

BROWNFIELD POLICIES IN ONTARIO & ILLINOIS



A REVIEW OF POLICIES TO FACILITATE SOCIAL RESPONSIBILITY

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Date: 4 May 2012

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Abstract

Brownfields exist around the world in huge numbers; close to 4,000 in the Greater Toronto Area (“Brownfield redevelopment” 298), 30,000 in Canada (“Cleaning” 2), over half a million in the United States (Wernstedt 10), and an estimated 5 million acres worldwide (The World Bank 3). Canada and the United States have made improvements to the brownfield legislation in the last few decades to ease the concerns of owners, developers and lenders alike. The amendments to the Canadian and American legislation provide liability protection in both Canada and the US for those who did not contaminate the site but were willing to get involved with the remediation process. Financial incentives offered by both Canada and the US have encouraged brownfield redevelopment; however, Canada is not as progressive with respect to the financing options, the number of grants and the application process of those grants.

After comparing the Canadian and American systems, four recommendations were made to improve the system we have here in Canada.

1. Create a voluntary program which allows property owners or developers to sign up and receive two significant benefits: guidance and assistance from government officials; and interim liability protection from municipal, provincial, and federal governments while the owners work through the requirements of the Record of Site Condition certification;
2. Create a streamlined application process in which one application would be completed and submitted to all levels of government - municipal, provincial and federal;

3. Make initial assessment grants available for those non-profit organizations or small businesses who can prove their financial need to allow them to complete the requirements for grants and incentives applications; and
4. Make Tax Incremental Financing available as a financing option for brownfield redevelopment.

These improvements to the Canadian system would make it easier for companies to act in a socially responsible manner and allow those parties who would like to, but may not have the means to, help improve the state of our environment.

Introduction

Urban regions around the world have been battling contamination associated with commercial and industrial practices for decades now with an estimated 5 million acres of land contaminated worldwide since the 1950s (The World Bank 3). In the United States alone it was estimated that there were anywhere between 450,000 to one million brownfields sites as of 2002 (Wernstedt 10). In Canada as many as 30,000 sites are considered brownfields (“Cleaning” 2) with 3,900 of those sites located in Ontario (“Brownfield redevelopment” 298). As of 1998, it was estimated that there were approximately 865 acres of contaminated lands within the Greater Toronto Area (GTA) (“Brownfield redevelopment” 299; “Turning” 182). These sites can have negative effects not only on the natural environment, but also on a number of other sectors, including: public safety, due to the health risks associated with various contaminants remaining on the sites (“Turning” 184; Higgins 240; Wernstedt and Hersh 10); the local economy, because the vacant sites do not generate any tax revenue for the municipal, provincial, or federal governments (“Brownfield redevel-

ment” 297; “Turning” 182; Higgins 253); and increased crime rates on and around the vacant sites (Higgins 240).

By remediating these sites, not only would the liabilities be reduced or eliminated, but the environmental integrity of the subject sites and those surrounding them would be improved. The World Bank’s 2003 World Development Report (1) stated that we cannot continue to grow and attain sustainability unless there is a revolution in the way the environment is managed. Brownfield remediation is a form of sustainable development (“Cleaning” ix; “Linking” 1) because it restores previously abandoned or unusable land and protects virgin land from unnecessary development, reuses existing municipal infrastructure (Wernstedt 10), and removes contamination thereby preventing it from further affecting the natural environment or jeopardizing public health and safety (“Brownfield redevelopment” 297; “Memorandum” 2; Higgins 253). Sustainable development is defined by the International Standards Association (15) as the ability to “meet the needs of society while living within the planet’s ecological limits and without jeopardizing the ability of future generations to meet their needs” and brownfield developments can help contribute towards that by redeveloping these sites and preserving greenfield and other virgin environments.

The City of Toronto has a population of 2.6 million residents and is considered to be one of the fastest growing cities in North America (“Census”); and it is estimated that the development of greenfields account for over 75% of new development in the GTA (Bourne et al. 256). The National Roundtable on the Environment and the Economy found that the redevelopment of every acre of brownfields redeveloped can save a minimum of 4.5 acres of greenfields from development (“Cleaning” 3). The City of Chicago, the third largest city in

the United States (Ekerdt 5), is considered to be one of the prime movers in the brownfield movement and its efforts have been mimicked by municipalities across the country (Higgins 247). In the 15 years following the founding of the Chicago Brownfield Initiative in 1993, the city remediated over 40 sites and 13,000 acres of land across the city (Higgins 241, 248). Most of that land was put to productive use and saved up to 58,500 acres of greenfields in the regions surrounding the City.

My thesis will examine the current state of policies surrounding brownfield remediation in Toronto, Ontario and Chicago, Illinois. Through an extensive review of government and published documentation I will examine the liabilities that exist pertaining to brownfield redevelopment and ownership; the protections currently available to encourage brownfield redevelopments; and the financial incentives that are being offered to help offset some of the sometimes substantial costs associated with brownfields. I will then examine the deficiencies of the systems and propose changes to improve them, focusing specifically on how to improve the Canadian system and what policies and procedures various levels of government could implement to increase the acceptance of social responsibility.

