



Reinvesting in America: BRAC Lessons for Brownfields

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**A policy paper for the
Washington Internships for Students of Engineering
Sponsored by the National Society of Professional Engineers**

August 1, 2000

SECTION I. Issue Definition

This paper will discuss the effect redeveloping Base Realignment and Closure (BRAC) and brownfields sites can have on a community. Due to the similarities of a BRAC site as compared to a brownfield site, the successful methods used by one could be applied to assist the other. Brownfields development procedures have been criticized; therefore, the main issue of this paper is to reform those programs by the comparison to productive BRAC programs.

Redevelopment of brownfield and BRAC sites is highly beneficial to the community. Engineers play an important role in this development. Legal concerns and previous legislation have hindered the advancement of brownfields revitalization. As a result, both communities and engineers suffer from these setbacks. The challenge to engineers is to project the importance of development over legal and legislative issues. This paper will provide background information about BRAC and brownfields, identify redevelopment programs, define current or past legislation, and based on the information, establish alternatives and recommend actions.

SECTION II. Summary

The two main objects discussed are BRAC and brownfields sites. BRAC is the program created to eliminate and consolidate military bases because of a decrease in defense available budget and the presence of underused facilities. Once the base vacates the site, the property is in the position for a potential redevelopment into a new source of community income. It is often times that the surrounding communities highly depended on the base to provide jobs and generate revenue to the local government.

The site may contain contamination because of the military activities that have occurred there. To facilitate the cleanup of the contamination and the transfer of the property, the military has directed a Base Closure Team (BCT) that will administer all of the previously mentioned concerns. The BCT is a cooperative group consisting of representatives from both military and environmental entities. It is their job to make all of the decisions pertaining to the future of the base. The BCT relies on input from the community in the form of recommendations generated by their involvement in DERFT and LRA teams, which consists of representatives from various surrounding local associations.

Brownfields-- as defined by the EPA-- are "abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination."¹ Similar to the BRAC sites, brownfields also offer great community improvement if redeveloped. Federal agencies have been active in creating programs themselves or as a group to assist in the assessment and cleanup of brownfields. The Brownfields Economic Redevelopment Initiative and the National Partnership Action Agenda are two examples of cooperative federal programs. There has been much criticism to federal programs due to regulations, liability concerns, and attachment to past legislation. States have taken the initiative to voluntarily cleanup their local brownfields in order to bypass federal involvement.

Often, Federal programs are associated with the act dubbed “Superfund”. Superfund is legislation dealing with the cleanup and regulation of more seriously contaminated locations. Among many other complications, Superfund creates legal concerns when assigning responsibility for the cleanup. This legislation’s reform has been in debate for many years. A newly introduced bill S. 2700, Brownfields Revitalization & Environmental Restoration Act of 2000, has addresses liability issues created through Superfund. This bill does not address comprehensive Superfund reform.

The creation of brownfields redevelopment programs has been popular. Therefore, at one site, the efforts of one entity may be duplicated or deemed inadequate by another. Not one body has sufficient control over all of the actions taking place on the brownfield. Three policy alternatives are issued to deal with sorting out this confusion. The first consolidates all of the federal programs into one, and this one body will oversee all of the process occurring at the brownfield. Similar to a Defense Environmental Task Force’s (DERFT) at a BRAC site, the body does not own the site but helps give input on how cleanup should be accomplished. This way, it can be assured that federal regulations will be followed and that all agencies are available for funding and assistance. However, this alternative creates problems by proposing that federal agencies abandon their own individual brownfields programs and conform to one. Also, the termination of state/local brownfields programs--even if they have previously been proven successful--is another source of concern with this policy alternative.

The second policy alternative suggests states, alone, control their own brownfields. In the same mind as a Local Redevelopment Authority (LRA) group at a BRAC site, state and local governments are most closely related and affected from the brownfield. A majority of states already have cleanup programs and the local governments are able to identify where community redevelopment would be best applied. One concern in this alternative would be the difference in standards and procedures set by each state, therefore, making difficult for a developing company to work among several states. Also, federal agencies are not likely to fund programs to which they cannot participate in.

The third alternative calls for the creation of a group in each state or region comprised of representatives from the necessary federal and state authorities. This is similar to the BRAC Cleanup Team (BCT) on a BRAC site who gathers all who are required to administer the cleanup and redevelopment. By having the proper representatives, the group can give thorough assessments and decisive recommendations about each brownfield site. This would be an effective approach to encourage states to develop their brownfields while federal agencies maintain their programs. The workings of this system require the cooperation of all entities that is often widely spoken about but rarely enforced.

In conclusion, brownfields redevelopment procedures need to be reformed. BRAC sites have been quick and successful in community turn-around. If brownfields programs would adapt to things similar to that of the military--such as one specific group who runs the cleanup and community planing teams--the blight of brownfields can be decreased. Support of the bill S. 2700, even though it is not comprehensive, is recommended

because if smaller issues are tackled and solved, the attainment of results can begin. The effect brownfields have on cities cannot be ignored. By not addressing the issues surrounding brownfield redevelopment reform, urban communities are further condemned.

SECTION III. Background

Definition of BRAC

With the progress of America's forces, there is often a need to examine new and emerging technologies and procedures. However, it is difficult to remain funding previous actions when the push is further forward. Secretary Cohen expressed, "we have to invest both in current capabilities and also in the future force—namely our people and technologies. But for the foreseeable future, the defense budget is likely to remain constant."² The Department of Defense (DoD) had to find ways to eliminate excess drainage on their limited resources. The solution was the implementation of the **Base Realignment And Closure** program (BRAC) which reorganizes military sites either through termination or through relocation/regrouping to a more centralized area. By doing this, the DoD was able to save portions of the budget that were not being spent on maintaining these bases.

