

Guest Editor's Introduction

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It cannot be emphasized strongly enough that what follows is my own personal opinion, not the official position of the U.S. Department of Housing and Urban Development (HUD). It is, however, informed by many years as a HUD employee, working on urban redevelopment.

The standard definition of a brownfield, as embodied in the Small Business Liability Relief and Brownfields Revitalization Act, is a “real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.”

Federal concern about brownfields arose as a direct consequence of growing criticism of and reaction to the get-tough “polluter-pay” federal policies contained in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA, or “the Superfund law”).¹ CERCLA, which Congress passed in reaction to the Love Canal environmental disaster, came down forcibly on any entity that caused or tolerated environmental pollution. The law imposed a severe liability scheme known as “strict, retroactive, and joint liability.” Although modified and moderated in 1986 by amendments, CERCLA was initially characterized by environmental lawyers as imposing a wide net with harsh and unremitting sanctions.

Reaction to the law, particularly from the development community, was quite strong. Critics claimed that the Superfund law was draconian and that it was having a severe chilling effect on urban revitalization, particularly for older and more mature cities. Its provisions applied to any contaminated site, not just sites with CERCLA designation, which magnified the law’s impact.

The Clinton administration developed strategies to respond to these criticisms. The Environmental Protection Agency (EPA) implemented an aggressive set of initiatives to counteract the view that, through its rigorous enforcement of the Superfund law, it was a major obstacle to urban revitalization. The EPA’s Brownfield Pilot Grant program, which awarded 200,000 grants to localities to assess their own brownfield problems, was the most visible dimension of EPA’s brownfield initiative.

Congress asked what is now the Government Accountability Office (GAO) to assess the extent of the problem in the country. Basing its analysis on very limited data resources, the GAO estimated that roughly 425,000 brownfields existed in the country. Speakers and authors have often used higher figures—450,000, 550,000, and even 650,000—citing GAO as the source. Today, among

¹ Some claim that the specific precipitating events were a few court cases that pulled lenders and investors into the CERCLA liability chain, which led to capital flight. Although this claim may be true, the Superfund law itself was the larger force at work.

the frequent references to 1 million brownfields, are mentions of sites such as gas stations, which were not originally part of EPA's definition of a brownfield.²

EPA's mission involves regulating contaminated land. Consequently, EPA's perspective has been site specific and tended to promote assessing and cleaning up specific contaminated sites as the driving forces behind urban revitalization and renewal. EPA commonly reported on the amount that its planning grants for small brownfields leveraged in urban investment or reinvestment, because the brownfield program was doing more urban redevelopment than just site cleanup and because no redevelopment would take place unless the initial cleanup dollars—even at small amounts—were invested.

Nonetheless, EPA's proactive approach quickly attracted the enthusiasm of and support from both the public and private development sectors. Because local governments were looking for federal leadership and assistance in overcoming the challenges of older urban areas and because grant funds for brownfields could be used for properties in attractive market areas, programs for EPA's brownfields were popular. Overall, EPA's brownfield initiatives have contributed substantially to urban revitalization: they have reenergized the field of urban revitalization; they have prompted the EPA to streamline its own regulatory approaches to brownfield investigation and cleanup; they have encouraged states and localities to streamline their own brownfield reclamation policies and to develop innovative approaches to reclaim blighted urban areas; and they have provided a welcome infusion of funds, training, and technical assistance for revitalizing declining and blighted urban communities.

The U.S. Department of Housing and Urban Development's (HUD's) perspective has been different from the start. HUD is an agency concerned with development and redevelopment; it is not an environmental regulator. HUD never viewed its mission from a "brownfields perspective," (that is, identifying and cleaning up specific sites as a significant engine of urban revitalization). Although HUD, along with all other federal agencies, is required to administer a wide array of environmental mandates, which are taken very seriously, such mandates represent only one aspect in the development process. To emphasize: brownfields was the mission, mandate, and message of EPA's approach to the contaminated properties of older urban areas. HUD has never considered brownfields its major focus.

Despite this difference, HUD funding might be the single greatest source of funding for brownfield revitalization because of the great flexibility with which communities can use community development block grants. The purpose of the Community Development Block Grant (CDBG) program has been to promote local discretion, not specific categorical requirements. The general philosophy has been to encourage and support broad, neighborhood, community-oriented improvement, with the priority being on helping low- and moderate-income families and communities. Unfortunately, HUD has never tracked to what degree it has supported brownfield revitalization, in part, because of a general policy of minimizing grantees' reporting burden and because HUD has no metric for measuring its effect on revitalizing brownfields.³

² The distinctions between EPA's views of brownfields and those of the Department of Housing and Urban Development are discussed later in this introduction.

