response. In the interests of advancing the compromise brownfields legislation, S. 350, the "Brownfields Revitalization and Environmental Restoration Act of 2001," GERI has relied on language in the bill retaining the Federal oversight role and reservation of the Federal right to act to protect human health and the environment. Therefore, we have not urged the Senate to include provisions that would require a stringent showing of State expertise and brownfields program adequacy. However, requiring a State to demonstrate the effectiveness and equity of its voluntary clean-up program prior to delegation of the brownfields program by the Federal Government, would provide assurances via a showing of a successful track record.

*Question 2.* Do you support Federal brownfields legislation, including a standard Federal definition of what constitutes a Brownfields site? Also, would you support including petroleum (and other common pollutants like asbestos, lead, and PCBs) in the definition of Brownfields? Would you offer Federal liability protections that mirror State liability protections? And, would you allow States to determine clean-up standards for Brownfields sites?

Response. Providing that it captures brownfields in rural as well as urban areas, a standard definition of what constitutes a brownfields site would assist stakeholders, including agencies, developers, communities, elected officials and others, in terms of clarifying issues and the relationships of stakeholders to those issues, standardizing approaches to addressing them and standardizing the process of formulating redevelopment plans. Overall, it could contribute certainty with regard to factors involved in brownfields clean-up and redevelopment.

Among others, petroleum, lead, asbestos and PCBs are commonly encountered toxic substances contaminating brownfields sites. Asbestos and lead in abandoned and/or old buildings, PCBs (e.g., either in storage drums or old equipment) and underground storage tanks pose problems at these sites. Thus, addressing these contaminants should be included within the realm of eligible expenditures.

The questions above, regarding liability and clean-up standards are intertwined. To provide certainty to all stakeholders involved in brownfields redevelopment, ranging from communities to government, insurers and developers, both liability exemptions and clean-up standards should be standard. For example, developers and insurers need certainty to calculate costs, make financial commitments and guarantees. Similarly, communities and governments need certainty about the sufficiency of environmental and health protection measures and clean-ups. Standards will prohibit what is equivalent to judicial forum shopping by preventing stakeholders from choosing States and localities for brownfields redevelopment depending on the laxity or stringency of laws and regulations.

*Question 3.* The General Accounting Office estimates that there are approximately 450,000 brownfields sites nationwide. Out of these sites, EPA estimates that 100,000 to 200,000 sites contain abandoned underground storage tanks or are impacted by petroleum leaks. Because S. 350 only provides a liability exemption for CERCLA contaminants and not petroleum, given EPA's own statistics that almost half of the sites contain petroleum, isn't it possible that half of the brownfields sites in this country may go undeveloped because of the lack of Federal liability protection for petroleum pollutants? How would you address petroleum contamination and leaking underground storage tanks?

Response. Addressing leaking underground storage tanks should be included within the realm of eligible expenditures under S. 350. See our response to Question No. 2.

*Question 4.* S. 350 allows EPA to "reopen" a site, even if that site has been approved or completed under a State program, if EPA "determines that information not known by the State has been discovered regarding the contamination or conditions at a facility." Isn't this standard overly broad? What exactly constitutes "new information?"

Response. EPA should work with the States to craft regulatory language about what constitutes sufficient grounds or criteria to reopen a site. The Senate could provide direction in legislative history. The definition of new information should in-

clude actual or imminent threats to human health or the environment. The uncertainty about new information would be greatly diminished if liability protections and clean-up standards are standardized throughout the nation.

*Question 5.* EPA has never overfiled on an State-approved brownfields clean-up under CERCLA or any other statute. Yet, it is the perceived threat that impedes brownfields redevelopment. S. 350 only provides developers with a safety net for CERCLA. Experts, such as Robert Fox—a witness at the hearing—stated that if the power of EPA to force clean-ups under Superfund is taken away, then the Federal EPA could side step the Chafee bill by using other statutes (e.g. RCRA or TSCA) to force parties to clean up sites. Therefore, shouldn't Congress provide a similar safety net for other statutes, such as RCRA and TSCA?

Response. We are uncertain what is meant by this question. However, Federal EPA already has the right to overfile or take action in lieu of the States under both TSCA and RCRA. Thus, the safety net already exists.

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STATEMENT OF AMERICAN INSTITUTE OF CHEMICAL ENGINEERS (AICHE)

I am Dr. Peter B. Lederman of New Providence, New Jersey and I am pleased to submit this testimony for the record on behalf of the American Institute of Chemical Engineers (AICHE). The AIChE has been concerned with clean-up of contaminated sites since the "Superfund" statute was implemented. We believe that the current Brownfields initiatives should be broadened and encouraged through statutory provisions and regulatory initiatives. These changes must be made at both the State and Federal levels.