Current Policies

LIABILITY

There are two main methods by which an individual or organization can be held liable for contamination of a site: by being given an order by a Director or Officer of government organizations, such as the Ministry of the Environment (MOE) and Environmental Protection Agency (EPA), to which they must comply (this is known as regulatory liability);

and by civil law, also known as tort law, where the individual or organization can be sued for nuisance or negligence (this is known as civil liability).

Liabilities create reservations in owners or prospective owners and deter them from getting involved in brownfields projects in both Canada and the United States (US). Brownfields are typically seen as much riskier than other developments because the condition of the site and extent of the contamination is not always known. This uncertainty creates the perception of risk, even if the risk does not actually exist (Antonowicz 3). One way governments have helped ease these reservations is through liability protection or exemptions. The type of liability that will be the focus of this paper is regulatory liability. Both Canada and the United States and their respective provinces/states have created protections to help ease some of the concerns associated with brownfield liabilities. Details regarding each of the programs and the protection that is offered are outlined in the following subsections.

TORONTO

As previously stated, there are two main ways in which a party can be held liable for contamination on their property: civil and regulatory liability. Regulatory liability is enforced by provincial and federal agencies including the Ministry of Environment and Environment Canada which are granted by power from various statutes such as, but not limited to, the Ontario Water Resources Act and Environmental Protection Act. (Antonowicz 2). Originally, under these acts the liability could be joint, several or strict, meaning anyone or everyone involved in the operations could, in theory, be held liable. This meant that the owners (past or present), site managers, lenders, operators, or even transporters could be

liable for a site's pollution. Because of these broad liabilities both developers and lenders have shied away from remediating these sites for fear of being responsible for the potentially very costly cleanup.

In order to address some of these concerns the Canadian and Ontario governments have made policy changes to encourage redevelopment. In 2001, the Brownfield Statute Law Amendment Act was passed. In 2004, Ontario's Ministry of Environment (MOE) enacted the *Ontario's Brownfields Legislation and Records of Site Condition Regulation* O. Reg. 153/04, which is considered to be the "centerpiece" of the Brownfields Law and offered further protection to site owners who filed the necessary *Records of Site Condition (RSC) documents*. Other exemptions were also included by the MOE, such as the Secured Creditor Exemption ("Legal Framework"). These amendments offer protection to property owners or creditors (described below), but they also offer protection to municipalities who take action on non-municipal properties that have been abandoned or failed at a tax sale for a period of up to 5 years upon transfer to the municipality ("Records" 46). Municipalities will be able to perform activities including investigations, securing the property, responding to exceptional or emergency situations (ex: fires), or removing or repairing the building/structure ("Records" 46").

Record of Site Condition (RSC)

A Record of Site Condition (RSC) is a document that is approved by the Ministry of Environment and filed with the Brownfields Environmental Site Registry ("Legal Framework"; Antonowicz 2). The RSC is filed once the applicable standards are met for soil, sediments, and groundwater as determined by, at minimum, and initial Phase I Environ-

mental Site Assessment (ESA) (“Records” 2). The RSC certifies the environmental condition at the time it is filed and can only be submitted by a Qualified Person as defined by the Brownfield Act (“Legal Framework”; “Records” 2).

By filing an RSC, protections are offered to the following parties at the time of filing or after: the filer of the RSC or future owner of the property; property occupants; property managers; the party who owned the site when the RSC was submitted (if the property changed hands between the submitting of the RSC and its acceptance); and the party who sold the property to the purchaser under the condition that they file the RSC and has done so (“Records” 44). These protections offer some level of comfort to those owning or interested in brownfield sites. However, there are a number of conditions in which protection may not be offered: if the property changes to a more sensitive land use; if new contamination is discharged after the filing of the RSC; false information was included in the RSC; or if contamination moves off site after the RSC has been filed and certified (“Records” 45).

Secured Creditor Exemption

The Secured Creditor Exemption (SCE) offers creditors protection against regulatory liability and MOE orders. Historically, if the MOE finds out that contamination was found during a site assessment, those involved with the site could be held liable for the contamination. The SCE provides protection for the creditors when executing the following: actions taken to perform investigations on the property; actions taken to protect or preserve the property; and actions taken while responding to any dangers or risks associated with human or environmental health as a result of a discharge of contaminant, so long as the creditors report any spill to the MOE within 24 hours of discovering it. Also, if the secured

creditors take possession of a property by way of foreclosure, they have a period of 5 years during which they will be protected from MOE orders, as long as the MOE does not feel there is an imminent risk to human or environmental health, and/or there has not been any gross negligence, willful misconduct or particular contraventions. If that is the case, they will have a period of 90 days. (van Rensburg)

CHICAGO

Similar to Canada, the United States has two main ways in which a party can be held liable for any contamination that exists on their property: by civil or regulatory liability. Regulatory liability can be enforced through federal or state legislation by the United States Environmental Protection Agency (USEPA) or the Illinois Environmental Protection Agency (IEPA) respectively.