Ever since the end of the cold war, the DoD has reduced both the defense support and the force structure.³ In addition, the Defense budget has been reduced by 40%.⁴ Infrastructure reductions—including military bases, facilities, and buildings—have not amounted to the loss in force structure.⁵ In total, the force structure has fallen 32% since 1989 and will decline to 36% by 2003.⁶ At the same time, after four rounds of base realignments and closures (BRAC 1988, '91, '93, '95) the base structure has declined only 21%.⁷ Because there is still an excess in base structure, "DoD will seek congressional authorization for two additional rounds of BRAC in 2001 and 2005."⁸ Graph 1 located in the appendix visually compares the differences between Defense budget, military personal, and base structure. "This relative disparity between base structure and force reductions wastes limited resources on maintaining unneeded bases."⁹ By eliminating this excess infrastructure and consolidating the forces at fewer bases, "the DoD can save a total of \$25 billion in net terms, \$5.6 billion each and every year from the year 2003 on. The billions of dollars are available to invest in technology and weapon systems."¹⁰

If BRAC was not originally approved and the defense budget remained constant then the DoD would be forced "to start cutting back on training, exercising, on readiness accounts, on real property management."¹¹ Another alternative to BRAC would allow the deterioration of these facilities; they would go with out repairs. The consequence is that the workforce would suffer. Therefore this is not an acceptable alternative and Secretary Cohen does not "look forward to making that kind of recommendation."¹²

Redevelopment of BRAC Sites

The community originally faces a serious economical impact by the closing of the base due to the loss of jobs and community income; however, programs have been established to counteract this burden. The redevelopment of the property is greatly beneficial to the

community. A variety in businesses can be attracted as the source of employment and in effect, “the closure often becomes an engine for economic growth.”¹³

It has been proven that there can be great success and improvement for communities after closure. Communities are rapidly overcoming the closure. “More than 50,000 civilian jobs have been created at bases closed since 1988; this represents 48% of the civilian jobs lost due to closure.”¹⁴ “Fifteen communities have already created more civilian jobs at their former bases than were lost.”¹⁵ The communities are not only recovering but improving their location. “As of 1997, about two-thirds of the communities affected by post-1988 closures (42 of 62) had an unemployment rate at or below the national rate of 5.1%. By comparison, in 1988, only 60% of the communities (37 of 62) had unemployment rate at or below the US average (then 5.5%).”¹⁶

Cause of Contamination on BRAC Sites

BRAC sites are federally owned. Because of activities that have taken place on the base, there could be a range of mildly contaminated areas. Mild contamination suggests levels that require cleanup because they are not only hazardous to the environment, but also to human health. However, these levels are not so extreme as to be identified with Superfund.

“Most military installations have significant amounts of environmental contamination scattered throughout the base, usually associated with industrial activities and military training.”¹⁷ For instance, soil contamination from explosives in training areas, both in the form of unexploded ordnance (UXO) and the materials used in ordnance manufacture.¹⁸ Other examples would be the presence of lead containing paint and the thermal insulating material asbestos in buildings on site. Fueling centers have pollution from petroleum products, and PCBs are a common contaminant found from transformers.

Standards of Cleanup on BRAC Sites

The future use of the military base varies with every situation. One site may become an industrial park while another may house families. With each different use, it is logical that there is a difference in the level of cleanup. “Federal and state government regulators have determined that human health and the environment can still be protected when sites are cleaned up to specific, risk-based levels of contamination acceptable for a predetermined future use.”¹⁹

Even though the military may set relaxed standards for appropriate sites, they are not exempt from existing cleanup standards because they “must comply with the conditions of the National Environmental Policy Act (NEPA).”^{20, 21} The DoD does not want to risk the human health or the environment, so it will set its standards stricter than that of existing policy.

Since the cleanup is only performed up to a certain standard set for the specific use of the land, if the use of the land were to change in the future, there is a risk for the need of additional cleanup. To prevent dangerous practices in the changing of property, “institutional controls are implemented at a site cleaned up to future-use risk-based levels

to ensure protection of human health and the environment.’²² “They involve restricting the use of the property through an ownership interest in that property.’²³

When the military is not responsible for cleaning up the entire site, they still provide an analysis of the whole area. “In addition, the Agreement will facilitate combining efforts in enterprise zone projects where the Military Components develop a cleanup plan for the entire site but is only responsible for a limited remediation initiative. State funds would be used to address any remaining contamination at the site which is not the responsibility of the Military Components.’²⁴

When waste is left on a site, the state and/or federal regulators “will conduct reviews at least every five years to monitor the site for any changes.’²⁵ “The DoD has stated that it will not carry out any further cleanup necessitated by a voluntary change in land use.’²⁶

Military Redevelopment and Cleanup Programs

Secretary Cohen stated the import role the government has in returning the community to productive status. “As a federal government that if we’re going to help communities that have become dependant upon that stream of revenue coming in from the military facility overcome the collapse of their economy.’²⁷ “The federal government’s role is to foster local reuse efforts by making it easier for communities to utilize newly available assets.’²⁸ The DoD provides support for redeveloping communities by funding an average of \$1 million dollars in planning grants to individual communities.²⁹ To be sure that the communities best interests are looked out for and that the transfer of property is speedy in order to lessen the time the land lies idle and non-generating, the DoD has established programs/teams to facilitate and organize property cleanup and transfer.