Some States, such as New Jersey, are leading in the effort to provide regulatory relief and innocent landowner protection. These State initiatives must be strengthened by parallel Federal legislation and regulations. At the present time a person redeveloping a Brownfields site may be protected under State law but can still be held accountable for actions taken by previous owners under the current Superfund Amendments and Reauthorization Act (SARA). This dichotomy makes developers hesitant to redevelop contaminated sites because of the unknown exposure under Federal law. We encourage the Congress to enact legislation that will protect innocent landowners thus providing certainty for the parties conducting the clean-ups. This will go a long way to providing a favorable platform for redevelopment of Brownfields.

The clean-up of contaminated sites is governed by a rigorous set of steps under the National Contingency Plan. These steps are dictated by SARA, which was intended to provide Congressional guidance for the Superfund program. AIChE believes that there is a better way to manage clean-up of contaminated Brownfields sites. We have championed the "engineering Approach" to clean-up as presented in the AIChE position paper "An Engineering Approach to Superfund Clean-ups." A copy of that paper is attached, and we request that it be made part of the record. We believe that this streamlined approach to site clean-up is in the interest of all parties in that it will create a more favorable economic climate for clean-up while maintaining the goals of protecting the health, safety and welfare of the public.

AIChE holds paramount the health and welfare of the public. We believe that a result-oriented clean-up methodology will achieve a better environment, and, hence better protect the public. AIChE supports language that focuses on streamlining the remediation process creating a more efficient, safe, cost-feasible clean-up for Brownfields.

Thank you for the opportunity to submit our written testimony. We stand ready to assist the committee and members should they wish to discuss this matter in greater detail.

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AN ENGINEERING APPROACH TO SUPERFUND CLEANUPS

EXECUTIVE SUMMARY

The professionals of the American Institute of Chemical Engineers desire to see CERCLA restructured so that the overall risk to human health and the environment at Superfund sites is reduced and that actions to reduce the risks are done in the most timely, efficient, and cost-effective manner possible.

Although well-intentioned, CERCLA is not meeting expectations. Clean-ups are too slow, and cost too much.

CERCLA clean-ups could be done more efficiently and quickly and at a significantly lower cost if the process were reformed so that the individuals responsible for clean-ups could apply sound engineering principles and methodologies from the

beginning—in other words, if an engineering-based, results-oriented approach were adopted. Such an approach would entail:

- Establishing clear clean-up goals that are focused on reducing risks at the site—identifying substances of concern early and utilizing a site-specific risk-assessment based on realistic assumptions—and that take into account the intended future use of the land.
- Determining meaningful clean-up priorities under a more flexible, timely, and cost-effective prioritization process and a system to categorize and assign sites for action based on the level of clean-up action necessary.
- Streamlining the remediation process by incorporating an engineering-based, results-oriented process that permits compression of the multiple study processes into a single engineering study and identifies and implements a remedy in a timely manner.
- Assuring the availability of the right remediation technology through promotion of research, development, and implementation of new, innovative, and cost-efficient technologies that meet identified needs.
- Delegating responsibility for achieving clean-up goals to the parties doing the clean-ups, with an appropriate level of oversight.
- Promoting community involvement throughout the clean-up using a “no surprises” approach.

AIChE’s approach places much greater emphasis on expediting site clean-ups in order to reduce as quickly as possible the risk to human health and the environment, rather than on the administrative compliance that is the hallmark of the current process.

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#### AN ENGINEERING APPROACH TO SUPERFUND CLEANUPS

##### *Background*

The Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), commonly known as Superfund, was enacted in 1980 in response to the discovery of chemical disposal sites at Love Canal, NY, and elsewhere. CERCLA requires that the U.S. Environmental Protection Agency (EPA) determine the nation’s most serious abandoned polluted sites and gives the agency the power to force those responsible to clean the sites.

To ensure prompt action, EPA can conduct clean-ups itself and later sue the responsible parties to recover the costs. EPA can also put States in charge of clean-ups. In order to cover EPA’s clean-up costs, CERCLA established a “Superfund” consisting of revenues from taxes on petroleum and feedstock chemicals, a broad-based corporate income tax, and general revenues.

CERCLA prescribes what appears to be a straightforward, simple procedure for selecting clean-up remedies, but in practice the procedure is complex. The law requires that a Remedial Investigation, Feasibility Study, Remedial Design and Remedial Action be undertaken at each site. It also provides for public participation and establishes liability standards. These steps are implemented under the National Contingency Plan (NCP) through extensive detailed regulations.