The *Comprehensive Environmental Response, Compensation, and Liability Act* (CERCLA) was enacted in the late 1980s with the intent of protecting the environment and remediating the contamination caused by many years of industrial operations throughout the country (Higgins 242; Ekherdt 14; Slutzky and Frey 85). CERCLA provided a mechanism for the government to fund government remedial projects known as the Superfund Act (what CERCLA is commonly known as now) (Higgins 242; Slutzky and Frey 85). CERCLA also gave the federal government power to gather information on the environmental state of a site, remediate that site if necessary, and hold the property owner liable for any of the costs associated with the remediation (Higgins 242). The liabilities that were brought about with CERCLA were broad and included strict, joint, several and retroactive liability (Ekherdt 15).

Despite the intentions of the government, these Superfund liabilities deterred property owners from getting involved with contaminated sites or conducting assessments for fear of finding contamination and then being held liable for the sometimes very substantial costs of remediation (Higgins 243; Slutzky and Frey 87). In fact, the Superfund liability was considered to be the single largest deterrent for developers (Slutzky and Frey 95).

Although some developers might have been willing and able to purchase and remediate these brownfield sites despite the liabilities, they would have needed to be able to acquire financing which lenders were hesitant to provide due to the liabilities associated with brownfields. In response to this, Congress enacted the *Asset Conservation, Lender Liability, and Deposit Insurance Protection Act* (Lender Protection Act) in 1996 which offered lenders protection from CERCLA liability for sites which they may not have managed and only became owners because of foreclosures (Slutzky and Frey 89). While this did provide lenders with protection from the liabilities associated with remediation costs, it did not provide them with any protection from the lost value of the assets in which they invested (Slutzky and Frey 90).

In 2002 amendments were made to CERCLA in order to offer protection from some federal liability and encourage the remediation of contaminated sites through the *Small Business Liability Relief and Brownfield Revitalization Act* (Ekherdt 18; Higgins 244; Slutzky and Frey 90). Under this Act three types of landowners can be protected from liabilities: bona fide prospective purchasers (BFPPs), contiguous property owners (CPOs), or innocent landowners (ILOs) (“Landowner”). These protections offer landowners relief from liability as follows: BFPPs are offered relief from previous liens on the property from unrecovered

remediation costs; CPOs, as neighbours who were not associated with the contamination, are offered freedom from liability associated with the subsurface migration of contaminants onto their property; and ILOs, those who acquire the property without knowing about the contamination before its purchase, are offered freedom from liability for those contaminants (“Landowner”; Slutzky and Frey).

One way that individual states are offering liability relief is through the issuance of No Further Remediation (NFR) letters. The IEPA has the authority to issue NFR letters which exempt the landowner from further responsibility under the IEPA (“More”). In order to obtain this letter from the IEPA, a property owner must enter the State’s voluntary Site Remediation Program (SRP) in which a land owner submits their remediation plan for IEPA review and approval and, upon completion of the agreed-upon remediation, the land owner can receive the NFR letter which then opens them up to be eligible for various forms of financial assistance (Higgins 245). Another advantage of entering the voluntary SRP is that the sites may be remediated using the Tiered Approach to Corrective Action (known as the TACO approach) which allows the owners to remediate to the extent required for the intended future land use, as opposed to being told to which extent to clean the site by an Order from the EPA (Higgins 245).

FINANCE

There are a number of different ways a party might finance a brownfields project. Some methods include private or public loans, financing, grants and tax incentives. In the last decade a number of private equity firms specializing in brownfield projects have popped up across North America since the passing of the Secured Lenders Exemption,

which will not be discussed within the scope of this paper. The financing options discussed will include public financing, grants and tax incentives.

TORONTO

Brownfield remediation in Toronto is being encouraged with financial incentives from each of the three levels of government: federal, provincial, and municipal.

Federal Incentives

The following are a list of federal incentives towards brownfields which will each be outlined in more detail in the following subsections:

- Green Municipal Fund (GMF)
- Building Canada Fund (BCF)
- Finance Canada: Federal Liens Removed

Green Municipal Fund (GMF)

The Green Municipal Fund is a program run by the Federation of Canadian Municipalities and provides partial funding for capital projects and feasibility studies to Municipalities that wish to remediate and cover up to 50% of the eligible costs up to a maximum of \$175,000 dollars (Green). The GMF also offers grants for various brownfield studies to help offset some of the costs associated with brownfields (“Programs”). In order for the brownfields projects to take advantage of the GMF, the applicants must show that the project will involve either or both of the following: site or risk management; or renewable energy production (Green).

