



NATIONAL ROUND TABLE ON THE ENVIRONMENT AND THE ECONOMY
TABLE RONDE NATIONALE SUR L'ENVIRONNEMENT ET L'ÉCONOMIE

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**National Round Table on the Environment and the Economy:
Summary of Notes from Multi-Stakeholder Meeting
November 14, 1996, Vancouver**

**NRT-1996060
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Brownfields and Contaminated Sites**

Prepared for
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Summary of Discussion

Objectives

The objectives of the meeting were to capture the views of the participants thoroughly and accurately to reflect the broad state-of-debate on brownfield/contaminated sites issues in Canada as well as steps required by key sectors to deal with two specific aspects of contaminated sites - the redevelopment of brownfields; and improving site-specific information on the environmental condition of land.

Sectors Represented at this meeting:

Municipalities; Vancouver, New Westminster

West Coast Law

Financial Services

Consultants

Development

Legal Council - non environmental representing lenders

Canadian Petroleum Process Unit - Industry

Insurance - liability

Insurance Bureau

Provincial Government, Pacific Place

Finance/Legislation

Mortgage CMHC

Yukon - Standards and Approvals

Health/Government

Green group: Breakout Groups #1 - Contaminated Sites Issues in Canada - Review of discussion paper.

Question -Does the paper cover the outstanding issues? What needs to be added/expanded? What are the consequences of not addressing these issues? What will we lose if we don't proceed? Issues missing from the paper?

[The session was opened with each participant giving their comments on the discussion paper. Each member of the group was asked by the facilitator to reflect on the issues that were discussed in the paper and on how well they had been addressed. The essence of the comments are summarized below.]

- Lenders and lending in relation to funding and development and at what stage that funding may take place.
- Criteria, standards and framework of procedures through legislation. We have been using quasi standards and criteria. Bill 26 is not there yet. What constitutes a contaminated site? Standards have to be in place, understood, clear and accepted by all stakeholders.
- The paper does not identify what issues are specific to B.C. The public knows more about contaminated sites than they did 10 years ago. Brownfield sites considered for development is often viewed as positive by community groups. Awareness and balance of public perspective is increasing.
- I support the previously mentioned notion that the paper does not have very much in terms of the topic of lender liability.
- It does not identify the types of tools that can be used to identify contaminated sites i.e.. planning systems, economic measurements etc. and categorize them into policy information tools. What is the difference meant between contaminated sites and brownfields? It is not clear to me from the report. The report uses a much more general definition of brownfields. We need a clear definition.
- Allocation of liability, future liability, a workable and timely process (lead times are often so long, they are not feasible), risk assessment and risk management. How can responsibility get back to past owners of a site.
- Cost/benefit analysis and broader properties. There should be a distinction between the technical process from the overall redevelopment. Public should have a role in the cost/ benefit but not in the technical analysis. I'm not talking about cost/benefit analysis done site by site, but in broader terms i.e. health, infrastructure, policy...distinguish the technical process from the redevelopment process for public involvement.

- Why we need to do anything is a looming question. What is the criteria? The whole thing has to be medically driven. How do we set the criteria? The process starts with the medical people estimating health risks and how will they stand the test of time. It has to be based on expertise rather than perception.
- I echo the concerns about cost/benefit analysis. Standards are too high. They should be guidelines, not standards. All these papers miss the difference between the definition difference of contamination and pollution. Contamination is not pollution until it's causing problems for the environment. In most cases contamination is not pollution.. Guidelines should reflect this difference. The public is in the dark. I suspect they will have trouble with the Retroactive Liability Act in their reaction to Bill 26.
- Fairness - who pays for contamination?
- Industry is very concerned with liability issues. There is a need for site specific criteria. Generic standards should not have precedence over site specific standards (generic standards are generally too conservative). Site specific standards should have equal value as generic standards. We need a process everyone understands.
- There is a need for establishing criteria and clarifying definitions - i.e. what is the role of insurance. Standards, enforcement and protection have to be consistent between the provinces, municipalities and federal governments. retroactive liability - legislation has to guide retroactive liability so that we can reduce litigation costs.
- We're not going to be able to attain complete fairness - but that doesn't mean you can turn a blind eye and not work together towards solutions. There is inconsistency between governments and between the different political parties i.e. a party change can mean a change in focus and action depends on the power of the Minister. We need a non-political regulatory agency that will not fluctuate with the party in power. Draw it away from being subject to political whim.
- Political whim - is another word for public accountability.
- There is a lack of importance we put on the misinformation in the minds of the public.. There's a need to educate all of us. There are concepts which are desirable yet not doable i.e. cost analysis. And there tends to be over-simplifications of standards. My fear is that industry is looking for something too simple to site contamination. We have to educate to overcome the stigma around cost/benefit and risk management. It will never be simple enough to attach an analysis to one number on a table. We have to understand the amount of naiveté that exists. Move to site specific risk assessment, you have to educate the public and all the stakeholders.

