

not cleaning and reusing these sites means that sites with the potential to contribute to local economic development and job creation sit dormant, and pollution remains unchecked. The lack of usable properties in long-term manufacturing centers like those in metropolitan Detroit and other cities encourages builders and investors to look for more distant locations for development.

The bill which I am sponsoring with my colleagues will address these concerns by providing more than \$100 million over 3 years so that local governments can choose and develop the sites which have the best chance of success if they are cleaned up. The grants will be used to assess the environmental conditions and economic potential of a site. Loans will allow cities and other development authorities to finish the job. Perhaps most important, current Federal laws would be amended to reduce fears of liability for purchasers and lenders. Together with the enhanced public funding, it is hoped that these steps will leverage additional private investment in brownfields.

I am pleased to say that local governments in my congressional district are not waiting for this legislation to get started on these efforts. However, organizations like the Southeast Michigan Council of Governments [SEMCOG] and the Port of Monroe assure me that this legislation should help guarantee success.

Mr. Speaker, I look forward to working with my colleagues on the Commerce Committee to see how this legislation fits with efforts to reauthorize the Superfund.

BROWNFIELD BILL—SECTION-BY-SECTION ANALYSIS

SECTION I. FINDINGS

SECTION II. FINANCIAL ASSISTANCE

Purpose

Provide financial incentives that encourage redevelopment efforts of brownfield sites.

Help create a more level playing field relative to the more desirable "greenfields".

Aid with the expenses involved with cleanup activities at brownfield sites.

Summary

Provides grants to local governments for site investigations to assess the level of contamination; authorizes \$15 million each fiscal year from the Superfund trust fund.

Provides interest-free loans to local governments for cleanup activities. Such loans are to be repaid within 10 years to be deposited back into the Superfund trust. Authorizes \$30 million each fiscal year from the Superfund trust fund for such purposes.

Establishes a 3 year sunset for authorization of funds.

Permits local governments to submit to EPA an application for a grant or loan for specific redevelopment project(s).

Specifies criteria by which applications are ranked; includes: Stimulation of economic development (eg. job creation, increased revenue); extent local community participates and supports remediation and development; financial involvement of State and local governments (in lieu of matching requirement); extent the local community supports the redevelopment project(s); and extent health and environmental risks (or threat of) are reduced.

SECTION III. LENDER LIABILITY

Purpose

Encourage lenders to help finance brownfield redevelopment efforts by reducing liability fears induced by unfavorable court interpretations. The US v. Fleet Corp. court ruling inflicted uncertainty among lending institutions regarding liability.

Clarify activities that lenders can perform without being held liable under Superfund.

Summary

Upholds EPA's 1992 Lender Liability rule which was invalidated by a court ruling:

Species lender's activities that give rise to potential liability. These include undertaking responsibility for hazardous substance practices and day-to-day decisionmaking with respect to environmental compliance and operational functions.

Specifies activities that do not give rise to liability. Includes: Mere capacity to influence or unexercised right to control facility operations; actions to require environmental inspection and/or cleanups; work out' activities (eg. preventing foreclosure by restructuring terms).

To remain exempt from liability after foreclosure, a lender must sell, re-lease, or otherwise divest itself of the property in a reasonably expeditious manner.

SECTION IV. PURCHASER LIABILITY

Purpose

Protect new purchasers and redevelopers from liabilities for past problems.

Under N.Y. v. Shore Realty, the court held the current owner responsible for response costs; it reasoned that CERCLA unequivocally imposes strict liability on the current owner of a facility from which there is a release without regard to causation.

Summary

Exempts prospective purchasers from liability when acquires ownership of a facility and establishes each of the following:

All active disposal of hazardous substances at the facility occurred before that person acquired the facility.

Person made all appropriate inquiry into the previous ownership and uses of the facility and poverty.

The person provided all legally required notices with respect to the discovery or release of any hazardous substances at the facility.

The person exercised appropriate care with respect to hazardous substances found by stopping on-going releases and preventing future releases of hazardous substances.

SECTION V. FIDUCIARY LIABILITY

Purpose

Reduce banks' fears of liability in their capacity as a fiduciary. Fiduciaries are wary of accepting real estate into their trust portfolios due to unfavorable court decisions.