Building Canada Fund (BCF)

The BCF is a fund administrated and funded by Infrastructure Canada which offers cost-sharing for projects that address one of the three areas of importance: a stronger economy; a cleaner environment; and strong and prosperous communities. The BCF offers cost-sharing of up to a 50 percent contribution towards a single project. The projects are run in conjunction with provincial and municipal governments - typically the federal share is up to one-third, while the provincial and municipal governments match the federal contributions up to a maximum of 50 percent of the project cost. These contributions are typically made towards public projects, but some private or non-profit projects are also funded. (“Building”)

Removal of Federal Liens - Finance Canada

Finance Canada and the Federal Government have allowed the removal of Crown Liens and federal Tax Arrears on a property which can be significant amounts and do act as a serious deterrent for potential purchasers. The removal of liens is determined on a case-by-case basis by Finance Canada. (“Programs”)

Provincial Incentives

There are a number of programs that are offered by the provincial government, some of which are offered to help municipal governments with the costs associated with brownfields, while others offer developers and investors assistance with projects. Outlined below are the basics about the following provincial incentives:

- Brownfields Financial Tax Incentive Program

- Community Improvement Plans (CIPs)
- Removal of Provincial Crown Liens

Brownfield Financial Tax Incentive (BFTI) Program

The provincial BFTI program allows the provincial government to provide educational property tax assistance towards the eligible remediation costs, matching the contributions made by the municipal governments Brownfield Financial Tax Assistance (BFTA) Program (described below). Applications are sent in by the municipalities on behalf of the owner once they apply to the BFTA program. (“Brownfields Financial”)

Community Improvement Plans (CIPs)

The Municipal Act regulates how much tax assistance a municipality can offer as assistance for various properties. Amendments were made to the Municipal Act that now allows municipalities to develop programs under their CIPs to allow those municipalities to offer tax relief, grants or loans to encourage investment in target areas outlined in the CIPs. (“Programs”; “Financing”; “Community”)

Removal of Provincial Crown Liens

The provincial government has allowed for the removal of any provincial Crown Liens and Tax Arrears under the Municipal Statute Law Amendment Act (Bill 130) which was passed in 2006. This removes the provincial liens when a municipality takes over ownership of a site that has failed at a tax sale. This allows the municipalities to resell it and advertise that it is “free and clear” of any liens on the property. (“Program”)

Municipal Incentives

The incentives offered at a municipal level by the City of Toronto are outlined in the City-Wide Community Improvement Plan (CIP) for Brownfield Remediation and Development of Prescribed Employment Uses.

Brownfield Remediation Tax Assistance (BRTA)

The BRTA provides tax assistance in the form of a Municipal Tax Increment for environmental remediation which is executed on brownfield sites for the development of ‘employment uses’, excluding retail development. The tax increment is payable upon completion of the remediation and site development for 3 years or until the eligible costs of remediation have been remunerated, whichever comes first.

In order to be eligible for this program a Phase II Environmental Site Assessment (ESA) must have been completed and found that the site has levels of contaminants which exceed the Ministry of Environment (MOE) standards for the applicable land use which would hinder the registration of the Record of Site Condition (RSC) on the Environmental Site Registry (“Toronto” 13).

Development Grants

These grants, also known as Tax Incremental Equivalent Grants (TIEGs), are aimed at investing in projects that bring buildings and lands back to productive use (“Toronto” 20). Toronto provides assistance in a number of development grants which are given annually to target certain sectors of development including: biomedical, manufacturing, scientific research and development. The TIEG’s value “may not exceed 60% of the cumulative

Municipal Tax Increment over a 10-year period” and can be combined with the BRTA for up to a 12 year period (“Toronto” 28).

CHICAGO

Federal Incentives

The US EPA offers three grants associated with brownfield remediation activities: Assessment grants; Revolving Loan Fund grants; and Cleanup grants. The assessment and cleanup grants are put towards the respective activities and each of the grants can be valued at up to \$200,000 per site towards the respective costs. (Grants)

One of the grants that the EPA offers is the Targeted Brownfield Assessment (TBA) Grant. This grant is different from the usual grant in that the EPA does not give the funds directly to the developer or entity. Instead of providing the funds to perform the work themselves, the US EPA will provide the contractors to conduct the work and bill the EPA directly, and not the entity. The TBA can be used towards a Phase I or Phase II ESA or towards a Remedial Option Feasibility Study based on the planned future uses. (“EPA Targeted”)

There are a number of tax incentive programs that the US EPA offer as financial incentives for brownfield redevelopment. The most relevant ones are as follows:

- Brownfield Tax Incentive
- New Markets Tax Credit (NMTC)
- Historic Rehabilitation Tax Credits

Brownfield Tax Incentive (BTI)

The BTI allows the taxpayers to lower their taxable income by the remediation costs and expenses in the year in which those costs are incurred. There are three eligibility requirements for the BTI program: the taxpayer must also be the property owner who is incurring the eligible costs; the site must be contaminated, or potentially contaminated, with hazardous substances; and the taxpayer must receive a statement from the state's Voluntary Cleanup Program (VCP) (Illinois' voluntary SRP) confirming that the site is indeed a brownfield (this requirement is satisfied by participating in the VCP). ("Guide" 2)