- On the lenders side, there is a high element of liability against lack of certainty whether you are going to be held accountable, which leads to lenders who are less willing to become involved. There are no standards to define the liability. What will make the industries become involved if there are no standards? You can't expect them [lenders] to be experts in the environment. Allocation of liability - lenders, insurance and the public want standards, the technical side wants the assessment to be site specific. Give qualifications to experts who can give assessments, and a third party can use those assessments.
- There are many different interests involved, and they are at odds. We are struggling for a system that achieves the greatest amount of fairness. Yet the interest of the stakeholders will change, people can put on different hats in different circumstances, which will affect the perceived fairness. Type of standards - there is a desire for uniformity, and also flexibility - the notion of what is contaminated or polluted will depend on the presence of a substance and the circumstances in which it is present. The impact will depend on the ability of the contamination to be mobile in the food chain.. How much information do we need to support the more complicated issues of standards?. Risk-based standards is the best option for any given site. It may not be worth while to look for the detailed analysis necessary for some sites. Develop a system that has flexibility to use generic and other assessments. Uniformity of process is possible but not uniformity of standards. Each province develops legislature in its own context.. In response to the emphasis on health - what we eat depends on the environment. Can't look at human health as the end-point, but also the environmental organisms themselves.. Difficulty on cost/benefit analysis - who bears the cost and who receives the benefits are, in most cases different, which makes cost/benefit analysis difficult.
- If there is no certainty into our science and process, how are we going to get industry involved. How clean is clean? Government has to assume some of the responsibility.. Society at large has to assume some responsibility. Government has to get away from its reluctance to spread the risk.
- Setting criteria starts with looking at how dangerous the chemicals are, numbers can be set from there. In the Yukon, we are asked what criteria we are using during any site truncation. We've had to say we don't have any - that's not good enough for the lenders and buyers. There's a need for standards and certainty. How do we prevent contaminated sites from becoming contaminated in the first place? If we could solve that, we wouldn't have to be debating these issues.
- The paper has very vague illusions to health and environmental impact. There is a failure to put this into an overall context. Soil is a minor contributor to the risks for public health (compared with other health risks). Desire for certainty and flexibility - we should focus on outcome. Avoidance of harm. Soil risk estimation is uncertain. Assessment is a technical matter, unless there is some opportunity for public input, there will be no solutions.

Priorities - Key Issues Discussed

- I. Certainty of process so that people know what the process is for identification, assessment and cleanup of sites. Certainty of framework - perimeters of framework and timeliness.
- II. Liability - future liability.
- III. Cost/benefit analysis - full cost and full benefit analysis (i.e. total cost for society included too) or for the risk itself. Cost/benefit for risk and setting priorities. Risk and risk assessment.
- IV. Standards/criteria/benchmarks.
- V. Education and communication for the public and all the stakeholders

Red Group: Breakout Group #1 - Contaminated Sites Issues in Canada - Review of discussion paper.

[The session was opened with each participant giving their comments on the discussion paper. Each member of the group was asked by the facilitator to reflect on the issues that were discussed in the paper and on how well they had been addressed. The essence of the comments are summarized below.]

- Overall impression was good. The paper does identify the issues. However, it left hanging the fact that legislation in B.C. has not yet been confirmed. This was not reflected in the impression of the state of the situation given.
- Overall impression was good. One area specifically looking for was risk assessment, the additional hidden costs and how people are going to handle those. People need to make a return on investment and there may be more remediation on a site than the original assessment indicated. Since the margin is based on the original assessment, hidden costs are a key feature. This is still a grey area in the report.
- Disappointed. The report captures emotional issues but not the factual ones. At a municipal level, contaminated sites have not been looked at. No distinction is made between contamination and pollution. Contamination can be a smaller problem that does not impact health and environment which are in the public interest.
- Interested in the allocation of liability. The report draws a false dichotomy between tort and joint civil liability. It is too stark a contrast and underplays negotiated settlements. Also, regarding social costs, the assumption that all costs are passed on and the public pays nothing but this is not true.