Summary

Limits the liability of fiduciaries (trustees) to the value of the assets of the trust or estate unless: Person undertakes fiduciary status to avoid preexisting personal liability; fiduciary is personally, causing or contributing to release of hazardous substance; fiduciary participates in planning and implementing a scheme to evade CERCLA; and fiduciary fails to comply with requirements set by EPA.

Fiduciaries undertaking or directing others to undertake a response/cleanup action under CERCLA are precluded from liability.

IN SUPPORT OF SUPERFUND REFORMS TO PROMOTE THE REDEVELOPMENT OF "BROWNFIELDS"

HON. RICHARD A. GEPHARDT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 3, 1995

Mr. GEPHARDT. Mr. Speaker, I join today with Mr. BROWN of Ohio, Mr. DINGELL, Mr.

STOKES, Mr. BORSKI, Mr. RUSH, Mr. KLINK, Mr. MANTON, Mr. TOWNS, and Ms. FURSE in introducing legislation to redevelop abandoned or underutilized industrial sites. As many as 500,000 sites that once sustained industrial or commercial activities now lie vacant or idle across the country in our rural and urban areas. Returning these sites to productive use must be an important national goal.

This legislation is intended to promote the cleanup and redevelopment of such abandoned properties, commonly referred to as "brownfields." Too often the private sector is deterred from redeveloping such brownfields because of their high cleanup costs and the potentially open-ended liability associated with undiscovered contamination. Likewise, cities have lacked the resources to assess contamination levels at abandoned sites or to help finance cleanups.

Like many cities across the country, St. Louis has hundreds—perhaps thousands—of abandoned sites that sit idle and need to be reused. In many cases, private owners have simply given up on their properties, allowing them to revert to the public domain; the municipality of St. Louis owns more than 40,000,000 square feet of abandoned property and buildings. But many other underused sites remain in private hands as well.

St. Louis has seen some neighborhoods deteriorate as investment and jobs have gone elsewhere. Many times it has been more attractive for businesses to invest in untouched property that does not carry with it potential environmental liability and expensive cleanup costs. Thus, many sites—the old Carondelet Coke plant in south St. Louis City, areas along the Mississippi riverfront, and the former National Lead site in St. Louis County—remain unused.

Our goal is to encourage the cleanup and reuse of brownfields for productive uses, thus bringing new job opportunities to blighted areas. This bill contains provisions to encourage private sector investment in redevelopment and provide cities with the resources to coordinate site characterization and promote cleanups. There are three major objectives.

First, this legislation provides cities new resources necessary to promote the cleanup of sites. Developers or purchasers often find capital out of reach when potentially costly environmental liabilities are present. In addition, cities often have difficulty in obtaining the necessary resources to assess the extent of toxicity of individual sites, the first step in brownfield redevelopment.

To help provide funding that the private sector cannot always provide, the bill authorizes the EPA to provide funds from the Superfund trust fund for cleanup activities. Local government entities, such as the St. Louis community development agency, would be able to apply and compete for interest-free loans or grants to perform site assessments and cleanup activities. The grants and loans would be competitively awarded based on their capacity to create new jobs, as well as the amount of local participation and financial support.

The cities have emphasized that site characterizations and assessments are extremely useful in marketing contaminated sites to prospective buyers or developers. After determining the level of contamination, parties are more inclined to invest in brownfield properties since the projected cleanup costs are better known. This bill authorizes the EPA to provide

up to \$15 million annually from the Superfund to local governments to perform such assessments. Furthermore, to facilitate cleanups, the bill authorizes the use of up to \$30 million annually in loans to finance remediation activities.

Second, this legislation clarifies the lender liability issue in order to encourage private sector investment. The Fleet Factors case obscured the intent of Superfund's secured-lenders exemption. This confusion has made many lenders reluctant to become involved in potentially contaminated properties. Bankers now often fear that their interest may make them subject to cleanup liability for newly discovered or released contamination. The bill makes it clear that lenders who are merely performing a lending function and not managing a site's daily operations or contributing to the contamination can lend for redevelopment purposes without fear of incurring large environmental liabilities. The bill also provides protections to lenders who act in their capacity as fiduciaries.