New development on the property cannot be initiated until the land is transferred from being in military possession. The DoD is trying to make this process very beneficial to the communities by offering land for free or at a cost well below market value. This is beneficial to both parties; the military no longer has to pay for the maintenance and upkeep of the under-used facility and the community does not have to spend a significant portion of its funding for acquiring the property. By adopting a no/low-cost property transfer, “the federal government can speed job-creating economic redevelopment even as it reduces its own costs.’³⁰ “At President Clinton’s request, in 1994 Congress gave DoD the authority to transfer such property at below fair market value.’³¹ Currently, the DoD can perform no-cost transfers at rural bases, and is seeking authority to expand this to other bases that are to be used for job-generating economic development.³²

There is a creation of a **BRAC Cleanup Team (BCT)** at every closing or realigning base that contains transferable property with environmental contamination. The BCT groups everyone that is crucial in the redevelopment of the base together therefore eliminating the confusion that may occur if each entity acted individually. The BCT “brings together appropriate military personnel and regulators to work cooperatively and expedite cleanup decisions.’³³ “The BCT, whose members include one representative from DoD, one representative from the state environmental regulatory agency, and one representative from the EPA, is responsible for making the final cleanup decisions on the base.’³⁴

To make sure the proposed use of the property is what would be in the best interest for the community, teams are set up to research and recommend the most beneficial options. The **Defense Environmental Task Force's** (DERTF) main goal "is to recommend ways to expedite and improve environmental response actions at closing military installations."³⁵ The DERTF is regulated by the DoD but comprised of various federal agencies and organizations.

When the military does not possess the information/know-how they reach out to tap other sources. The DoD supports the cooperative action between themselves and other agencies such as the Federal EPA. The valued resources housed by the EPA could be used towards cleanup and property transfer. "DoD provides funding to EPA for support above and beyond the roles and responsibilities mandated by statute. With EPA's additional technical expertise and support, the cleanup and property transfer processes are accelerated at closing bases identified by DoD. Senior-level EPA remedial project managers serve on the BCTs at over 70 major bases scheduled for closure under the first three rounds of the BRAC program. To support fast-track cleanup efforts, EPA also provides in-house technical professionals, such as hydrologists, risk assessors, toxicologists, community relations specialists, and attorneys. Such in-house expertise provide real-time response capability that expedites decision making."³⁶

Nonmilitary Program Participation

There is a great importance in the cooperation between local governments and the DoD. The DoD leads the local government through a maze of military base closure and reuse processes. To make sure that the transfer is a success, the DoD and local governments must be willing to assist each other to create the best possible outcome. "While every successful transition is unique, most have had four things in common: the community leaders took advantage of all available public and private resources; they planned ahead; they acted immediately; and they came to a consensus concerning future development."³⁷

"Reuse planning requires the concurrent execution of numerous activities. Generally, this phase begins once a facility is slated for closure or realignment and ends when the **Local Redevelopment Authority's** (LRA) redevelopment plan has been approved by the military department."³⁸ The LRA--representing all major groups and communities affected by the closure--is responsible for planning for the reuse of the base. This group solicits ideas for redevelopment and develops a comprehensive land-use plan. "Reuse planning activities can be grouped into these principle categories: comprehensive land-use and redevelopment planning; environmental impact analysis; the BRAC environmental processes; and installation management."³⁹

The military has authority over the base closure; however, that does not mean that they are ignorant to what the community feels will be best. "Most local governments are not invited or allowed to participate in BCT meetings."⁴⁰ In spite of this, when an issue arises that the BCT feels will affect the local government, BCT will consult the LRA and local government. Military teams focus on the LRA's reuse plans "as the blueprint for all federal property disposal and reuse decisions."⁴¹

There is a process that has been devised, and proven successful, that would allow for the early transfer of military property to a private developer before the actual closure of the base. The **Finding Of Suitability for Early Transfer (FOSET)** team members include “the BRAC Cleanup Team (BCT), the supporting real estate office, and the transferee.”⁴² “The team should develop a plan and schedule for developing the draft FOSET and discuss post-transfer responsibilities. These include: when and how property use restrictions will be applied and eventually discontinued during the cleanup period; the manner in which the warranty required by CERCLA section 120(h)(3)(A)(ii)(I) will be conveyed upon completion of the cleanup; and the development and implementation of any institutional controls required by the final remedy decision.”⁴³

In certain cases, it may be more beneficial for the community to take on the responsibility of cleanup. If the community serves as the cleanup engine, “DoD should use the money it saves in cleanup costs to reimburse all expenditures accrued by the community during implementation and maintenance of institutional controls.”^{44, 45}

Definition of Brownfields

Brownfields are defined as “**abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.**”⁴⁶ At one time, “many of these brownfields sites were thriving factories or industrial centers—sources of economic vitality, jobs, and community pride.”⁴⁷ However, they now sit and deteriorate posing a dangerous threat to the community. According to the United States General Accounting Office approximately 450,000 brownfields exist in USA⁴⁸ which “affect virtually every community in the nation.”⁴⁹

Redevelopment of Brownfields

Brownfields waste valued space within an urban area. With the property lying idle, further improvement and enhancement of the community cannot be achieved. In addition, without brownfields development, the available land within urban areas decreases which forces industry to proceed outward, invading suburban areas.⁵⁰ The development of greenfields was encouraged by previous actions such as the creation of interstates. This drew out prospective developers and further abandoned the inner cities. Sen. Frank Lautenberg said in a statement supporting the new bill S. 2700 that brownfields “threaten not only the health of our citizens, but also the economic health of the communities across the country, by leading to abandoned inner cities, increased crime and sprawl and loss of jobs.”⁵¹ Redeveloping brownfields “helps bring these areas back into productive use, providing the foundation for revitalization, job creation, and the restoration of hope in distressed neighborhoods. It also helps restore and protect green space in both urban and suburban areas by reusing already developed properties and by cleaning up contaminated sites.”⁵²

As early as 1994, the US Conference of Mayors--an organization of mayors representing over 1050 of our cities--identified brownfields as the number one environmental issue in the nation.⁵³ “Brownfields redevelopment is the vehicle to unearth the development

potential of our urban communities.’⁵⁴ “As referenced in the US Conference of Mayors’ 1999 report, 168 cities estimated they would receive between \$955 million to \$2.7 billion in additional annual tax dollars and create more than 675,000 jobs if their brownfields sites were returned to productive use.’⁵⁵