- The allocation of liability is a concern to banks and is an obstacle to financing brownfields.
- On the allocation of liability, there are problems because of the differences between the different provinces. We waste time trying to understand the differences. There is a lack of harmony. As you move from one province to another you have to relearn all new rules. This takes attention away from other issues.
- Depending on levels of contamination, interested in managing contamination on-site rather than remediation.
- Liked the report generally as a baseline for discussion more than anything else. Cutting government spending is a good idea except where a party is interested. The polluter pays principle is too simplistic.
- Generally pleased. The report reflected an opened mind. Did not find that materials resolved issues just put them in perspective. Issues such as retrospective allocation of liability and how clean is clean the mining industry is trying to resolve. Who's going to fund orphan sites is a problem of moral hazard. On the matter of who pays for social costs, the nature of transformation is that the polluter is accountable.
- On societal costs, there seems to be the suggestion that the only ones are who pays for the clean up, but it is much broader. There is utilization of service to sites on the periphery. This represents a significant loss in tax revenue from non use of land and an increased cost to local governments. Urban sprawl is resulting in order to avoid brownfields. can't just look at the narrow polluter pay issue.
- The report is simplistic given stage of debate at this time. It is a useful summary. Certain issues should have been beefed up including the costs of legislation, the costs of clean up, remediating contaminated land and roadblocks to cleaning up. There was lots of focus on liability because of the costs of clean up, but the fundamentals are how can we appropriately use money to clean up the problem. It should have focused on the standards issue: flexibility and ways to facilitate remediation. Also, the lack of disposal facilities. There are lots of creative things that can be done including burial of waste and old mine sites. Getting rid of material efficiently will cut the cost of liability. These issues not covered in the current report.
- From a financial point of view, the report laid out issues but did not get into answers. There is a concern with livability including health concern and how to overcome them and start to develop.
- The stage of debate in B.C. and Alberta is further ahead. It would have helped to have a matrix of the regulatory framework including legislation etc.

- Agree with the report. It is generic in nature but for this purpose that's not bad. It is hard to gain a lot because the nature and size of the problems are not that well known in Canada. We need to spend more time looking at this problem. Also, we have done a lot of things that are not captured in here: how clean is clean. Where is bill 26? We need to spend more time in cooperation with each other.
- Different jurisdictions are taking different approaches to providing certainty. In B.C. it is legislation. Ontario is reluctant to do this. Is this the tool that will provide enough certainty to allow capital to flow? We need to regard soil as a resource and not as a waste. We need to give some thought into what actions are needed to make digging and dumping a questionable option.

Priorities - Key Issues Discussed

- I. The cost of remediation (2 parts):
 - institutional obstacles (constraints to achieving remediation)
 - how clean is clean?
- II. Retrospective liability
- III. The allocation of liability
- IV. Certainty
 - can this be achieved by a prescriptive legislative model or do we allow for a high degree of regulator discretion?

[The discussion then focused on the second of these issues: retrospective liability]

Should current owners be held accountable or previous owners?

- We need to define what we are talking about: pollution or contamination. Contamination is defined in the document as any site with any contamination but at small amounts, health and environment are not damaged. Therefore, contamination is an element out of place. If we can decide on what constitutes pollution, we can lower the fear of liability.
- It is not a matter of the degree of contamination but rather where the responsibility for it should rest.
- The market determines that. It will be reflected in the cost of land that is found to be contaminated.

- When owners are operating to existing standards, when rules are met or exceeded, this needs to be acknowledged so we can move on. If a company continues to accumulate liabilities on its balance sheet, that liability remains when the site is closed.
- The polluter pays principle is simplistic. Can you even collect from someone? This can result in a windfall to a current owner if the past owner has to pay for clean up.
- Maybe retroactivity makes sense if the past owner acted irresponsibly and as a result there has been a threat made to health and environment.
- The present owner should be held accountable: fail to see justice of going back to someone who followed the laws and regulations of that time.

What if new legislation removed retroactive liability? What would happen?

