

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
ENVIRONMENTAL FINANCIAL ADVISORY BOARD**

APR 19 2001

Honorable Christine Todd Whitman
Administrator
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Administrator Whitman:

The Environmental Financial Advisory Board, through its Brownfields Workgroup, has been monitoring federal legislative proposals intended to help spur investment in brownfields redevelopment. Those initiatives that address funding have proposed some variation of one or more of the following: 1) direct public funding (grants); 2) capitalization of revolving loan funds; 3) loan guarantee programs (such as those of the Small Business Administration); and 4) tax incentives. We believe that the fourth alternative has significant advantages over grant and loan approaches because tax incentives would most effectively attract capital from the private sector.

The 1998 Brownfields Tax Incentive (which the Board commented upon in previous correspondence) was a beginning, but a bolder approach is necessary to bring significant private investment to brownfields redevelopment. We believe the following provisions could provide the core of a new legislative initiative that would help to bring the still-reluctant private sector into the brownfields remediation financing arena. We encourage EPA to propose and/or support legislation that is aimed at attracting private investment to this important area.

Specifically, the Board proposes the following for brownfields tax incentive legislation:

- § Create a transferable tax credit equal to the cost of the environmental investigation and remediation incurred on a "qualifying site." This would enable cities to assess and clean up property and transfer the credits to the next purchaser. We believe that the nature of the real estate development process makes the transferability of the tax credits necessary to make the tax incentives truly meaningful. Tax credits drive real estate transactions, particularly in low income and redevelopment lending which is attracted to areas with already existing infrastructure, like brownfields. We think that general objections to affording benefits to parties other than the taxpayer are both inapplicable and invalid for the type of tax credit envisioned.

- \$ Define "qualifying site" as contaminated property within an Urban area as defined by the Census. This definition includes most brownfields, but importantly, precludes greenfield sites, development of which should be discouraged. We believe that the low usage of the current Brownfields Tax Incentive is due, in part, to its restrictive site qualification criteria. Budgetary concerns that led to a narrow definition have proven to be unfounded.
- \$ The tax credit should be available only after certified commencement of redevelopment to avoid claiming the credit and then "warehousing" the property without actually starting the cleanup. Since large projects can take years from investigation to redevelopment, taxpayers should be able to claim the credit when there is evidence that the project legitimately has begun and will proceed on an identifiable timetable to completion.
- \$ Property "redevelopment" should be defined to include open spaces, parks, residential living spaces, commercial use, schools and any other uses that are of benefit to the community. This definition may be specific to the application of this tax incentive. While we know that the former administration's Better America Bonds proposal was aimed at similar properties, the financial mechanisms of the tax incentive and bonds should not be confused. Irrespective of other programs, an open space component should be included in any new tax incentive proposal.
- \$ ~~A~~Qualifying remediation costs should include the capitalized costs of ongoing remediation, including pump and treat systems. We urge this definition be established in legislation or regulation to avoid the unnecessary progress-inhibiting uncertainty that would accompany leaving this to after-the-fact, case-by-case determination by IRS.
- \$ Insurance premiums covering post-remediation liabilities should qualify for the tax credit. Insurance has become one of the most effective tools to remove the uncertainty that is such an impediment to brownfields redevelopment. We see insurance as a valuable addition to the definition of qualifying costs that should be set in legislation or regulation.

The Board thanks you for the opportunity to provide our comments and recommendations to you. We hope they will promote legislation that reflects a strong commitment to the recycling of developed areas and that effectively mobilizes private capital in the redevelopment of cities.

Sincerely,

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Robert O. Lenna, Chair
Environmental Financial Advisory Board

cc: Michael W.S. Ryan, Deputy Chief Financial Officer
Dona DeLeon, Deputy Associate Administrator for Policy, Economics, and Innovation
Joseph L. Dillon, Acting Comptroller