Superfund

The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), commonly known as Superfund, was enacted by Congress on December 11, 1980.⁵⁶ Superfund’s main job was to “locate, investigate, and clean up the worst [contaminated] sites nationwide.’⁵⁷ To generate the funding necessary to operate this program, a tax was placed on the chemical and petroleum industries.⁵⁸ This tax “raised about \$1.5B per year before the collection of taxes expired on Dec. 31, 1995.’⁵⁹ CERCLA was amended by the Superfund Amendments and Reauthorization Act (SARA) on October 17, 1986.⁶⁰

Ever since the law’s enactment, there have been serious concerns about liability, standards, and restrictions. “CERCLA’s liability provisions, intended to ensure cleanup by the responsible party, actually may discourage the redevelopment of contaminated sites because of the fear of potential liability.’⁶¹ As of now, “innocent” landowners or potential developers can be held responsible for all cleanup costs on the site even if they had no role in the contaminating of the property. “The law’s cleanup standards and remedy selection procedures are also controversial. Requirements for treatment, permanence, and the application of both federal and state regulations have led to what some critics characterize as overly strict risk assessment, and increased costs and delay at many sites.’⁶² “As of Sept. 1998, 18 years after the law’s enactment, 535 sites (39%) placed on the superfund’s NPL had been removed to the Construction Completed List. The program has been accused of being slow, ineffective, and expensive.’⁶³

State and Local Brownfields Development Programs

States wanted to disassociate their brownfields from the Superfund legislation after the complications arose. States soon created programs that would deal with their brownfields before they became in the attention of Superfund.

“The report, *Revitalizing Urban America: Cleaning Up the Brownfields*, said states have been highly successful at administering their brownfields programs, despite federal rules that discourage developers interested in purchasing such land.’⁶⁴ Forty-four states have established **voluntary cleanup programs** that “encourage private parties to voluntarily undertake early protective cleanups of less seriously contaminated sites, thus accelerating their cleanup and redevelopment.’⁶⁵ “At present, EPA and states enter into cooperative agreements on a site-by-site basis that authorize the states to undertake most of the cleanup activities that the agency would perform.’⁶⁶

States are taking the initiative themselves to head up programs for brownfields redevelopment. “Michigan Gov. John Engler signed into law on June 6, 2000, a legislative package (SB 269, HB 5444) that boosts tax incentives and expands eligibility for tax credits aimed at spurring redevelopment of brownfields sites.’⁶⁷ Engler noted,

“these new laws will substantially improve and expand our brownfields program, thereby creating exciting new opportunities for the revitalization of previously undesirable properties in our states.”⁶⁸ He felt that his individual state’s program was due for renewal if not improvement.

In the Conference of Mayors survey of 223 cities, “More than half of the respondents indicated that local or state incentives were offered to encourage brownfields redevelopment including tax credits or abatements, liability protection, low-interest loans, development funds, cleanup funds, and tax increment financing.”⁶⁹ “More than one-half of the respondents (121 cities or 54%) indicated that incentives were offered to encourage brownfields redevelopment. These incentives include tax credits, tax abatements, infrastructure upgrades, low interest loans, loan guarantees, job training, cleanup funds, tax increment financing and grants for assessment and remediation.”⁷⁰

Cities also feel the need for redevelopment of their urban brownfields. “We [city of Boston] use city initiatives such as tax abatements, public takings of properties, Community Development Block Grant funds and debt financing through city agencies like the Boston Redevelopment Authority.”⁷¹

The realization for redevelopment has also stretched as far as encouraging communities to help out. Empowerment Zones/Enterprise Community Initiatives (EZ/EC) “are residents working together to create economic opportunities for their neighborhoods and to build public-private partnerships for sustainable community development.”⁷² “They offer significant economic incentives that may be used for BF cleanup and redevelopment.”⁷³ Tax incentives such as tax-exemption are offered to businesses as an encouragement to build on a brownfields site.

Federal Brownfields Programs

State programs created the awareness for brownfields redevelopment related programs. Federal agencies, seeing the accomplishments made by the state programs, began to create their own, modeling them after the states.

Local lenders are wary of investing in brownfields redevelopment, so the availability of other options is needed. Federal agencies are creating programs that help fund brownfield sites. “The report [EPA’s Council for Urban and Economic Development (CUED)] concluded that for every \$1 the federal, state, and local governments put into revitalizing BFs, \$2.48 in private investment is attracted.”⁷⁴

The Environmental Protection Agency (EPA) is awarding up to \$200,000 to states, cities, towns, counties, and tribes to act as the funding for the **demonstration pilot programs**.⁷⁵ The pilots assess brownfields sites and test cleanup and redevelopment models. “The BF pilots enable recipients to take a unified approach to site assessment, environmental cleanup, and redevelopment, an approach that stimulates economic activity and the creation of jobs.”⁷⁶

The EPA created the **Brownfields Cleanup Revolving Loan Fund (BCRLF)** program in 1997 to provide communities with funding in order to assess and cleanup brownfields. Originally, “the agency selected 21 cities or counties and three states to receive grants totaling more than \$8 million for the purpose of setting up revolving loan funds that would help finance cleanups and lead to the redevelopment of brownfields.”⁷⁷ “It [BCRLF] is now the largest single brownfields program run by the Agency, and the largest one that provides funding for actual cleanup of contaminated brownfields sites.”⁷⁸ “The Agency provides funds (\$500,000) to local governments, which in turn use that money to make loans to private or public entities interested in cleaning up brownfields in their communities.”⁷⁹ In order for the program to run smoothly, the EPA stated “the first step is often from within, calling for interdepartmental coordination and collaboration among such entities as the city’s redevelopment and environmental, public health, legal, business and finance departments and offices. This infrastructure and institutional modeling is critical to a sustainable community-based brownfields solution.”⁸⁰