New Markets Tax Credit (NMTC) Program

This program is run through the U.S. Department of the Treasury's Community Development Financial Institutions (CDFI) Fund. This fund distributes tax credits to Community Development Entities (CDEs) which can either be used by those CDEs or provided to investors by the CDEs. CDEs can be non-profit or for-profit organizations that are certified as such by the Department of the Treasury's CDRI Fund, and can then receive the tax credits which can be distributed to investors who purchase them using capital interest or cash only stocks. Investors do not necessarily need to be brownfield developers, but can be any organization or individual looking to receive a tax break. In exchange for those tax credits CDEs receive cash which they can then use to finance projects within their communities. The projects that are funded do need to be implemented in low-income neighbourhoods. Brownfield developers have the choice of applying to be a CDE themselves, or approaching CDEs to finance their project. CDEs support a wide range of redevelopment activities such as site acquisition and preparation, remediation, demolition, and a variety of other im-

provements, and may be willing to do so with a more favourable deal than the typical lending institutions. (“Guide” 5)

Historic Rehabilitation Tax Credits

This is a tax credit program administered by the National Park Service in conjunction with the Internal Revenue Service and State Historic Preservation Office to help discourage the demolition of sound historic buildings and encourage the retention of business in aging urban areas. This incentive has two separate credits available: a 20 percent tax credit for rehabilitation of a certified historic property (a property listed in the National Register of Historic Places), and a 10 percent credit for rehabilitation of a non-certified structure which is built before 1936. Both credits require the work to have a minimum cost of \$5,000 in order to be eligible and the property owner must keep the property for 5 years after award of the credit. The brownfield developers also have the option of selling their tax credits for cash as an upfront investment for their project. (“Guide” 12)

State Incentives

Brownfield Assistance Program

The IEPA has an Office of Brownfield Assistance which administers the Brownfield Assistance Program. This program offers two main forms of financial assistance to remediation applicants: the Illinois Brownfield Redevelopment Loan Program and the Illinois Municipal Brownfield Redevelopment Grant Program. The Brownfield Redevelopment Loan Program is run under the voluntary Site Remediation Program and offers loans of up to \$500,000 at low interest rates for the cleanup of sites that have already been assessed.

This loan can be used to finance the costs of limited investigations, the remediation and demolition of brownfields. The Illinois Municipal Brownfield Redevelopment Grant offers up to \$240,000 to municipalities to assess and remediate brownfield properties. This program does not offer grants to private investors but to the municipalities carrying out the activities. (“Brownfield Assistance”)

Municipal Incentives

The City of Chicago does not offer any grants or incentives themselves but they do have local financing opportunities which are available through the Department of Housing and Economic Development. The staple financing option in Chicago is the Tax Increment Financing (TIF) program. (“TIF Best Practices” 1).

Tax Increment Financing (TIF)

The Tax Increment Financing (TIF) program, utilized throughout the USA, is aimed at promoting public and private investments towards rejuvenating polluted lands and vacant sites, as well as repairing roads and other infrastructure (“Tax”). Areas within the city are declared TIF districts, at which point the current amount of property tax that the area generates is set as the Equalized Assessed Valuation (EAV) amount (“Tax”). The incremental taxes that are subsequently generated as the property is remediated and property values increase, are then put towards paying down the debt (“TIF Best Practices” 2). Chicago uses 23 year terms during which any increase above the EAV amount pays down the debt; and when the debt is repaid the total of the tax generated by the property is returned to the municipalities (“Tax”; “TIF Best Practices” 2).

SOCIAL RESPONSIBILITY

There are currently no set regulations with respect to social responsibility per se. While the government has implemented various regulations and liabilities which qualify as aspects of social responsibility, but there are no policies which organizations within North America are required to follow.

ISO 26000: Guidance on social responsibility

In 2010, the International Organization for Standardization (ISO) came out with their *ISO 26000: Guidance on social responsibility*, which provides guidelines outlining ways in which corporations can and should voluntarily conduct themselves in a socially responsible manner and contribute to sustainable development. The ISO stresses in their document that it is not a standard, guideline or recommendation but was intended to serve as a way to guide organizations on how to conduct themselves. The standard contains a total of seven (7) core subjects including: human rights, labour practices, the environment, and fair operating practices.

The ISO 26000 (International 21) outlines the general characteristics of social responsibility which are considered to be:

- “The willingness of an organization to incorporate social and environmental considerations in its decision making”;
- “The willingness of an organization to ... be accountable for the impacts of its decisions and activities on society and the environment”
- Operate with “transparent and ethical behaviours which contribute to sustainable development”; and

- Comply with all applicable laws and act consistently with international norms of behaviour.

The guidance defines accountability as “the state of being answerable for decisions and activities to the organization's governing bodies, legal authorities, and, more broadly, its stakeholders” (International 13).