Thus far, EPA has identified approximately 40,000 potential CERCLA sites. The sites considered the most hazardous have been placed on the National Priorities List (NPL) for CERCLA clean-up; there currently are about 1200 sites on the NPL. Clean-ups have been fully implemented at more than 400 NPL sites, and clean-up activities are ongoing at approximately 500 other PAL sites. Clean-ups have been averaging 12 years and \$30 million per site. It is estimated that the Superfund and private parties have spent over \$30 billion to clean CERCLA sites.

##### *An Engineering Approach*

As engineering professionals, the members of the American Institute of Chemical Engineers (AIChE) desire to see CERCLA restructured so that it reduces the overall risk to human health and the environment posed by Superfund sites in the most timely, efficient, and cost-effective manner possible.

The problems with CERCLA are well documented: in many cases, clean-ups are too slow, cost too much, and are unfair as to who pays. Although CERCLA is well intentioned, it is not meeting expectations, and the current clean-up process inures to no-one’s benefit.

CERCLA’s shortcomings are in great part a result of the focus on process over results. Currently, CERCLA operates like a person with a broken arm who goes to the hospital and says, “My arm is broken. I think I need an x-ray, a cast, and some painkillers.” But the doctor says, “We have to find out what is wrong with you. We need to do a complete physical. I am ordering a blood test, a urinalysis, an MRI,

and a cardiac stress test. After I've reviewed the results of your tests, we'll find a cure for what ails you."

The EPA Inspector General agrees that CERCLA's focus is misplaced. In a recent report, he noted:

"In general, lengthy remedial investigation/feasibility study and enforcement negotiations delayed actual clean-up of sites. Studying the sites and designing clean-up remedies accounted for about 75 percent of the time since the sites were discovered. . . . In addition, the requirements of [CERCLA] resulted in more focus on achieving process steps rather than clean-up of sites."<sup>1</sup>

CERCLA needs to be reformulated to focus on results, while providing an expedited, efficient process to ensure that stakeholder needs are met.

CERCLA clean-ups could be done more efficiently and more quickly and at a significantly lower cost if the individuals responsible for clean-ups could apply sound engineering principles and methodologies from the beginning. About one-half of the time and a significant amount of the costs can be saved if projects are allowed to proceed as normal engineering projects—in other words, if a problem-solving, engineering approach is adopted by all parties.

A results-oriented approach would entail:

- Establishing clear clean-up goals
- Determining meaningful clean-up priorities
- Streamlining the remediation process
- Assuring the availability of the right technology
- Delegating responsibility for achieving clean-up goals
- Promoting community involvement throughout the clean-up

This can be accomplished without sacrificing protection of the public.

#### *Establishing Clear Clean-up Goals*

Fundamental to the success of any project is to identify the desired goals at the beginning. While mandating that site clean-ups meet the general standard of "protective of human health and the environment," CERCLA does not provide specific clean-up goals. This has led many to wonder "how clean is clean"? The lack of clear clean-up goals has been a major cause of contention and delay in executing CERCLA clean-ups as those responsible for the clean-ups (called Potentially Responsible Parties or PRPs) and regulators argue over what standards should apply in each case.

Clean-up goals must be clear. They must be realistic. They must be achievable. They must be measurable.

Clean-up goals should focus on reducing the risks at the site, utilizing a site-specific assessment of risk based on realistic assumptions regarding the frequency, duration, and nature of potential exposure to hazardous substances. The goals must take into account the intended future use of the land, as determined in consultation with the landowner, the local community, and appropriate units of local and State governments.

Establishing clear goals very early in the process would provide cost savings because: site assessments could be tailored to the clean-up goals; applicable technologies could be identified early; the process could go forward with minimum oversight; and the party doing the clean-up could be measured against clear performance criteria when the clean-up is fully implemented.

#### *Determining Meaningful Clean-up Priorities*

CERCLA's existing priority-setting mechanisms do not meet the objectives of conducting clean-ups quickly, efficiently, and at a reasonable cost and addressing the most serious (or "worst") sites first.

Currently, all sites ranked for possible inclusion on the NPL are treated in essentially the same way; site-specific issues receive inadequate attention. However, all sites are not the same, not only with regard to the imminence of risk, but also the technological and economic feasibility of clean-up.