- If we remove any part of retroactivity, we may not see progressive uses of land but just minimal adherence to regulations.
- An important point is whether business was being conducted legally or not at the time. If not, the party should be held accountable
- There is a question as to what funds from taxpayer would be required to go with prospective liability.
- Banks might pull out of investing in certain industries.
- We have to recognize the global economy. Progressive liability puts us at a comparative disadvantage. In North America, retroactive liability is the dominant scheme. It should only enter in if a law has been broken but this is not workable.
- Developers do an environmental investigation before they go in to a project. It would be the mom and pop businesses who bought in 60s or 70s that would be the most hurt by this proposal. Retroactive is not the full answer. There will have to be some government involvement (but not like superfund). In B.C. there is a lot of cost associated with the regulatory process. Some government involvement is unavoidable. Reluctant to see government do the clean up.
- Real estate values have allowed some clean up to occur in the lower mainland but now things are starting to change and contaminated sites are beginning to sit dormant.
- Perhaps a qualified retroactive system which would provide some protection for innocent people. We have to accommodate businesses to some extent.

- We are currently funding the Ministry of Environment with contaminated sites fees. The government could get money for clean up from other sources.
- Municipal governments are currently absorbing a lot of cost in this exercise.
- The issue of polluter pay is so simplistic. The question of whether or not to develop goes up and down with the economy.
- There is some responsibility of government to intervene that the public could accept because in the past we recognize that we did not regulate properly. However, we have to consider whether it is in the public interest.
- We need to look at government as an intergenerational public good. Finding the bad guys and pinning the cost on them doesn't work. We all pay. There is a question of allocating a scarce resource to clean up contaminated sites. Maybe some sites are better left alone until the economy is ready to deal with them.

What might an alternative to retroactivity be?

- A generalized tax, although we are already taxed significantly.
- Need to determine at what point the taxation burden would have the same effect as liability of scaring off investment.
- A tax would have to be carefully targeted to a sector that is benefiting from the clean up.
- There are some cases where liability should flow but others where maybe not. In these cases we need to consider an alternative.
- Tax revenues for specific purposes are debated a lot. Only 20% of battery taxes go to recycling. Then there is FRBC and gasoline tax. This is an ideal world but there is not evidence to support that it will happen.
- There are credibility and trust issues associated with earmarked funds.

[The next issue discussed was the first of the four issues identified: the cost of remediation.]

What are the institutional obstacles?

- The reports far underestimate the number of contaminated sites in Canada. Lots of private money is going into government regulatory structure and there are trust issues.
- In B.C. there is no added value in paying for a certificate from government. There should be no government involvement in assessment of sites. They could have a role in conducting audits, otherwise we should certify consultants. The regulatory regime should be totally rethought.
- The lack of a clear definition of contamination is an obstacle. It's a question of how we should be allocating funds for the protection of the public interest. Soil is a valuable resource and should be kept. Local government could play a role if the regime was more rational. We need to introduce some level of rationality as to what is safe.
- Standards which are applied generically are on the conservative side. Those who are saying that this is a huge problem are those who have the most to gain by saying it. We have to link this whole discussion to what is safe.

Summary: Key Issues Discussed

- I. When do you proceed to put money into a project? We need clarity as to the allocation of liability.
- II. What are the true costs to society of what is contaminated and what is not? We have to link the environment, the economy and society. We need to consider what is the cost to society of lost opportunities and lost investment in addition to health and environment.
- III. There is also the problem of knowing the magnitude of liability.

Green group: Breakout Groups #2 - the Redevelopment of Brownfields and Improving Site-specific Data on the Environmental Condition of Land

[The group re-examined the definition of brownfield redevelopment]

- If a brownfield is economically remediable, why is it a brownfield and not proceeding with development? A brownfield should be defined as not economically remediable.