The BCRLF has received much criticism since its enactment. “In simple terms, this program is not achieving the desired results as quickly as anyone, including EPA, had imagined it would.”⁸¹ Critics feel that the EPA did not research the pilot cities/states well enough to make sure that they would have the necessary tools to run such program. “EPA did not ensure that the pilots it selected had the necessary legal, technical, and administrative capability to establish and administer a brownfields cleanup revolving loan program. A common source of trouble among pilots have been acquiring the necessary legal authority from either manager to oversee the loan fund.”⁸² Not a single one of the original pilots have been able to successfully make a loan, and only one 1999 pilot city, Stamford, so-far has made a loan.⁸³

Other federal agencies have developed brownfields funding programs besides the EPA. The U.S. Department of Housing and Urban Development (HUD) has several loan and grant programs designed to encourage development. The **Community Development Block Grant (CDBG)** allows for the assessment of brownfields sites that will benefit low income persons, prevent or eliminate slums or blight, and address conditions that present a serious and immediate threat to the health and safety of the community.⁸⁴ The **Section 108 Loan Guarantee** and the **Brownfields Economic Development Initiative (BEDI)** both provide communities with funds for economic development. These last two sources allow the local governments to use the funds for acquiring brownfields property and then selling it at a discounted price to a private sector party.^{85, 86}

Federal Brownfields Partnership Programs

Various organizations and government entities act on brownfields independently. “These resulting divergent brownfields activities underscored the need for a more focused redevelopment plan.”⁸⁷ The **Brownfields Economic Redevelopment Initiative** spearheaded and coordinated by the EPA encourages the “partnering of brownfields stakeholders, such as state and local governments, non-governmental organizations, and local communities.”⁸⁸ This initiative provides an opportunity for federal agencies to work together in a more integrated fashion. “This is an effort to facilitate the various brownfield-related activities occurring throughout the country.”⁸⁹ Its strategies include

“funding pilot programs and other research efforts, clarifying liability issues, entering into partnerships, conducting outreach activities, developing job training programs, and addressing environmental justice concerns.”⁹⁰

The Clinton Administration Brownfields **National Partnership Action Agenda**, announced by Vice President Gore May 1997, has commitments of “over 20 Federal agencies and non-governmental organizations in support of brownfields redevelopment in communities throughout the United States.”^{91, 92} “This outlines a comprehensive approach to the assessment, cleanup, and sustainable reuse of BF.”⁹³ The Action Agenda links “environmental protection with economic development and community revitalization programs.”⁹⁴

“HUD, EDA, NOAA, and DOT are integrating brownfields into their planning processes, ensuring that brownfields cleanup and redevelopment are eligible expenses for their project funds. They are removing internal barriers and encouraging their fields offices to work with communities on brownfields projects.”⁹⁵

SECTION IV. Key Conflicts and Concerns

Laws and Legislation on BRAC Site Contamination

Not all military bases contain the severity of contamination as to place it on the National Priorities List (NPL) of CERCLA. NPL only includes areas of contamination, therefore, if a BRAC site is listed, it is not usually in its entirety. “EPA is developing a pilot program to delete portions of BRAC installations listed on the NPL that are found not to require remediation or that have been remediated.”⁹⁶ With this action, uncontaminated property can be more easily and quickly transferred for community redevelopment.

“An initial remedy might be considered ineffective because: 1. It fails to meet goals specified in the record decision or other relevant directives; 2. Additional contamination is discovered; or 3. A determination is made, as part of the five-year review of effectiveness of the remedial action, that the remedial action is no longer protective of human health and the environment. In such cases, the DOD could bear the responsibility.”⁹⁷

“President Clinton in 1993 announced a five-part program to give top priority to early reuse of closing bases’ valuable assets by the host communities.”⁹⁸ The program includes: “catalyzing the local planning process, transferring property at an affordable price, investing in infrastructure improvements to make property more attractive, helping to pay for training that gives workers skills needed in the local economy, and cleaning up environmental contaminants left by the military.”⁹⁹ The President’s Base Closure Community Reinvestment Program states, “early economic reuse and redevelopment is essential in the revitalization of communities affected BRAC.”¹⁰⁰ The President’s goal of rapid development and creation of new jobs was suggested to be carried out or assisted by the use and increasing of economic planning grants. The processes that the community would have to follow through would be made easier by the establishment of “transition coordinators” that would be assigned to every major base.¹⁰¹

Brownfields Redevelopment Laws and Legislation

Federal brownfields assessment and cleanup programs have been popular with congress. Congress has appropriated money for these such programs awarding increasing amounts to the EPA \$36.8M FY1997, \$85M FY1998, and \$91.3M FY1999¹⁰² and \$25M for HUD.¹⁰³

Tax Incentive Laws

August 5, 1997, President Clinton signed the Taxpayer Relief Act (HR 2014/PL 105-34), which included a new tax incentive to spur the cleanup and redevelopment of BF in distressed urban and rural areas.¹⁰⁴

“The brownfields tax incentive will help bring thousands of abandoned and under-used industrial sites back into productive use, providing the foundation for neighborhood revitalization, job creation, and the restoration of hope in our nation’s cities and distressed rural areas.”¹⁰⁵ “Under the new brownfields tax incentive, environmental cleanup costs for properties in targeted areas are fully deductible in the year in which they are incurred. The \$1.5 billion incentive is expected to leverage \$6.0 billion in private investment and return and estimated 14,000 brownfields to productive use.”¹⁰⁶ The properties must meet requirements in beneficial land use, geographic location, and presence/potential presence of contamination.