CERCLA should allow for more flexible, timely, and cost-effective prioritization of sites clean-ups utilizing site-specific factors, including risk and future land use. Sites should be categorized based on the level of clean-up action necessary and assigned to one of the following categories:

- Removal or Remediation Pathway: Sites where there is an imminent or near-term risk and/or where technologies are available for mitigation should be subject,

<sup>1</sup> U.S. Environmental Protection Agency, Office of Inspector General, "Semiannual Report to Congress," October 1, 1995 through March 31, 1996, at 17 (May 1996).

according to their relative priorities, to timely, risk-reducing removal or remediation actions.

- Immediate Removal/Monitor Pathway: Sites where full remedies are not practical or are of insufficient priority but require removal actions to provide a degree of protection should see such actions implemented immediately. Further action would be deferred until necessary or practical.
- Control/Monitor Pathway: Sites where practical remedies are not available should be stabilized and monitored. They could be returned to the standard track if conditions change.
- No Action/Monitor Pathway: Sites that do not require present action should be routed away from the main CERCLA pipeline and deferred until action is necessary. Sites should be rescored in the Hazard Ranking System (HRS) after field assessment as well as after interim actions. An expanded set of removal actions should be allowed and should be reflected in the HRS rescoring. These actions may obviate the need for inclusion on the NPL in specific cases.

#### *Streamlining the Remediation Process*

In the conventional CERCLA process, every site is treated like the first, last, and only site. Little institutional memory is built into the process. The cost, in time and money, of starting every site from scratch may have value for legal defenses, but wastes technical resources and saps financial strength.

The current remediation approach mandated by Congress has five major steps once a site has been placed on the NPL list: Remedial Investigation (RI); Feasibility Study (FS); Record of Decision (ROD); Remedial Design (RD); and Remedial Action (RA). In practice, the steps are very complex, with their attendant work plans, reviews, public participation, and related studies such as risk assessments. From inception of the Remedial Investigation to issuance of the Record of Decision often takes about 5 years. By the time the Remedial Action is fully implemented, on average 10 years have passed, with attendant added costs, since the decision to clean the site was made.

The current process can be shortened by adopting an "engineering approach." This approach would examine the most recent similar projects, look at what's different at the site, incorporate lessons learned at prior sites, modify the approach to account for the differences, and proceed to a remedy. It would focus on the ultimate goals of protecting human health and the environment. Investigations would be designed to produce only the data needed to make good decisions. Remedies would be selected from a truly feasible set and applied with flexibility to respond to site conditions. The key is to set, with the concurrence of the public and based on a risk assessment, the criteria by which the site will be judged as being remediated. The steps for this and the following actions are:

- Scope problem and define goals
- Identify contaminants of concern
- Conduct initial risk assessment to establish clean-up goals
- Develop initial feasible clean-up options
- Negotiate clean-up levels (subject to confirmation during remedial investigation)
- Pick most likely clean-up scenario
- Conduct remedial investigation
- Establish extent of contamination
- Obtain sufficient data for feasibility study, confirming risk assessment, and engineering solution
- Select feasible options
- Draft and adopt Record of Decision
- Develop remedial design (if necessary)
- Prepare bid specification for remedial action
- Conduct remedial action
- Perform actual remediation
- Prove site meets clean-up levels
- Monitor (if required) and remove from NPL or action list
- Obtain a release

The steps outlined above are similar to the current remediation scenario, but with several major exceptions: more would be done in parallel; likely remedies would be selected and focused on much earlier; and the work would be directed toward cleaning up the site. The proposed process looks at developing minimum data to meet the needs of the solution. The process would not be rigid, but rather would be outcome-oriented on a case-by-case basis. Where sites have met the established clean-up criteria, a release should be available.

The proposed process would require three to 5 years and should be carried out at two-thirds the cost because time, analytical, and engineering costs can be reduced

significantly. The initial phase prior to the negotiation of clean-up levels should take 6 months. The negotiation should take 3 months. The feasibility study should take 6 months, and the Record of Decision with public hearings another 6 months. Clean-up should take 2 years for most sites; thus the entire process can be fully implemented in under 5 years.

*Assuring the Availability of the Right Technology*

Selecting the right remediation technology is key to the success of an results-oriented approach to clean-ups. New, innovative and cost-efficient technologies can improve site remediation by providing better clean-ups, accelerate the pace of clean-ups, and decrease costs. However, innovative technologies have not been effectively utilized because of a number of barriers. There is a general resistance to approving the application of an unproven remediation technology, and administrative procedures often delay the evaluation and approval of innovative technologies. PRPs often are hesitant to utilize innovative technologies because of the process delays, liability, and costs involved if an innovative technology fails to meet clean-up goals. Often there is not a sufficient market for investors to fund development of innovative remediation technologies.