- Economically - means; can you do it, with all the help you can get? This is perhaps more vague than the traditional definition of economically remediable.
- The definition we are using is not a definition for brownfields but a definition for brownfield redevelopment.
- We have to discuss what difference there is between our regions and provinces. For example, market forces and other circumstances are different in the Lower Mainland than the rest of Canada. Brownfield redevelopment can be development driven (i.e. Vancouver) or used to revitalize a city core.
- Land use and the way the market drives the issues is very different from region to region and city to city.
- I have concerns about building on the fact that profit and economics are driving these issues, which diminishes the importance of the environmental, social and health issues. Health, environment and economic issues have to be balanced.
- The whole province cannot be defined by what goes on in the Lower Mainland. There can be brownfields where there is no demand for redevelopment, yet have an environmental impact.
- Are we assuming brownfields are having an impact on the environment?
- Our purpose here today is to decide how we get these sites developed. Who does it? Who finances it? What is the process? How do we deal with liabilities?
- Financial services have difficulty with proposed and current legislature. Where does liability start and where does it end? What is the risk to the lender over and above the value of the loan. The current legislature leaves this unanswered.
- Action - Create the ability to go in with your receiver with an agreement that allows you to recoup your losses. Provincial legislation for land regulation should provide certainty that the receiver/lender will not be held accountable. Otherwise no one will touch these properties.
- Response - Bill 26 is the most fairness we are going to reach. The receivers and lenders should be covered by a change in Federal Bankruptcy and Insolvency Act. Provincial regulations do give exceptions for lenders and receivers.

- Response - You can not work in isolation, the provincial and federal governments have to work together. For example, government has to create an arena for the business sector to work in, and business has to decide how is going to work within that arena. If you don't deal with public or environmental groups in an open manner, you end up with public voices. Voices that are not based on expertise.
- Bring people together at the outset.
- Communication - is it an issue?
- Response - Was the most recent issue of the B.C. legislation sent out? No. Therefore the public is not aware how far we have come.
- The lenders are happy to receive the value of the loan, they should be happy to accept the liability. A compromise is probably the solution.
- Legislation and regulation is better than leaving the issues to litigation in court.
- Municipalities can provide density bonuses for cleaning up a site that is in societies' best interest. Also provide incremental tax benefits for cleaned sites.
- The Federal Government can provide GST and PST tax incentives for sites that have been cleaned up.
- Our conversation seems to point out the fact that liability to meet regulations for brownfield redevelopment seems to be taking precedence over health and environment issues.
- We are forgetting that we should be going after the parties who are responsible for the condition of the property in the first case.
- Do we know if the public values clean up?
- As long as the public doesn't see or smell something they don't like, they don't care.
- First concern for the public comes down to whether or not it will affect the value of their property, or have an immediate tax implication - rather than long term health issues.
- Development and park costs could drop if there is a higher redemption cost.
- In the Lower Mainland, there are no brownfield sites - Municipalities should be more receptive to rezoning brownfield sites to higher density.

- First do site assessment with an approved expert to determine the level of contamination (i.e. risk on environment and health). If it's high risk, hand the site over to the provincial government. As for the rest of them, the assessor should be certified to authorize a letter stating the site is safe. Possibly develop a national building code.
- We want to hear views from the environmental groups.
- Environmental groups are there to create awareness, and to highlight the benefits to cleaning up contamination. Environmental groups could play a bigger role in cleaning up the sites. If little value is put on cleaning up a site, other factors carry greater weight as to whether the development will go ahead. Portions of the value should go toward the clean up.
- There is also an environmental benefit to developing brownfields in lieu of developing greenfield sites.
- Environmental groups create awareness around the benefits of higher density.
- Can environmental groups assume the role of educating the public? i.e. How clean is clean?
- Environmental groups could provide an accounting model for the costs of leaving the brownfield undeveloped. A full cost analysis. They can define at what level you can set the incentives for redevelopment - utilize an environmental group that is research based. This idea could be open for other groups. "Advocacy for Development" i.e. Northwest Environment Watch based in Seattle looks at transportation issues.
- I've seen groups /consultants come out with reports and they are accused of being biased towards their funder. What credibility do you give an environmental group? They are not experts or may be opposed to the issue and could become the opponent. I have concern over people who can become emotional.
- Environmental insurance options are not fully explored. Are there any more options?
- Insurers are not going to be the ones to provide all the products available for lenders. The NRTEE needs to research more about what products are out there. Or, the general insurers can do more work to educate the lenders. Develop action from the NRTEE and the Financial Services.

Comments on best practices set out by CMHC to augment the CCME principles:

- They are ultimate goals, they are broad ideal principles, something we should work towards, gives us a benchmark.

Are there examples of brownfield sites in Canada?