Third, this legislation provides protection for good faith prospective purchasers. To protect innocent landowners from Superfund liability when they acquire property subsequently found to be contaminated, the bill exempts prospective purchasers from such liability if certain precautionary measures are taken. Under Superfund, the owner of a contaminated tract of land may be held responsible for cleaning it up even if the pollution was created by the prior owner. Thus, potential purchasers are often deterred from investing in sites with potential contamination. This provision allows a purchaser who checks the site carefully before purchase to avoid liability if contamination is subsequently discovered.

This legislation is the result of our discussions with many leaders on this issue. St. Louis Mayor Freeman Bosley, Jr., cochair of the U.S. Conference of Mayors' Brownfields Committee, has been committed to finding solutions to problems associated with brownfields. We have also worked closely with St. Louis lenders, environmentalists, and the St. Louis Regional Commerce and Growth Association. Finally, I am pleased that this bill has the support of the National League of Cities. Their contributions helped us focus on the most critical problems and develop solutions that are workable in an era of fiscal limits.

This legislation does not solve all aspects of the brownfields redevelopment problem. The solutions require a comprehensive reform of the Superfund bill, of the sort that nearly passed the House last year. There are also other aspects of the problem—such as those involving the treatment of leaking underground storage tanks—that must be addressed as well.

Generally, this legislation begins us on the way toward confronting the most important factors that have blocked the redevelopment of communities throughout urban and rural America. I thank all of my colleagues, particularly Mr. BROWN and Mr. DINGELL, for their hard work in developing this bill.

A BROWNFIELDS CLEANUP PROGRAM

HON. ROBERT A. BORSKI

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, August 3, 1995

Mr. BORSKI. Mr. Speaker, I am pleased to join today with the gentleman from Ohio [Mr. BROWN], the gentleman from Michigan [Mr. DINGELL], the ranking Democratic member of the Commerce Committee, and the Democratic leader, Mr. GEPHARDT, to introduce legislation to help cities attract jobs by cleaning up brownfields sites.

This initiative will bring jobs to Philadelphia and every other city that has been facing inflexible environmental laws.

This bill is necessary because Superfund has become an obstacle to the economic redevelopment of our cities. Superfund has become a job-killer in our Nation's cities and that has to be changed.

Mayor Ed Rendell of Philadelphia, America's mayor, made revision of the Superfund brownfields program a prominent part of his new agenda for urban America.

The current Superfund Program has required America's cities to fight the battle for jobs with one hand tied behind their backs. Cities must be able to attract jobs—new jobs—if they are going to be able to expand their tax bases and provide funds for all the other services that are essential in urban areas—schools, housing, transit and many others. Cities cannot survive without new jobs.

In Philadelphia, the city is attempting clear away the more than 30,000 abandoned buildings that dominate far too much of the city. They want to clear the lots for development but they have run into a stone wall because no developers want to touch land that poses the threat of Superfund involvement.

Our Commissioner of Licenses and Inspections, who is in charge of this effort, testified before the Subcommittee on Water Resources and the Environment about an atmosphere of fear among prospective developers.

It is clear that we must take the steps that are necessary to dispel the atmosphere of fear that pervades our cities.

This bill that we are introducing today will help Philadelphia and all the other cities with the same problem a small measure of help by setting aside Superfund money to be used just for these sites.

During the next 3 years, \$45 million would be available for grants to cities for preliminary site characterization work and \$90 million would be provided for loans to cities for cleanup.

The bill also includes protection for prospective purchasers—people who want to buy property but may be scared away by the potential liability.

Under this bill, prospective purchasers who have no connection with the waste disposal will be shielded from liability.

The brownfields problem has a major impact on communities across the country. Experts have estimated as many as 500,000 contaminated sites that could be available for productive industrial development if the liability issue was settled.

EPA Administrator Carol M. Browner has done a good job moving this program in the right direction with her brownfields action agenda, especially removing 25,000 sites from the CERCLIS list.

That removal eliminates the taint of a Superfund listing from sites that don't belong on a Superfund list.

More must be done legislatively to focus attention on the brownfields problem.

As the ranking Democratic member on the Water Resources and Environment Subcommittee, I am prepared to offer this bill during the Superfund debate in the Transportation and Infrastructure Committee.