Technology development should be refined so that it overcomes these barriers. The first step is to identify specific clean-up technology needs, particularly those that have the potential for the greatest cumulative risk reduction or a significant reduction in costs. The selection of the right remediation technology should be encouraged at four levels: cooperative research of new technologies; development of techniques for remediation of significant problems that would not sustain commercial development; risk-sharing methodologies for implementation of new technologies; and administrative incentives to promote the use of innovative technologies.

Cost-effective clean-ups can be promoted through continued support of research to develop and demonstrate innovative clean-up technologies at the Hazardous Substance Research Centers (HSRCs) established under CERCLA.

*Delegating Responsibility for Achieving Clean-up Goals*

EPA retains a great deal of supervision and oversight of the conduct of clean-ups, while legal representatives of PRPs exercise considerable control over clean-ups in order to protect their clients' interests. CERCLA generally precludes EPA from providing a release from future liability for unknown site conditions; in addition, EPA does not release PRPs who conduct clean-ups using remedies chosen and approved by EPA from liability if the remedy later fails or is found to be inadequate.

With the establishment of clear goals and meaningful priorities, responsibility for achieving site clean-ups can and should be delegated to the parties doing the clean-ups. The delegated parties, in turn, should assign operational responsibility to the technical experts assigned to the clean-up.

A single project team headed by an experienced technical professional should be selected to run the project. The team will need to include technically competent representatives of all agencies, communities, and firms involved in the clean-up. It should work together to resolve the technical aspects of the clean-up from a holistic approach. The professionals need to be empowered and supported by management, without unnecessary interference, but must be held accountable for achieving the clean-up goals.

In order to ensure accountability, there needs to be appropriate oversight. Where possible, EPA should delegate the oversight, pursuant to Federal standards, to the State. The current oversight practice is to have a representative on the site overseeing the work of the engineers and PRP at every step and usually every day. The project team needs to be allowed to run the project, with review and concurrence at key milestones in the project but without detailed review of, and requiring changes in, items such as the Health and Safety Plan, the number and location of samples to be taken, and detailed work plans. This approach would put the responsibility for meeting the established operating practices, health and safety criteria, and clean-up levels where it should be: with the PRP and the engineer. PRPs who conduct clean-ups that are approved by EPA should be provided an opportunity to obtain a release from future liability for the remedy, absent non-compliance with the approved clean-up plan.

*Promoting Community Involvement Throughout the Clean-up*

The public often feels that it does not have adequate information about proposed CERCLA remedies and opportunities to provide timely input into the clean-up process. This results in a lack of trust in the adequacy of clean-ups.

The plan to achieve the clean-up must be formulated with the assistance of the community. The public should be involved in clean-up decisions, using a "no sur-

prises" approach. This means early and continuous public consultations. Each site should have a community advisory panel consisting of PRPs, local interest groups, local government representatives, and the general public to provide continuing involvement in decisionmaking.

In addition, the general community should be brought into the process through public forums, periodic progress meetings, newsletters, press releases, open houses, and information sessions. In addition, all documentation should be available for easy public review.

Most importantly, there must be an agreed-upon mission statement and commitment statement that guides the clean-up team members and identifies the community as their "client." Community trust will only come about by recognized deeds and achievement of timely milestones.

#### *Recommendations*

Because CERCLA affects our membership and because of our special skills, AIChE strongly urges that the CERCLA hazardous substance clean-up process be reformulated to incorporate a more efficient and cost-effective, engineering-based, results-oriented approach. This can be achieved by revising CERCLA and its implementing regulations to:

1. Incorporate an engineering-based, results-oriented process that permits compression of the multiple study processes into a single feasibility study and identifies and implements a remedy in a timely manner.

2. Mandate that site-specific risk assessments, based on realistic acceptable risk, be conducted wherever possible to determine the clean-up goals and priority for each site.

3. Require that the intended future use of the land, as determined in consultation with the affected community, be considered when determining clean-up goals and priorities.

4. Revise the provisions establishing the National Priorities List and the Hazard Ranking System to: (a) allow for more flexible, timely, and cost-effective prioritization of site clean-ups; and (b) categorize and assign sites for action based on the level of clean-up action necessary.

5. Increase funding to support research and development of innovative remediation technologies. Permit EPA to use the superfund to pay for a portion of the backup remedy if a pre-approved application of an innovative technology fails to meet the required clean-up level.