Organizations should recognize and account for situations where local laws may not exist or conflict with ethical behaviour. While this is less likely to be the case in North America, organizations should conduct themselves in a socially responsible manner regardless of whether or not there is legislation or regulations telling them to do so.

The ISO Guidance outlines a number of environmental issues which should be considered and incorporated. These include: prevention of pollution; sustainable resource use; climate change mitigation and adaptation; protection of the environment, biodiversity; and restoration of natural habitats.

Deficiencies

While the Canadian policies with respect to brownfields have made considerable progress in the last decade, there are still a number of deficiencies that should be recognized and dealt with to create a more efficient and user-friendly process which will more greatly encourage brownfield remediation.

While the liability protection has offered a great deal of encouragement in the Canadian brownfield remediation industry, there are a number of shortcomings that still exist. The liability protection of the Record of Site Condition (RSC) offers security to those owners

who have completed their site remediation to the applicable standards for the site. However it does not lend any protection to the property owners who may be in the process of completing a remediation or want to complete a remediation but do not currently have the capital, and cannot get the financing to complete the remediation in a timeframe deemed appropriate by the MOE. In the United States, those who willingly enter the voluntary Site Remediation Program are offered interim protection from orders or fines from the US EPA while they are cooperating with the IEPA (assuming there is not a grave risk to human or environmental health) to work towards remediating the site. By entering this program, the IEPA also offers support and guidance to those property owners who may not have a thorough understanding of the remediation process. Canada should adopt a similar system in which property owners who would like to work towards remediating their sites have the support and assistance necessary, should they need it.

Another deficiency, which overlaps between the liability and financing of a brown-field site, is associated with initial Environmental Site Assessments (ESAs). In order to qualify sites to apply for the majority of the grants and incentives available, property owners must have completed, at minimum, a Phase I ESA and a Phase II ESA to assess whether there is, in fact, contamination on the site. Unfortunately, there are many small businesses and non-profit community organizations who cannot afford to have the ESAs completed in order to qualify for the financial incentives that are available. The initial costs associated with the ESAs can deter individuals and organizations from trying to remediate sites to bring them back to productive use. If Canada had a fund, similar to that of the American Targeted Brownfield Assessment Grant, which allowed small businesses or organizations

to get assistance in performing these initial assessments in order to qualify them for the grants, it is very likely that a substantial number of sites would be assessed and more projects would be initiated. Requiring proof of financial need and/or non-profit status would help ensure that the grant would not be exploited by companies with the means to complete the ESAs without financial assistance.

Canada's financial assistance for brownfield initiatives is not as strong as that offered by the United States. While Canada does offer tax incentives, the number of grants available is not as high as the States, and the process is much more onerous. In the US, once a property owner enters the voluntary SRP they are not only automatically registered into the state level grants and incentives, but the program applies for the federal grants and incentives automatically as well. In order to apply for the provincial and federal incentives in Canada, one needs to find the applications on the respective agency web pages and apply to each of them individually. The process of researching incentives, finding their respective agency applications, and completing them is a confusing and tedious process. A significant improvement would be to have a centralized database/program in which the applicant could fill out an application. Granted this application would be lengthier and more detailed to ensure the information for all of the incentives would be included, but that one application could be used for all the available brownfield grants and incentives.

As for financing, the existing financing options for property owners are either through private creditors or banks. Public financing, such as Tax Increment Financing (TIF), is not available. Currently in Canada, TIF has been introduced on a pilot scale by Ontario's Ministry of Municipal Affairs and Housing (MMAH) with two projects in the Greater To-

ronto Area (“Financing”). TIF has been shown to be the staple financing option for brown-field redevelopment within the City of Toronto (“TIF Best Practices” 1). TIF is being used not only in the USA, but also in Europe, and has resulted in countless success stories. Canada should be guided by the examples set by other countries, instead of waiting for years for pilot studies to be completed, and start letting TIF support brownfield remediation across the country.

While the ISO 26000 does address the prevention of pollution, it fails to address any historical contamination caused by organizations. The guidance merely outlines measures to take in order to prevent pollution or remedy any pollution caused, but does not address pollution which may have been caused by historical operations or parent companies. Understandably, the companies that cause the pollution may not exist anymore, but our system should be one which allows parties who are willing to clean up others’ wrongdoings to do so without difficulty. If the system was streamlined, it would encourage companies to act in a more socially responsible way by restoring the state of our natural environment and preserving the green spaces that would otherwise be developed.

Recommendations

The following is a list of the proposed recommendations that I would suggest to improve the current system in Toronto and Canada.

- Create a program similar to the Illinois voluntary Site Remediation Program which provides interested parties with the assistance and guidance of govern-

ment officials and offers interim liability protection to those who wish to work towards the Record of Site Condition certification;

- Streamline the whole application process by creating a system allowing applicants to complete one, albeit lengthy, application which would automatically be submitted for all of the brownfield grants and incentives that are available in the municipal, provincial and federal levels of government;
- Make grants or subsidies available for non-profit community organizations and small businesses who do not have the resources to complete the Phase I and II ESAs and can show proof of their financial need and /or non-profit status ; and
- Expedite or forego the pilot tests on the Tax Increment Financing and allow it to be used in Toronto and across Canada.

