

New Approaches on Energy and the Environment

New Approaches on Energy and the Environment: Policy Advice for the President

Edited by
**Richard D. Morgenstern
and
Paul R. Portney**

Resources for the Future

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CHAPTER 15

A Broader View of Brownfield Revitalization

by Kris Wernstedt

Sir, a policy change is needed to refocus federal resources to larger-scale, areawide revitalization of brownfield sites—underused properties whose redevelopment is complicated by the fact or perception that contamination is present. The cleanup and redevelopment of such land can both revitalize neighborhoods burdened with a legacy of contamination and enhance tax revenues. However, most cleanup and redevelopment to date has rested on a narrow, property-by-property approach. Your initiative should include a limited-term amnesty period to encourage the volunteering of contaminated properties for a large-scale revitalization effort, strong public participation and reporting requirements, innovative financing mechanisms, and an expansion of the range of sites eligible for assistance.

Background

A variety of federal and state laws apply to brownfield sites. Fearing cleanup liability under these laws, most notably the federal Superfund statute, many owners and prospective buyers of brownfields remain leery of redeveloping or even investigating such properties and attracting regulatory attention. The parties who may have caused the contamination may be long gone or unable to pay for cleanup, and few of the brownfield sites would qualify for public funding under the Superfund program or its state counterparts. Yet left unattended, brownfield sites may pose threats to public health and the environment and depress the economy of local neighborhoods. Moreover, existing roads, utilities, and other public infrastructure may remain underutilized even as undeveloped rural or suburban properties attract development, contributing to social and economic segregation and continued underinvestment in older urban and industrial areas. This problem bedevils communities across the country, with hundreds of thousands of acres at stake. The U.S. General Accounting Office reports that the nation has between 130,000 and 450,000 brownfield sites, based on data collected from several federal agencies in the 1980s. Other estimates put this number as high as 1 million.

Throughout the 1990s, federal and state legislative and regulatory reforms reduced some of the barriers to redeveloping brownfield sites, and at the programmatic level, the Brownfields Program of the U.S. Environmental Protection Agency (EPA) supported hundreds of pilot projects that resulted in the environmental assessment of thousands of properties. Moreover, the signing of the Small Business Liability Relief and Brownfields Revitalization Act in early 2002 has provided firmer statutory footing for expanded liability protection and additional federal funding. In 2003, EPA awarded \$75 million in grants to states, local governments, and non-profits under the new law, bringing its investment in brownfields since 1995 to more than \$700 million. In addition, all but a handful of states now offer voluntary cleanup programs to encourage owners and developers to come forward and voluntarily address site contamination, in exchange for less onerous requirements and certainty that state authorities will not continue to hold them liable for additional cleanup.

An Alternative Approach

Federal, state, and local brownfield redevelopment efforts generally aim at supporting the highest and best use of individual properties. Although these efforts have in many cases yielded significant increases in jobs and tax revenues on a property-by-property basis, they have not been as successful at revitalizing whole communities. The piecemeal approach is particularly problematic in areas with a large number of scattered properties that are less than a half acre in size. These properties often attract little interest from the private sector because of their location in distressed areas, the high fixed costs of remediation and redevelopment relative to the small gross returns on such small properties, and the lack of cost-effective insurance options to reduce the risk of encountering unexpectedly high costs.

An alternative areawide approach that explicitly treats multiple brownfield properties as a system and tackles them en masse rather than each in isolation offers a number of potential benefits and could improve the prospects for community revitalization in four related ways. First, redeveloping multiple small brownfield properties in a coordinated fashion can be financially attractive to both public and private developers, particularly for residential reuse. For the public, the cumulative effects of redeveloping multiple properties can increase property values, tax revenues, and other community benefits over an entire neighborhood depressed by a small number of contaminated sites. Additionally, increases in property values over a neighborhood may increase the expected market price for new housing to a high enough level that a private developer will undertake a new project. Even absent sufficiently high market rates, anticipated public benefits might justify subsidies that reduce investment risks and provide the developer with an acceptable rate of return.

Redeveloping multiple small brownfield properties in a coordinated fashion can be financially attractive to both public and private developers, particularly for residential reuse.

Second, an areawide approach may allow larger dollar investments in cleanup and redevelopment that can take advantage of both economies of scale in remediation and infrastructure for redevelopment and risk-sharing opportunities across

multiple sites. For example, the cost of investigating contamination and remediating 10 properties in a coordinated fashion may be far less than doing each in isolation, particularly if the properties share a common environmental problem, such as underlying groundwater contamination, and would benefit from a similar remedial strategy. Even if the contamination problems are dissimilar, the exceptional risk of one property encountering unanticipated and potentially costly cleanup surprises may be balanced by the unexceptional risks of the other nine properties.

The cost of investigating contamination and remediating 10 properties in a coordinated fashion may be far less than doing each in isolation, particularly if the properties share a common environmental problem and would benefit from a similar remedial strategy

Third, if multiple contaminated properties within a defined area can be put under single ownership, an areawide approach may make environmental insurance a financially critical part of a redevelopment strategy. Such insurance can provide protection against unanticipated overruns in cleanup costs, as well as liability protection for a wide range of risks, such as the discovery of additional contamination or lawsuits by site workers or adjacent property owners for personal injuries suffered as a result of the contamination. The insurance is currently unaffordable for small projects, but bundling multiple properties together could make it cost-effective.