6. Provide incentives for program managers to promote and approve the use of innovative technologies.

7. Authorize EPA to provide releases to PRPs who conduct approved clean-ups, except in cases of non-compliance with the approved clean-up goals.

8. Permit EPA to delegate authority to administer CERCLA clean-ups to States, where appropriate.

9. Establish community advisory panels at each CERCLA site to provide continuing input and advice onsite clean-up decisions, including future land use.

Finally, although these recommendations, if enacted, would greatly improve CERCLA, they will not totally solve CERCLA's problems. A number of the problems that CERCLA has experienced can be traced to the law's system for apportioning liability for clean-ups. It is impossible to fix CERCLA so that it conducts clean-ups quickly, efficiently, and cost-effectively without fixing the liability system. CERCLA must be amended to provide a liability system that promotes certainty, efficiency, equity, and finality—and does not delay clean-ups or disproportionately absorb clean-up resources. The system must provide both strong incentives, including liability releases for timely resolution of liability claims, and strong financial disincentives for failure to resolve liability issues quickly. As part of CERCLA liability reform, relief must be provided for response action contractors. CERCLA and EPA's associated guidance expose response action contractors to Superfund liability even though response action contractors are not responsible for site contamination. This drives up the cost of clean-ups as response action contractors seek to avoid liability by practicing "defensive engineering" and avoiding innovative technologies.

The Superfund Task Force was established by AIChE's Government Relations Committee. The members of the task force are:

PETER B. LEDERMAN, *Chairman*,  
DALE E. BROOKS,  
BILL BYERS,  
JOHN R. EHRENFELD,  
WILLIAM G. MCGLOSSON,  
J. WINSTON PORTER,  
STANLEY I. PROCTOR,  
SUNIL I. SHAH,  
SEAN DEVLIN BERSELL.

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#### AICHE CREATING A WORLD OF DIFFERENCE

The American Institute of Chemical Engineers (AIChE), founded in 1908, is a non-profit, professional association that provides leadership in advancing the chemical engineering profession. Our membership of approximately 58,000 is made up of individuals who work in industry, government, academia, and consulting, as well as students and retirees. The Institute's efforts in the public policy arena are geared toward using the expertise of our members to provide sound technical information to government officials and others involved in public policy issues that impact the practice of chemical engineering and the industries and organizations where chemical engineering is utilized.

Our members are creative problem solvers who use chemistry, physics, and mathematics to develop processes and design and operate plants that alter the physical or chemical states of materials to make useful products at a reasonable cost and in the safest manner possible. They play key roles in critical industries such as chemicals, petrochemicals, petroleum, agricultural chemicals, biotechnology, ceramics, electronics, fibers, food, glass, paper, pharmaceuticals, plastics, primary metals, and specialty chemicals. Chemical engineers are also at the forefront of research on environmental protection, process safety, and hazardous waste management to assure the safe and environmentally sound manufacture, use, and disposal of chemical products.

To further our goal of promoting excellence in the development and practice of chemical engineering, we promote public understanding of the profession and its roles in resolving societal issues, provide forums to advance chemical engineering in theory and practice, create opportunities for individual chemical engineers to enhance their professional skills and capabilities, uphold and advance high professional standards and ethics, and support excellence in education. AIChE also sponsors pioneering research geared toward examining new technologies that can solve the problems of today and tomorrow.

AIChE's position papers are intended to be informational and educational. They are the product of AIChE's commitment to using the expertise of our members and staff to provide sound technical information to government officials and others involved in public policy debates on issues that impact the practice of chemical engineering and the industries and organizations where chemical engineering is utilized.

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#### STATEMENT OF THE ENVIRONMENTAL BUSINESS ACTION COALITION (EBAC)

The Environmental Business Action Coalition (EBAC) strongly supports the Brownfields Revitalization and Environmental Restoration Act of 2001 introduced by Senators Lincoln Chafee of Rhode Island, Robert Smith of New Hampshire, Harry Reid of Nevada and Barbara Boxer of California. EBAC endorses this bipartisan effort and looks forward to working to secure its enactment this year.

EBAC is an organization of leading environmental engineering, scientific and construction firms representing over 60,000 professional, managerial and support personnel trained in all aspects of the hazardous waste clean-up field. We represent the firms that are hired to perform clean-up actions at sites across the country—from the highly complex sites on the National Priorities List, to the high level waste and mixed waste sites operated by the Department of Energy, to the former and current military bases and facilities operated by the Department of Defense, to State-listed sites, to manufacturing and commercial facilities, landfills and other environmental projects.

