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**Before the House of Representatives Committee on Energy and Commerce,  
Subcommittee on Environment and the Economy**

**Hearing on “EPA’s Brownfields Program: Empowering Cleanup and  
Encouraging Economic Redevelopment.”**

Mr. Chairman and Members of the Subcommittee, I am pleased to be invited to present my views on how the U.S. Environmental Protection Agency (“EPA”) Brownfields program impacts private stakeholders who are vital to the sustainable redevelopment, reuse, and investment in brownfields. The Brownfields Program is critical to reducing blight and converting these properties into productive, tax-revenue-generating properties for the communities in which they are located.

I am an attorney with the law firm of Plews Shadley Racher & Braun, LLP. I represent several private businesses, non-profit entities, and other private shareholders who are interested in property development. My firm also represents the Indiana Petroleum Marketers and Convenience Store Association, several towns and cities within Indiana, and economic development associations. The municipalities and businesses my firm represents are concerned with the continued funding of the Brownfields revitalization program, and they are also interested in any changes to the program that will reduce transactional costs in terms of both time and money. However, I am not presenting this testimony directly on my clients’ behalf. Rather, my advice to the to the Subcommittee today is drawn from



my fifteen years of work on environmental issues and redevelopment projects and my overall desire to improve the Brownfields programs both as a legal practitioner and as a citizen who lives in a community that has been assisted by the program. I have personally seen the positive impact brownfields redevelopment can have on a community.

### **Why the Brownfields Program is Important to Private Shareholders**

The program supports the initial phases of site investigation that may prevent private redevelopment. While the typical American pictures a “brownfield property” as a large abandoned industrial site, in reality most brownfields properties are small properties such as former gas stations or drycleaners that may have low levels of environmental contamination and are interspersed throughout communities. Often, very little is known about these smaller properties since the businesses previously operating were small in size, somewhat unsophisticated and did not always keep extensive records.

Private developers are wary of such properties because the general lack of knowledge about the prior operations increases the potential risk for high cleanup costs, a concern about potential liability to neighboring property owners, and the potential for lengthy cleanup processes. All of these issues increase the transactional costs and the overall risk that developers face when they seek to acquire such properties.



When a business is looking for opportunities to develop within a community, they intend and plan to do so in a financially positive manner. Adding the risk of the unknown makes brownfield properties undesirable since businesses may not realistically assess the potential costs and downsides associated with unknown environmental conditions. When communities use brownfield grants and funding to investigate such sites in their brownfields inventory, they're filling in knowledge and information gaps that allow private developers to realistically assess risk and the potential for successful reuse, growth, and consequently, profit. While providing some initial site investigation information about a possibly contaminated site does not completely remove the impediment that site has compared to greenfield development, it may be just enough incentive to increase the chance of reuse and redevelopment.

For example, our firm has been involved in the development of commercial real estate in economically disadvantaged areas of Indianapolis. The initial knowledge generated by the city gave the developer some comfort in acquiring the site for redevelopment purposes. Knowing that the primary contaminant of concern was gasoline and assessing the geology of the site allowed the developer to know that although construction costs would be increased due to how potentially contaminated soil had to be handled; such additional costs would be worth it given the central location of the property for the intended commercial use. Furthermore, having some initial information about the environmental conditions of the site



allowed the developer to work with its environmental consultants to assess the likelihood of obtaining an environmental restrictive covenant (“ERC”) which would dramatically lower cleanup costs. This information also allowed the developer to understand long-term costs associated with the development of the property, such as the maintenance of a parking lot as an institutional control. Knowing this allowed the commercial developer to make an educated calculation whether or not the potential risks were outweighed by the favorable location and benefit of developing this property.

Similarly our firm assisted in the redevelopment of a large abandoned brownfield site along an interstate in Indiana into a large and successful truck stop and travel plaza. This redevelopment never would have been completed without the assistance of the brownfield program and a partnership with both city and state environmental agencies. The petroleum marketer was willing to make a large investment both in acquiring the property as well as completing any necessary environmental work and maintenance in part because the city and state were willing (and had the funding available) to assist in the site assessment and response. A property which had sat vacant for years was returned to the tax rolls, improved the neighborhood (and hence surrounding property values), and provided much needed jobs in a struggling economy. None of these benefits to the community would have happened without the Brownfields programs.



## **The Brownfields Program is Not a Windfall to Private Businesses**

When I describe what I do to my neighbors or in social settings, I'm often asked why the government should provide funding for private businesses to develop properties. This is a fundamental misunderstanding about how the Brownfield program works. Developers are not paid to develop these blighted properties – they're investing private money for development. Rather, any grants or money that helps with the development of the property acts as seed money to help overcome the impediments that come with contaminated properties. Make no mistake – the development of these properties is often more expensive and time-consuming than the development of a property without the stigma of environmental contamination. Lenders are less likely to provide loans for contaminated property, especially without extensive and detailed information regarding the scope of contamination and the extent of any necessary remediation. Insurance companies may be less likely to write policies to cover such properties. Lessees may be wary of leasing such properties because of concern over possible liability. Furthermore, building and development may be delayed while dealing with government agencies and getting permission to complete the development due to environmental risks. Developers often have to provide additional money up front to deal with these hardships, while experiencing a delay in profiting from the development due to the delays added in dealing with the potential environmental liabilities. Furthermore – these investments are rarely a sure thing. During construction additional



contamination or other contingencies may be encountered that drive up the cost of development. Thus, these projects always come with a higher risk that can cripple a business. Developers can often only complete these projects by cobbling together various sources of funding, such as loans and insurance proceeds, all while walking the tight-rope of hoping that they correctly anticipated and planned for the environmental risks and costs. Rarely does brownfield money provide the sole source of funding necessary for these projects and rarely are these projects completed precisely as planned.

### **Assisting Communities will Assist Businesses and Redevelopment**

In my experience the most successful Brownfield redevelopment happens in well-organized and well-funded communities. This occurs because these cities can afford to hire knowledgeable and qualified staff to assess their inventory of brownfields and to develop and collect information about the businesses previously operated on those properties. These staff members also often assist smaller businesses in their interactions with environmental regulators and make the successful redevelopment of a property more likely.

Quite simply, those communities that have the most knowledge about their properties and can help with the navigation of the regulatory system make their sites more attractive for redevelopment. As I discussed above, knowledge allows businesses to realistically assess the risks and benefits to acquire and develop a



property, and the existence of this knowledge often is the critical factor in whether an impacted property will be developed or not.

To level the playing field for smaller and economically distressed communities will require providing those communities with the resources that large cities have to develop this type of information. I support any changes to the Brownfields revitalization program that improves the technical assistance available to small and distressed communities, or provides funding to help these communities hire qualified and sophisticated staff. These changes will enhance how the Brownfields program works in these communities.

### **Conclusion**

The EPA's Brownfields Program is working to develop blighted properties, improve the communities in which these properties are located, and to make a property work again by providing tax revenues and jobs through redevelopment. I have seen it work in both my practice and my community.

While contaminated properties will always present inherent risks to private businesses looking to develop them, the existence of the Brownfields program helps level the playing field and provides some seed money to overcome the risks of environmental contamination. But for this funding, much of this development would never happen. Providing additional resources to small and distressed communities can only improve the program.



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The Brownfields revitalization program is a wonderful asset in the arsenal of communities focusing on improving the economic vitality and quality of life for their citizens. I want to thank the Committee for taking the time to see how they can make the program work even better.