Conclusion

There has been much progress with the brownfields industry in the last few decades. In order to ease the concerns of owners, developers and lenders alike, Canada passed the Brownfield Statute Law Amendment Act in 2001 and further addressed concerns in 2004 with Ontario's Brownfields Legislation and Records of Site Condition Regulation O. Reg. 153/04, and the United States did the same with the passing of the Small Business Liability Relief and Brownfield Revitalization Act in 2002. These amendments provided liability protection in both Canada and the US for those who did not contaminate the site but were willing to get involved with the remediation process. The US provided some additional liabil-

ity protection to those who joined the voluntary Site Remediation Program while they worked through the remediation process, which Canada did not. There have also been a number of financial incentives offered by both Canada and the US, however Canada is not as progressive with respect to the financing options, the number of grants and the application process of those grants.

After comparing the Canadian and American systems, four recommendations were proposed to improve the system we have here in Canada. First, create a voluntary program which allows property owners or developers to sign up and receive two significant benefits: guidance and assistance from government officials; and interim liability protection from municipal, provincial, and federal governments while the owners work through the requirements of the Record of Site Condition certification. Second, create a streamlined application process in which one application would be completed for submission to all levels of government - municipal, provincial and federal. Third, make initial assessment grants available for those non-profit organizations or small businesses who can prove financial need to allow them to complete the requirements for grants and incentives applications. Lastly, make Tax Incremental Financing available without delay as a financing option for brownfield redevelopment. These improvements to the Canadian system would make it easier for companies to act in a socially responsible manner and allow those parties who would like to, but may not have the means to, help improve the state of our environment.

Works Cited

- Antonowicz, Natalie. "Policy Obstacles to Brownfield Redevelopment in Ontario." *Advancing the Environmental Agenda*. Canadian Institute for Environmental Law and Pol, June 2011. Google Scholar. Web. 20 Apr. 2012.
<http://cielap.org/pub/pub_brownfieldobstacles.php>.
- Bourne, L. S., M. Bunce, L. Taylor, and N. Luka. "Contested Ground: The Dynamics of Peri-Urban Growth in the Toronto Region." *Canadian Journal of Regional Science* 26.2,3 (2003): 251-70. ScienceDirect. Web. 22 Feb. 2012.
- "Brownfield Assistance Program." *Brownfield Assistance*. Illinois Environmental Protection Agency, 2011. Web. 27 Apr. 2012.
<<http://www.epa.state.il.us/land/brownfields/brnasst2.html>>.
- "Brownfields Definition." USEPA. United States Environmental Protection Agency, 4 Oct. 2011. Web. 10 Jan. 2012.
<<http://www.epa.gov/brownfields/overview/glossary.htm>>.
- "Brownfield Financial Tax Incentive Program." *Brownfields Ontario*. Ontario Municipal Affairs and Housing, 18 Aug. 2008. Web. 1 May 2012.
<<http://www.mah.gov.on.ca/Page5077.aspx>>.
- "Building Canada Fund." *Programs*. Infrastructure Canada, 26 Oct. 2011. Web. 1 May 2012.
<<http://www.infrastructure.gc.ca/prog/bcf-fcc-eng.html>>.
- "Chicago Brownfields Initiative: Recycling our Past, Investing in our Future." City of Chicago Brownfields Initiative. City of Chicago, June 2003. Web. 27 Jan. 2012.
- "Cleaning up the Past, Building the Future: A National Brownfield Redevelopment Strategy for Canada." National Roundtable on the Environment and the E. Government of Canada, 2003. Web. 3 Apr. 2012.
<<http://nrtee-trnee.ca/brownfield-redevelopment-strategy>>.
- "Community Improvement Plans (CIPs) (s. 28)." *Land Use Planning*. N.p., 31 Mar. 2010. Web. 1 May 2012. <<http://www.mah.gov.on.ca/Page6850.aspx>>.
- De Sousa, Christopher A. "Brownfield redevelopment in Toronto: an examination of past trends and future prospects." *Land Use Policy* 19 (2002): 297-309. Sciencedirect. Web. 20 Dec. 2011.