The Brownfields Revitalization and Environmental Restoration Act of 2001 would provide the much-needed "finality" for States that already have successful clean-up programs. In addition, S. 350 would provide critically needed financial support for assessment and clean-up of brownfields. Finally, the proposal's liability reforms will



go a long way in returning to productive use these abandoned sites burdening communities across the country. Overall, this bill provides the framework and funding that an effective national approach to Brownfields will require.

While EBAC fully supports this well-crafted legislation and believes it will make important contributions to the redevelopment of countless abandoned properties nationwide, we strongly believe the liability reform provisions contained in S. 350 should be expanded to include protections for Response Action Contractors (RACs) from existing law's unfair liability scheme. Like those who favor finality, the firms performing clean-up services at hazardous waste sites need assurances that they won't be ensnared in the same liability scheme as PRPs. These protections are vital for encouraging and accelerating the clean-up of Brownfield sites across the country. Additionally, language that provides liability protections for clean-up firms will foster innovation in clean-ups and result in faster clean-ups at a reduced cost to the taxpayer.

RACs are a critical part of the solution to hazardous waste problems; they are not the PRPs who own or operate the sites where the clean-ups are performed. RACs are the resource that employs highly trained, technically experienced staff to identify and prescribe remedies for waste at sites and to clean them up.

However, current law does not restrict lawsuits to parties that caused a problem. In fact, the courts have allowed parties with direct Superfund liability to bring suits against RACs, drawing clean-up firms into the liability net without regard to fault or negligence in clean-up activities. It is unfair to allow RACs to be placed on the same strict liability footing as polluters with direct responsibility for contamination of sites. Liability protection should be provided to RACs to facilitate the prompt clean-up of hazardous waste sites, including sites on the National Priorities List (NPL), Brownfields, and voluntary clean-up actions, in an expeditious, innovative and cost-effective manner.

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#### STATEMENT OF THE AMERICAN INSTITUTE OF ARCHITECTS

##### *Introduction*

The American Institute of Architects (AIA) is a professional society representing approximately 67,000 licensed architects and associated professionals located in 305 chapters throughout the United States. In large measure, AIA architects are small business men and woman working in firms with fewer than 10 employees. They are leaders in their community and understand the contributions small businesses make to the economic vitality of America. Working together with other elements of the design and construction industry, the AIA promotes a better quality of life through good design.

##### *Brownfields Development Opportunities Abound*

Architects throughout this nation understand the enormous significance of redeveloping former industrial sites—Brownfields mixed uses including parks, shopping areas, learning centers, and affordable housing. Brownfield sites appear in every State and nearly every community, many in prime locations.

Architects view Brownfields redevelopment legislation as an opportunity to redesign and enhance America's communities. The AIA stands ready to support the Brownfields Revitalization and Environmental Restoration Amendments Act of 2001 and assist the sponsors of this legislation and members of the Senate Committee on Environment and Public Works in its passage.

Introduction of the Brownfields Revitalization and Environmental Restoration Act of 2001—(S. 350)—is a strong, positive step to provide much-needed relief to thousands of communities. The AIA commends Senator Bob Smith and Senator Lincoln Chafee for their strong leadership in keeping this issue at the forefront of the national agenda.

More importantly, S. 350 provides long-awaited remedies for important funding and liability issues. This legislation would spur the clean-up of troublesome sites by providing financial resources and liability relief in a manner that both public and private sectors can endorse and wholeheartedly embrace. This measure provides communities with some of the key tools to tackle the reclamation of these unproductive lands and thus, it deserves broad Senate support.

S. 350 would build on the Environmental Protection Agency's (EPA) current brownfields program by providing funding through a \$150 million grant and loan program for fiscal years 2002–2006. These grants and loans are designed to help State and local governments identify and clean-up properties that are abandoned. EPA is authorized to provide grants to State or local governments and to set up Revolving Loan Fund for remediation grants.

The bill recognizes that one size does not fit all and thus, it offers community friendly solutions. It provides flexibility to communities through grants and access to loan capitalization funds. It also provides remedies that will serve both urban and rural communities that are experiencing problems with contaminated sites.

In addition to commitment of Federal financial resources, liability reform is critical to the success of brownfields redevelopment efforts. S. 350 provides liability protection for landowners—who did not contribute to the contamination—whose property may be contaminated by a contiguous contaminated site. This bill also provides relief for purchasers of contaminated property who did not contribute to the contamination. These are the types of liability reforms that the private sector developers, entrepreneurs and architects view as necessary ingredients to recycle the estimated 500,000 brownfields properties in our nation.