³ Until recently, the Federal Housing Administration's stringent site cleanup requirements have constrained its separate contribution to brownfields revitalization. See Eugene Goldfarb's article, "Field Survey of HUD Site Contamination Policy," in this symposium (Goldfarb, 2010).

The minor role that HUD played in the brownfield issue was also illustrated in the creation of the Brownfields Expensing Tax Incentive, a 1996 enactment that allows developers to deduct all brownfield cleanup costs the year they are incurred instead of amortizing them over many years. Primary responsibility for its management has resided with the U.S. Treasury.

The surging interest in the idea of brownfield redevelopment led the Clinton administration to ask Congress to create the Brownfields Economic Development Initiative (BEDI). Communities could use BEDI funds only if the sites met EPA's definition of brownfields and EPA's regulatory requirements. The BEDI program was quite small—\$25 million in annual appropriations in the first few years of its existence—but may have been the high point in HUD's formal role in brownfields as a policy issue. HUD and EPA actively cooperated in the program's implementation.

With the transition to a new administration, however, HUD's role in the brownfield issue eroded quickly. The Bush administration sought to terminate the BEDI program, which Congress continued to fund, but at increasingly smaller levels. HUD policymakers stopped actively addressing the brownfield issue, leaving EPA to dominate brownfield policymaking. Although the BEDI program has continued, and has been HUD's only development program specifically addressing brownfield needs, at the local level, CDBG funds probably provided the bulk of federal funding devoted to brownfields. Because brownfields are frequently associated with slums and blight, which are an eligible use of CDBG funds, such linkage allowed for the use of CDBG for properties with significant market potential that were not located in low-income areas.

Between 2001 and 2008, HUD did not mount any major new community or economic development initiatives, so it has been quiescent in its brownfield-related efforts as well. The BEDI program continues, but, in the past 4 years, both administrations have recommended eliminating the program, deeming it duplicative of other federal community development efforts; it has so far survived because of support in Congress.

Although HUD and EPA moved along seemingly parallel program tracks in the 1990s, HUD, in fact, did mount an effort to work with EPA on brownfield issues and to conduct research on brownfields relevant to HUD's community revitalization mandates. This effort was the result of an interagency agreement between HUD and EPA, signed by HUD Secretary Henry Cisneros and EPA Administrator Carol Browner in 1996, which pledged mutual cooperation between the two agencies on brownfield issues. As a practical matter, there was too little cooperation in ensuing years, except for the staff cooperation on the BEDI program, HUD's participation in EPA's federal partners working group, and some scattered efforts in the field independent of headquarters oversight.

HUD's Office of Policy Development and Research (PD&R) has conducted a vigorous research program on the role of brownfields in urban decline and urban revitalization. PD&R has sponsored the following brownfield-related research: *The Effects of Environmental Hazards and Regulation on Urban Redevelopment*, a study of how brownfields and attendant liability and regulatory issues could be thwarting site cleanup and redevelopment; *Redeveloping Brownfields: How States and Localities Use CDBG Funds*, which documents how localities used CDBG and related programs for "brownfield" redevelopment; *An Assessment of State Brownfields Initiatives*, which reviews and assesses leading state activities to address brownfields redevelopment; *Environmental Insurance for Brownfields Redevelopment: A Feasibility Study*, which analyzes the feasibility of using environ-

mental insurance as a tool in brownfield redevelopment; *A Guide to Deconstruction: An Overview of Destruction With a Focus on Community Development Opportunities*, which shows how deconstruction could be used in community renewal; and *Study of HUD's Site Contamination Policies*, which focuses on Federal Housing Administration brownfield cleanup requirements for multifamily housing. Other significant PD&R actions, aside from the development of the HUD-EPA Interagency Agreement on brownfields, include a report on the identification and assessment of possible changes to CDBG regulations to make them more conducive to cleanup and redevelopment; public forums to examine policy options for brownfield redevelopment; a followup study of how HUD field offices implement these policies (the followup study is published in this issue); and a forum, with EPA participation, on how brownfields fit into the emerging sustainability agenda. All these studies can be accessed on www.huduser.org.