“In 1994, the IRS issued a ruling that stated that certain costs incurred to clean up land and groundwater could be deducted as business expenses in that same year. However, the ruling only addressed cleanup costs incurred by the same taxpayer that contaminated that land. It did not address cleanup costs incurred by a party that had purchased contaminated property, or an owner who was interested in putting the land to new use.”¹⁰⁷ “This arguably left prospective purchasers at a disadvantage in terms of environmental remediation expenditures.”¹⁰⁸

Pending Bills

“At least 21 bills with brownfields provisions were introduced in the 105th congress.”¹⁰⁹ Recent bills related to brownfields and Superfund reform are listed in Table 2 of the appendix. The latest bill introduced in the 106th congress is **S. 2700, Brownfields Revitalization & Environmental Restoration Act of 2000**. “The proposed Brownfields Revitalization and Environmental Restoration Act would revise Superfund liability standards to protect ‘innocent landowners’ and prospective purchasers and would provide grant funds to encourage redevelopment of the sites.”¹¹⁰ This bipartisan legislation authorizes money for states and tribes to award grants or loans and strengthen their own brownfields programs. The bill limits federal enforcement at cleanups.¹¹¹

S. 2700 has “40 cosponsors and is widely supported by the Clinton administration, mayors, a real estate association, and a conservation group.”¹¹² This “legislation also has been endorsed by the United States Conference of Mayors.”¹¹³ However, the Competitive Enterprise Institute (CEI) has spoken out in objection because the bill does involve comprehensive Superfund reform. Senate Majority Leader Trent Lott also stated that he opposes S. 2700 because it only addresses a few issues of Superfund instead of total

reform, thus leaving problems for further legislation to fix.¹¹⁴ “In the past, the administration supported brownfields legislation within the framework for comprehensive legislative reforms to the Superfund program.”¹¹⁵ “While many parties have desired Superfund reform for several years, the lack of agreement on reforming the liability provisions appears to be the key reason impeding congressional action.”¹¹⁶ Therefore, even though comprehensive reform is highly sought, it has been nearly impossible to accomplish.

Problems of Brownfields Legislation

Redeveloping brownfields “can be a costly, high-risk venture because CERCLA can make current owners of contaminated land liable for the contamination, even if it occurred before their ownership, the CEI report said.”¹¹⁷ The “unreasonably high level”¹¹⁸ standard of cleanup also acts a disincentive to developers. Federal policies associated with CERCLA do not protect “developers from liability for the sites or from developing their own rules for site remediation”¹¹⁹ “Grantees suggested that flexible cleanup standards and formal liability releases for parties not responsible for existing contamination will simplify brownfields redevelopment.”¹²⁰

Currently brownfields legislation and programs are tied to Superfund, so there are restrictions that eliminate possible brownfields sites. “Superfund funds cannot be used for petroleum sites, or the cleanup of buildings contaminated with lead and asbestos.”¹²¹ “Sites which are primarily contaminated with oil products need to be eligible for this program. In Boston, a recent review of all brownfield sites found that over 70% were contaminated with oil. Each of these sites would have a difficult time passing current regulations under this program.”¹²²

“The lack of cleanup funds” for brownfields is “the most frequently identified impediment” to the redevelopment of brownfields.¹²³ Due to issues relating to liability “private lenders are wary of lending on a site that has environmental contamination.”¹²⁴

Problems for Community Redevelopment/Cleanup of Brownfields

In a study done by the Conference of Mayors, “For the third year, the ‘lack of funds to cleanup these sites’ was the most frequently identified impediment, cited by 90% of the respondents. The next two major impediments were the same as in the past, ‘liability issues’ and the need for ‘environmental assessments.’ Three out of four respondents indicated that they would need additional help to redevelop their brownfields sites.”¹²⁵ Suggestions made by the cities focused on tax incentives, loans, and assistance programs. The tabulated results of the Conference’s poll are listed under Table 1 in the appendix of this paper.

BRAC and Brownfields Comparison

BRAC and brownfields sites both share the same characteristic of land available for reuse. Communities depended on the previous establishment to provide jobs and income to the local government. The property in both BRAC and brownfields locations have the potential to revitalize the surrounding area.

Programs

When cleanup is in order, there are programs available for both military sites and public brownfields. BRAC sites focus their efforts towards the revitalization from the immediate beginning by forming a BCT. This one entity, the BCT, makes all decisions for the site including future use and cleanup standards and methods. The community does get to participate by voicing opinions through groups such as DERFTs and LRAs. On the contrary, not one specific group is responsible for administering and regulating the cleanup program in brownfields redevelopment. For instance, the EPA may fund the assessment of a brownfield site while the state government is funding the cleanup and development. Perhaps, the state may choose the cleanup method and future use for the site; however, the EPA may set the standard to which the site has to be cleaned up.

Property Ownership and Liability

It is certain that BRAC land previously belonged to the military. It is therefore their responsibility to correct any actions that were detrimental to the community/environment. DoD accepts the responsibility for cleanup to levels that are fully protective of human health and the environment.¹²⁶ With brownfields, the current owner may not be the originator of the contamination. In fact, the local government itself may be in possession of the property due to involuntarily inheriting it through real-estate tax laws. If a business relocates and fails to pay taxes on the land they previously occupied, the government is legally forced to confiscate the property even if they do not want it because of its brownfields potential. Due to these occurrences, it is hard to assign liability.

SECTION V. Policy Alternatives

Brownfields Policy Alternatives

1. **Consolidate all federal agency brownfields programs into one and this one program will oversee all of the processes occurring at the brownfield.** Already, federal agencies are realizing it is beneficial to work together, that is why programs such as the Brownfields Economic Redevelopment Initiative and the National Partnership Action Agenda have been developed.

Comparison to BRAC: This partnering of agencies into a singular program would be similar to the DERFT at a BRAC site. Even though the federal agencies do not directly own the property or benefit from the results, they can help by providing guidance. Cleanup regulation can be made through the one body instead of several different groups.

Efficiency: The partnership will eliminate the duplication that can occur when multiple groups work on the same project. “Close cooperation from the beginning of a BF pilot may also decrease the likelihood that agencies will duplicate efforts, work at cross purposes to each other, or confuse community leaders and civic groups.”¹²⁷ A program that everyone agrees upon would speed the process thus making it more cost effective.