*Realizing the Potential: Two Case Studies*

Two successful case studies of brownfields redevelopment where architects played a major role can be found in East Palo Alto, California and Atlanta, Georgia. Both case studies demonstrate the unique skills architects bring to the brownfields redevelopment debate.

*Silicon Valley Gets a New Front Door*

East Palo Alto is a Brownfields Regional Pilot, a Federal Empowerment Zone, and an Enterprise Community. At the doorstep of the Silicon Valley, the town, incorporated for only about 15 years, is a prime location. It is still distancing itself from a disreputable past. The former downtown area was known as Whiskey Gulch and lived up to the moniker, according to those familiar with the area. East Palo Alto also had the dubious distinction of being the 1992 murder capital of the U.S. Enough was enough for community leaders who have begun to turn the tide, with the help of police from adjacent jurisdictions, eager developers, and The American Architectural Foundation (AAF).

With a grant from the AAF, and with assistance from AIA San Mateo County and other area leaders, including Lee Lippert, AIA, and D. Michael Kastrop, AIA, East Palo Alto is in the process of planning to redevelop the 130-acre Ravenswood Industrial Area, an EPA-designated Regional Brownfield Pilot site. Clean-up of the site was initially put at \$30 million, killing any chance of development. A more thorough evaluation put the clean-up cost at \$2 to \$5 million set a plan in motion. With an AAF grant funding a charrette, East Palo Alto residents finally have a chance to bring in such basics as grocery stores, other retail shops and small businesses. Prior to this effort, east Palo Alto had virtually no tax base to speak of. Architects have made a difference in this community and how it tackled its brownfields problem.

*Restoring Steel Town*

In Atlanta, Thompson, Ventulett, Stainback & Associates, Inc.(TVS), has completed the master plan to redevelop the 138-acre former midtown site of Atlantic Steel. Combining 3,600 residential units, 6.25 million square feet of retail and entertainment space, and 1,000 hotel rooms, developers Jacoby Development, Inc., and CRB Realty Associates are creating a new in-town community. "The long-term benefit of the redevelopment of this site is not only the amenities, but that the project also extends and complements the existing mass transit and pedestrian infrastructure" said Philip A. Junger, AIA, TVS project manager. "This project is big enough to make a real difference." There were no public funds for remediating the brownfield, said Thomas W. Ventulett, FAIA. Junger added that other than slag residue, a construction obstacle because it is expansive, there is minor contamination apparent. Architects view this not only as a financial or business opportunity but also as a successful community revitalization effort.





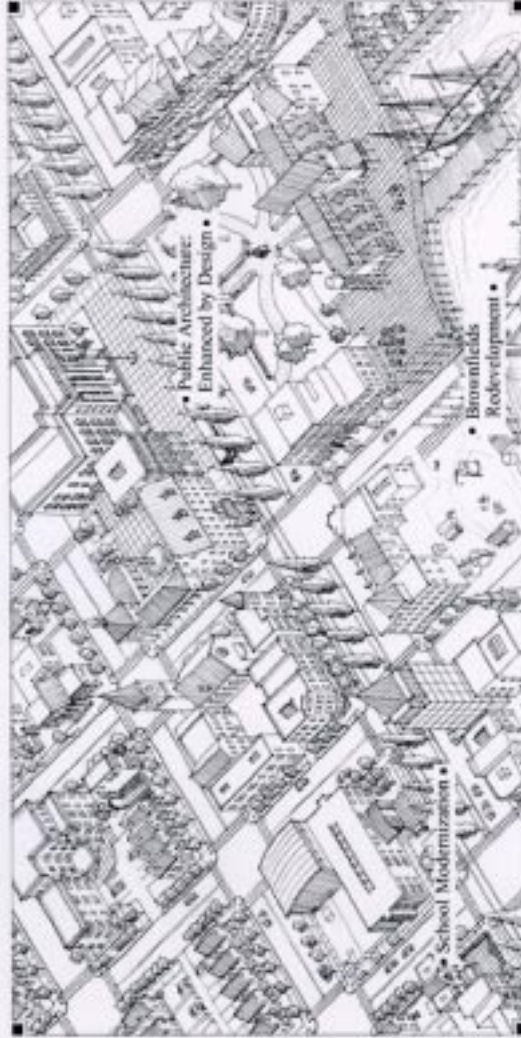
Courtesy of CBH Realty

**Atlanta's former Atlantic Steel site Reclaimed by TVS.**



Photo indicates the 138-acre site of Atlantic Steel, soon to be an intown community.

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