Although HUD and EPA were moving along parallel tracks for much of the past two decades, EPA's brownfield mission and HUD's revitalization mission now are moving closer together. EPA has recognized the need to promote broader scale renewal through its recently announced Area-wide Brownfields Assessment Grant program. EPA has also launched an urban waters revitalization initiative, which is intended to be a multipronged, interagency effort to promote revitalization with water resources as the hub.

The current administration now formulates HUD's basic mission in the following terms: "Create strong, sustainable, inclusive communities and quality, affordable homes for all." HUD has been given lead responsibility for the Partnership for Sustainable Communities (whose founding members are HUD, EPA, and the Department of Transportation [DOT]) through its stewardship of the Sustainable Communities Planning Grant Program and the Challenge Grant program. The underlying purpose of the Partnership for Sustainable Communities is to align housing, community development, transportation, environmental, and other federal resources and policies to support a sustainable future. The real challenge is to bring each agency's considerable resources, knowledge, and expertise into the Partnership for Sustainable Communities, as exemplified by the principles of sustainability and livability, the DOT's formulation of sustainability. This means moving beyond brownfields as a critical policy focus. The contamination of urban land remains a very real concern, so the tools and approaches developed to address brownfields are still essential and will be for a long time, but it is time for a broader conceptual perspective to govern federal urban policy.

In This Issue

In May 2008, Margherita Turvani of the Università IUAV di Venezia organized an "exploratory workshop" on brownfields for the European Science Foundation (ESF). In February 2009, she approached *Cityscape* with a proposal to publish the papers from the workshop as a symposium. We agreed that some of those papers would interest *Cityscape* readers, and we are grateful to Dr. Turvani for her assistance. As guest editor, I have worked with authors of selected papers from the ESF workshop and with authors of other papers that I was aware of to prepare this symposium, which consists of five original research articles. The articles, all thought provoking, represent varying perspectives and approaches to brownfield issues. Inasmuch as no third-party referees were involved, their inclusion is entirely my decision.

The first two articles are small-scale empirical studies of industrial brownfields in a particular eastern city. Dennis Guignet and Anna Alberini's study, "Voluntary Cleanup Programs and Redevelopment Potential: Lessons From Baltimore, Maryland," examines whether a state voluntary cleanup program can support redevelopment of contaminated properties in an urban industrial area and whether the program can serve as a possible alternative to the conversion of agricultural land and open space (that is, greenfields) in suburban and rural areas of the state.

The study by Marie Howland, "The Private Market for Brownfield Properties," is an empirical study of the effect of site contamination on sales and sales prices of properties in an industrial area of Baltimore. The study found that, after the mid-1990s, contaminated parcels sold on the private market, with price discounts accounting for contamination and cleanup. The author concluded that, although the private market can address the costs of site cleanup itself, public intervention is still needed to overcome the classic problems of obsolete, obsolescent, and fragmented land use and urban infrastructure.

Peter B. Meyer's article, "Brownfields, Risk-Based Corrective Action, and Local Communities," explores the seemingly irreconcilable conflict between economic development and environmental improvement. Meyer reviews some U.S. responses that avoid sacrificing environmental to economic gains and suggests lessons that states and municipalities may learn from others, after socioeconomic, political, and legal differences are taken into consideration.

Eugene Goldfarb's article, "Field Survey of HUD Site Contamination Policy," which is a followup to a *Study of HUD's Site Contamination Policy* (HUD, 2003), examines how HUD field offices administered the Department's (particularly the Federal Housing Administration's) official policy at the time (2003), which discouraged using the risk-based corrective approach to brownfield redevelopment. The article also has implications for the Department's urban mission.

Finally, David Slutzky and A.J. Frey's article, "Brownfields Uncertainty: A Proposal To Reform Superfund," reviews America's brownfield problem (that is, the barriers to brownfield redevelopment) from the perspective of the current environmental liability and financial support framework and offers a bold proposal to overcome existing impediments.

References

Goldfarb, Eugene. 2010. "Field Survey of HUD Site Contamination Policy," *Cityscape: A Journal of Policy Development and Research* 12 (3): 71–83.

U.S. Department of Housing and Urban Development (HUD). 2003. *Study of HUD's Site Contamination Policies*. Washington, DC: U.S. Department of Housing and Urban Development, Office of Policy Development and Research.