Equity: A partnership will allow all of the agencies involved with brownfields to make decisions. Representation can assure that everyone will be informed of the process. Also, when they are working together as a group, not one agency can claim sole accreditation and responsibility. It would accommodate everybody involved because the

established way of doing things must be agreed upon by all involved agencies. If each agency knew their role in the whole process it would be a lot simpler and productive.

Feasibility: Since programs similar to this are currently being implemented, it is possible for the materialization of a larger partnership program.

Complications: All responsibility is placed on the federal agencies through this partnership. Less important brownfield sites, in the eyes of the partnership, could prove to be quite beneficial to the state if developed. The state governments could become impatient and upset when these crucial sites are overlooked. Also, for this program to be applicable everywhere, a universal procedure and standard is set. This contradicts the notion of site-by-site analysis. Productive state programs would be abandoned to accommodate for the singular federal program even if they have previously proven their effectiveness. In conclusion, federal operated programs are known to progress slow due to counterproductive legal issues. This program is entirely facilitated by federal means, so federal power is increased and states' abilities are left out. This is very harmful since the state is closer to the affecting community and is more in-tune with the communities needs.

2. **Allow State alone to control brownfields redevelopment.** The brownfield directly affects the local community and state, so it is them who would have the motivation to cleanup and redevelop these sites. Federal programs are mainly concerned about the contamination, where-as state programs are interested in development and community enhancement.

Comparison to BRAC: Allowing local governments and communities to have a significant impact on the redeveloping of a brownfield is similar to the role of the LRA on a BRAC site. The LRA represents those who will be affected the most by the redevelopment decisions, and therefore are allowed to voice an opinion and give recommendations. However, the LRA is not able to make any decisions about the site, where as in the proposed alternative, the persons most affected are permitted to make the crucial decisions.

Efficiency: States realize how much their cities and communities can benefit from redevelopment, so they will readily act on the revitalization. Also, it is the state who decides what sites are the most important, as a result, sites will be acted on by importance to communities instead of by level of contamination. Liability issues often halt progress in federal programs. States often have assumed ownership and therefore liability of the property to encourage developers to act without legal fears.

Equity: States will feel more important in the scheme of things nationally. It is ultimately those who are nearest to the brownfield that will be affected the most. Less contaminated states will no longer feel overlooked when they have the control to act immediately.

Feasibility: Currently states have their own voluntary cleanup programs. These programs are funded partially by federal programs; however, the majority of funding is

amassed through state and private funds. By increasing federal funding and decreasing federal participation and regulation, a more progressive approach can be made. Federal programs have excellent goals and aspirations, yet the programs are not providing immediate action and achievement. It is the state programs that take the initiative and have indeed proven to be a success.

Complications: With all of the current brownfields programs administered by federal agencies, it is hard to believe that they will simply abandon them. It is unlikely that federal agencies will give money from their budget to the states then allow them to operate unsupervised. In addition, having each state act independently will create discrepancies in standards from state to state. Developers working among several states will have to deal with these differences which could create confusion and delay.

3. **Create a group in each state/region comprised of representatives from the necessary federal and state authorities.** This group will administer the assessment and cleanup of all brownfields in their respective region or state. Members of the group will be well versed in all state and federal brownfields programs and funding opportunities. “Federal and State programs may be in place to address these local issues, too often the programs operate in isolation.”¹²⁸ Judy Sheahan--a representative speaking on behalf of the US conference of mayors--suggested that the Conference is supportive of a “one-stop-shop” where all of the appropriate people would be grouped together.¹²⁹

Comparison to BRAC: The “shop” is similar to the BCT. The BCT groups military, local, and federal members together to make sure that all regulations will be met as well as all interests. Even though there is a new BCT created for each BRAC site, the same shop will remain constant in the state/region in order to stay updated on all procedures and eliminate wasted time due to personal turn-around.

Efficiency: Great success has been achieved by the BCT method, so if the “shop” method is quite similar, it could also have such an outcome. Since the shop includes federal agency representatives, recommendations will be issued to make sure that the proper measures are taken to meet the requirements of the programs. This way, every project can be approved from the beginning instead of seeking help during the middle of the redevelopment process.

Equity: The shop method incorporates the participation of both federal and local entities. Both sides will then have an important role and be satisfied. Federal agencies are not sacrificing any power and are making sure that their standards and requirements are being met. State and local governments will be able to give their input and emphasis on the future of the site and the speed of the redevelopment.

Feasibility: Currently, there are no definite “shops” that incorporate both federal and state members. Similar programs are in place in cities such as Chicago and Dallas.¹³⁰ If these smaller programs have proven to be successful, it would seem logical to expand them to the entire state. Federal agencies and states are not giving up their brownfields

assessment and cleanup programs; in fact, they are publicizing them by having a representative present to explain and recommend them when applicable.

Complications: When there is a mixing of federal and local powers, each decision will be thoroughly discussed. These debates circulating around the most appropriate program could waste valued time. Often it is hard to bring together numerous teams without conflict.

SECTION VI. Recommendations

The benefits of brownfields redevelopment reform are numerous. Reform could eliminate legal concerns and further simplify the process of cleanup and development. It is essential that valuable land is not wasted and the neglect of inner cities does not continue.

One major concern with brownfields redevelopment is who is responsible in paying for the cleanup. Because the process to assess blame is tedious and harmful to “innocent” parties, states have been assuming the liability risk by taking part in the ownership or cleanup responsibility. After reviewing all of the problems associated with liability, the inescapable conclusion is in support for the bill S. 2700. There is a universal agreement that comprehensive Superfund reform is needed, yet no one will agree on how to accomplish this. S. 2700 may not address the whole issue, but it is one step towards total reformation. Metaphorically speaking, the bill is like a piece of a puzzle, small itself; however, once you start adding up all of the pieces, the whole picture begins to come into focus.