- De Sousa, Christopher A. "Turning brownfields into green space in the City of Toronto." *Landscape and Urban Planning* 62 (2003): 181-98. Sciencedirect. Web. 20 Dec. 2011.
- Ekherdt, Molly H. "Where Have All the Brownfields Gone? Lessons for Chicago 15 Years In." MA thesis Massachusetts Institute of Technology, 2009. Web. 27 Apr. 2012.
- "EPA Targeted Brownfield Assessments-The Basics." *Grants & Funding*. United States Environmental Protection Agency, Sept. 2007. Web. 29 Apr. 2012.
<http://www.epa.gov/brownfields/grant_info/>.
- "Financial Barriers." *Brownfields Redevelopment Toolbox*. aboutREMEDICATION, June 2011. Web. 21 Apr. 2012.
- "Financing a Brownfield Project." *Brownfields Ontario*. Ontario Ministry of Municipal Affairs and Housin, 1 Feb. 2012. Web. 30 Apr. 2012.
<<http://www.mah.gov.on.ca/Page223.aspx>>.
- Grants & Funding*. United States Environmental Protection Agency, 9 Mar. 2012. Web. 29 Apr. 2012. <http://www.epa.gov/brownfields/grant_info/>.
- Green Municipal Fund*. Federation of Canadian Municipalities, 23 Mar. 2012. Web. 30 Apr. 2012. <<http://www.fcm.ca/home/programs/green-municipal-fund.htm>>.
- "A Guide to Federal Tax Incentives." *Brownfield Tax Incentive*. United States Environmental Protection Agency, Apr. 2011. Web. 28 Apr. 2012. "Census Profile." Statistics Canada. Government of Canada, 1 Feb. 2012. Web. 7 Mar. 2012. <www.statcan.gc.ca>
- Higgins, Jessica. "Evaluating the Chicago Brownfields Initiative: The Effects of City-Initiated Brownfield Redevelopment on Surrounding Communities." *Northwestern Journal of Law & Social Policy* 3.2 (2008): 240-62. EBSCO Host. Web. 26 Apr. 2012.
- International Organization for Standardization. *Guidance on social responsibility (ISO 26000:2010)*. N.p.: International Organization for Standardization, 2010. Print.
- "Landowner Liability Protection." *Cleanup Enforcement*. United States Environmental Protection Agency, 15 Apr. 2011. Web. 29 Apr. 2012.
<<http://www.epa.gov/compliance/cleanup/revitalization/landowner.html>>.
- "Legal Framework." *Brownfields Redevelopment Toolbox*. aboutREMEDICATION, June 2011. Web. 21 Apr. 2012.

- "Linking Brownfields Redevelopment and Greenfields Protection for Sustainable Development." *Great Lakes Sustainable Land Use*. Great Lakes Commission, June 2001. Web. 27 Apr. 2012. <<http://www.glc.org/bridges/9-01BridgesI.pdf>>.
- "Memorandum of Understanding between the Illinois Environmental Protection Agency and the United States Environmental Protection Agency Region 5." *State & Tribal Response Programs Agreements*. United States Environmental Protection Agency, July 1997. Web. 30 Apr. 2012. <http://www.epa.gov/brownfields/state_tribal/moa_mou.htm>.
- "More Information About the Bureau of Land ." *Bureau of Land*. Illinois Environmental Protection Agency, 2011. Web. 30 Apr. 2012. <<http://www.epa.state.il.us/land/more-info-about-bol.html>>.
- "Programs." *Financing*. aboutREMEDICATION, 2012. Web. 29 Apr. 2012. <<http://www.aboutremediation.com/financing/programs.asp>>.
- "Records of Site Condition: A Guide on Site Assessment, the Cleanup of Brownfield Sites and the Filing of Records of Site Condition." *Ministry of the Environment*. Government of Ontario, Oct. 2004. Web. 29 Apr. 2012.
- Slutzky, David, and A. J. Frey. "Brownfields Uncertainty: A Proposal To Reform Superfund." *Cityscape: A Journal of Policy Development and Research* 12.3 (2010): 85-100. *ScienceDirect*. Web. 5 Feb. 2012.
- "Sustainability Reporting Guidelines." G3 Guidelines. Global Reporting Initiative, 2006. Web. 25 Apr. 2012. <<https://www.globalreporting.org/resourcelibrary/G3-Guidelines-Incl-Technical-Protocol.pdf>>.
- "Tax Increment Financing." *City of Chicago Brownfields Initiative*. City of Chicago, 2012. Web. 30 Apr. 2012. <http://www.cityofchicago.org/content/city/en/depts/dcd/supp_info/tax_increment_financingprogram.html>.
- "Tax Increment Financing Best Practices Reference Guide." *International Council of Shopping Centers*. Council of Development Finance Agencies, 2007. Web. 1 May 2012.
- "The Toronto Community Improvement Plan for Brownfield Remediation and Development of Prescribed Employment Uses." Toronto Business Incentives. City of Toronto, 18 Apr. 2008. Web. 2 Apr. 2012.

van Rensburg, Katherine M. "The Brownfield Statute Amendment Act: What's in it for lenders?." *aboutRemediation*. Gowlings, Apr. 2003. Web. 21 Apr. 2012.

Wernstedt, Kris, and Robert Hersh. "Brownfields regulatory reform and policy innovation in practice." *Progress in Planning* 65 (2006): 7-74. Sciencedirect. Web. 5 Jan. 2012.

The World Bank. *World Development Report 2003 - Sustainable Development in a Dynamic World: Transforming Institutions, Growth, and Quality of Life*. N.p. The World Bank Group, 2003. Print.