Finally, an areawide approach can place the redevelopment of brownfields in a comprehensive, integrated planning framework that takes advantage of the opportunities these contaminated properties provide. Rather than limit the benefits of redevelopment to the sum of the benefits from individual projects, a community undertaking an areawide approach can design the redevelopments so that they are complementary and synergistic, causing the value of the whole to exceed the sum of the parts.

Options for Areawide Approaches

EPA has recognized the promise of areawide approaches in two related initiatives it announced in 2003. In the Land Revitalization Agenda, the agency identified areawide assessments as one approach for reducing costs and called for the coordination of grants to support the redevelopment of clusters of contaminated properties. More broadly, in both its Land Revitalization Agenda and the One Cleanup Program, EPA has provided modest funds to support areawide pilot projects that promote coordinated approaches for cleaning up areawide contamination problems across its multiple land cleanup programs.

Several states recently have ventured into areawide strategies. For example, a 2002 policy directive from New Jersey's Department of Environmental Protection called for the establishment of an areawide brownfield development program to enable communities in the state to plan comprehensively for the remediation and reuse of multiple sites. To support this, the department has developed a "cluster approach" to address sites located near each other. In neighboring New York, a state law signed in 2003 includes provisions to create and fund Brownfields Opportunity Areas. This program encourages community groups to undertake areawide planning and provides incentives for private developers to participate in this effort.

States and nonprofit conservation entities also have explicitly supported brownfield projects that promote community and environmental benefits beyond the confines of an individual contaminated and underutilized parcel. Such projects deemphasize the job and tax benefits that traditional brownfield economic development programs promote in favor of broader gains. For example, the redevelopment of a contaminated parcel and its conversion to open space or parkland may provide environmental benefits such as improved water quality, by virtue of limiting the runoff of polluted water, and increase the value of surrounding properties. Wisconsin's Brownfields Green Space and Public Facilities Grant Program exemplifies this broader appeal with a stated intent to assist communities with the financial costs of the cleanup of brownfield properties that will be redeveloped into community assets that yield public benefits.

These various federal and state areawide approaches have brought some important new aspects of areawide redevelopment to the policy world, but none of them have fully embraced the potential of this approach. The EPA actions are pilot efforts and arguably aim not so much at areawide revitalization as at the integration of EPA's major cleanup programs across multiple sites or broad areas of contamination. The few state programs with areawide programs also have not focused on revitalization per se, in part because they typically rely on tactical targets of opportunity—larger properties with significant development potential—that will yield benefits in a relatively short time.

A strategic program of investments in smaller properties with a longer-term planning horizon for the community has proven to be a difficult political sell in an environment of scarce public funds. Similarly, it has been difficult to garner widespread support for open-space reuses of contaminated properties, a use that has great potential for areawide revitalization, largely because of an understandable desire to realize more immediate gains in jobs and on-site property tax revenues from redevelopment projects.

Recommendations

I recommend that you develop a federal areawide revitalization initiative that specifically targets the redevelopment of multiple smaller brownfields in distressed urban and rural communities. Specifically, the areawide initiative should include the following six substantive elements:

- new criteria in EPA brownfield grants that reward an applicant who presents a redevelopment proposal that includes multiple small parcels of contaminated land and documents the expected spillover potential from each parcel for providing communitywide environmental, health, and social benefits;
- strengthened requirements for public participation in areawide projects that receive federal support, including funding to promote the involvement of community groups;
- a limited-term amnesty that provides partial liability waivers, grants for site assessments, and matching grants, loans, or insurance subsidies for site cleanup

to encourage owners of small, “mothballed” contaminated parcels to perform site investigations as a prelude to redeveloping or marketing the properties;

- changes in the federal brownfield tax incentive, which lets taxpayers who incur cleanup expenses fully deduct these costs from their taxable income in the year they are incurred, to make the incentive permanent, allow petroleum sites to take advantage of the incentive, and eliminate the requirement that the expenses be recaptured when the property is sold;
- provisions in the tax incentive that will allow trading of the tax deduction for cleanup expenses, so that qualified brownfield projects for which the incentive currently is not attractive (such as sites with activities that do not produce income or those owned by local governments) can benefit by selling their allowable deduction to other parties; and
- mandated requirements that all properties receiving federal support report data on contamination and assessment and remediation costs for use in the development of a publicly accessible database to provide better information on the environmental risks of brownfield redevelopment.

These recommended changes would correct the myopia of piecemeal, site-by-site brownfield redevelopment, both through direct efforts that specifically support an areawide perspective and by indirect means that increase the range of contaminated sites attractive for redevelopment and the range of parties interested and able to participate. For example, allowing the sale of tax credits could open up the possibility for local nonprofit, municipally affiliated entities to actively pursue the remediation of tax-delinquent contaminated properties, financed in part by the sale of the tax credits.

The proposed initiative will require a financial commitment to areawide brownfield revitalization through grants, loans, and other financial incentives. If the federal budget deficit and offset requirements militate against an increase in federal support, I recommend a middle political meeting ground of refocusing existing allocations

to promote the six substantive elements of the areawide brownfield initiative I have described.

K.W.

Allowing the sale of tax credits could open up the possibility for local nonprofit, municipally affiliated entities to actively pursue the remediation of tax-delinquent contaminated properties.