Many brownfields programs are tied to Superfund and consequently may contain inapplicable regulations. This creates complications for those involved in the redevelopment. One developer commented “is it really worth the lower rate when I have to hire three new attorneys just to ensure I am satisfying the regulations?”¹³¹ The resources are being spent to satisfy legal issues; as a result, funding is depleted which hinders physical redevelopment. If redevelopment is not occurring, then consultation towards the environmental conditions supplied by the engineers is not presently needed.

Recommendations

1. NSPE should support Superfund reform when it involves the reduction of legal uncertainties and the enhancement of engineering participation and importance.
2. NPSE should support the bill S. 2700 unless there is language added which could be detrimental and restrictive to engineers.
3. Congress should continue working on separating brownfields from Superfund even if it requires more than one bill.
4. Leading environmental agencies should re-evaluate their programs to make sure that they are indeed in compliance for speedy brownfields redevelopment and cleanup.
5. Federal agencies should stress more cooperation amongst them and state governments.
6. States should continue operating their voluntary cleanup programs. A statewide initiative should be enacted to improve deteriorating cities.

SECTION VII. Successful Examples of BRAC/Brownfield redevelopment

Nonmilitary Ownership to Nonmilitary Possession

South Haven, Michigan

The city of South Haven housed a large manufacturing site which has subsequently turned into a brownfield. The 57,700 square-foot abandoned factory building previously manufactured pipe organs and picture frames. A local builder now plans to renovate the historic building and develop it into condominiums and sports facilities. The developer will invest nearly \$2 million provided in part by a \$570,000 grant awarded to the city under the Site Reclamation Program, administered by the Department of Environmental Quality.¹³²

Redevelopment of Military Relocation Site

Washington Navy Yard, Washington, DC

The Washington Navy Yard was on the accepting side of BRAC because nearby bases were moved to the Navy Yard. The nearby bases were located on non-military property, therefore, to alleviate the cost of leasing property, it was practical to relocate the bases on to a military owned property. In 1995, all of the NAVSEA facilities were scheduled to be moved and housed at the yard; this increase of 5,000 military personal is what really spurred the renovation of unused facilities at the Yard.¹³³ The National Capitol Planning Council (NCPC) has identified historical resources and therefore stresses the importance of keeping the existing shape of buildings. Historic industrial buildings were where the future NAVSEA offices would be located. Like many old buildings, these facilities contained hazardous materials such as lead-paint, low levels of metals, bi-products of coal and oil combustion, and arsenic. The consolidation of naval facilities on the Navy Yard has spurred growth in the relatively poor neighborhood surrounding the base.¹³⁴ The new development initiatives are planned to make an improvement in the District's poverty rate currently at 15% which is significantly higher than the regional average of 4.3%.¹³⁵

Military Ownership to Nonmilitary Possession

Fort Sheridan, Illinois

The fort closed in May 1993 after being commissioned for closure in BRAC 1988. The developer is transforming the historic buildings into lofts, condominiums, town homes, and single-family housing. The developers are trying their best to reuse the "classic military architecture . . . in a creative way."¹³⁶ The plan "avoids a massive teardown of old buildings;" however, "all structures will require complete gutting of the interiors and careful rehabbing of exteriors in accordance with the U.S. Department of the Interior standards."¹³⁷ Demolition was not pursued because the buildings were protected by their historical classification. "91 of 94 historic buildings will be saved and rehabbed for 275 living units."¹³⁸ The largest residential addition to the fort will be an eight-story, 108-unit condominium, which will go up on the site of the old base hospital.¹³⁹

SECTION VIII. Appendix

Graph 1.

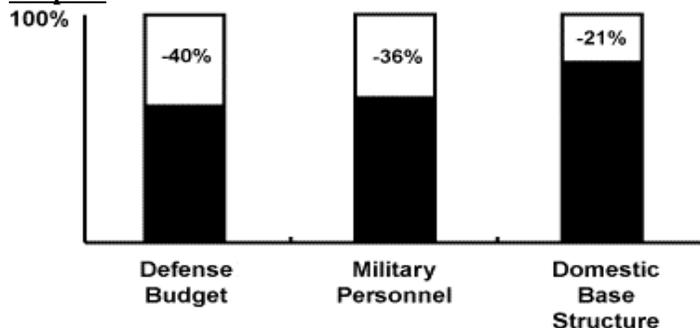


Figure 4a. DoD, *Defense Reform Initiative Report*, Chapter 4. Available: <http://www.defenselink.mil/pubs/dodreform/chapter 4.html>

Table 1.

Numerical Breakdown of U.S. Conference of Mayors' Brownfields questionnaire*

Cleanup Funds Needed	204
Community Concerns	99
Environmental Assessments Needed	139
Environmental Regulations	105
Insufficient Time to Develop Deal	59
Infrastructure Inadequate	70
Liability Issues	175
Market Conditions	110
Neighborhood Conditions	81
Standards for Cleanup	93

*This report is a compilation of data from 223 cities.

Recycling America's Land: A National Report on Brownfields Redevelopment, Volume II, by the U.S. Conference of Mayors, April 1999. Available:

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Table 2.

Listing of bills associated with Brownfields and Superfund reform

S. 20	Brownfields and Environmental Cleanup Act of 1999
S. 1090	Superfund Program Completion Act of 1999
S. 1105	Superfund Litigation Reduction and Brownfield Cleanup Act of 1999
S. 2590	Brownfields Revitalization Act of 2000
S. 2700	Brownfields Revitalization and Environmental Restoration Act of 2000
H.R. 1300	Recycle America's Land Act of 1999
H.R. 1750	Community Revitalization and Brownfield Cleanup Act of 1999
H.R. 2580	Land Recycling Act of 1999

All bills can be found online through the Library of Congress Webpage, House of Representatives Webpage, or Senate Webpage.

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