- The former Expo lands? They would fall into the category of brownfield redevelopment sites.
- Land between Burlington and Oakville, previously a Shell Refinery and still owned by Shell. It has been cleaned up, but it is between the slow process of being cleaned up and being for sale.
- Toronto Waterfront - Clean up and redevelopment has been a cooperative effort between tenants, provincial and municipal governments.
- We keep going back to the issue of defining brownfields. Should we define it first? Would this definition be useful to the BC situation? Either broaden the definition or don't make it such a big issue.
- The issue around brownfields is reusing, the redevelopment of previously used land.
- Brownfield is defined by whether or not it needs help from the sectors we are talking about. The number of brownfields fluctuates with the economy i.e. how much demand there is for redevelopment and the resources to fund it.
- Why do we wait until there is a problem...until the developer comes along and wants to do something with it? Are we aware of which sites are contaminated and how many there are? When we do, we will know the extent of our problem.
- The issue is a moving target: is the definition itself site specific?
- Ministry of Environment and Department of Fisheries and Oceans differ in their definition of how clean is clean? They need to agree.
- There is a difference between how land owners handle private and public land i.e. public agencies that own land do not have it within their focus (priorities or job descriptions) to do something about the brownfield sites.
- Is brownfields a sub issue of urban development?
- Perhaps we should add to our Top 5 Issues, the need for a clear and consistent definition of brownfields. The perspectives the sectors seem to bear on the same definition is different.

Red Group: Breakout Group #2 - the Redevelopment of Brownfields and Improving Site-specific Data on the Environmental Condition of Land

[This second morning session focused on the next three reports: 2 studies by CMHC and one on improving site specific data. Because the two CMHC reports were closely related, they were addressed first leaving the site data paper for later. Each participant was asked by the facilitator to state the perspective from which they view the issues and again give their comments on the discussion papers. The essence of the comments are summarized below:]

- From the perspective of the interface between public policy and the private sector: The role and responsibility of government, the proponent and interest groups is an area where the papers don't focus clearly. Part of the uncertainty arises from a lack of clarity of the issues: how clean is clean and who's responsible? Not clear how this works in the real world.
- From the perspective of the insurance industry: Agree with previous comments. We need to know more about the technical orientation of assessments of risk management in order to make better underwriting decisions. We need to emphasize education of underwriters.
- From the perspective of banking and financial services: Concerned with questions of how far do liabilities extend and where do you draw the line?
- From the perspective of mortgage insurance: Capital is skittish. If we define the costs and the liabilities it would simplify things. We need to define the ultimate costs. Our group is interested in human living conditions since we are in for the long haul with provision of mortgages. Need to know what the costs and liabilities would be.
- From the perspective of real estate development: Found the reports useful. The recommendations in the lending report are forward thinking and present examples. We are starting to look at more sophisticated handling of these issues. The list of 22 best practice points (ch6. p37) are good but could go further on some points.
- From the perspective of a crown corporation that is accountable to both the public and the private sectors: Most of the value of urban sites is intangible. The reports do not talk about the value in terms of removing barriers to investment going into developing the outlying areas of contaminated sites and then using the payback to clean up brown sites. These could be developed for a park or for housing. This option shifts densities. Those types of things were not looked at.

- From the perspective of mining: Greenfield sites are made into brownfield sites as part of our industry. But one could argue that sites are left with fewer metals and that is part of the definition of contamination. Many municipalities rely on existing mines for their tax base. The structure of the tax systems very often affects what an organization can do with an existing urban site. We need to look at the whole issue of the life cycle of the materials we use. This takes us into primary development but also into products. This is not all dealt with in the reports.
- From the perspective of bankruptcy and receivership law: What can the financial sector do to facilitate brownfield redevelopment? Educating the public that making investments means making choices and if it is too difficult to invest here, companies will go to Chile. Companies want the best return on their investments. There is a gulf between lenders and developers. There is a whole vocabulary foreign to regulators. We need to provide a more transparent system of rules for investors.
- From the perspective of real estate development: The cost of remediation is a barrier to development. Also if standards change. If a standard is set at a certain level, the cost of remediation can change dramatically with small changes in standards. A reasonable risk criteria is needed.
- From the perspective of personal trust financial services: Often represent mom and pop investors. Their main concerns are covered by best practices. Qualification of environmental consultants is an important issue. Also, having availability of information on contaminated sites.
- From the perspective of banking: Environmental risk goes beyond the financing projects. Projects which are exposed to environmental liability are a secondary risk to banks. Banks are sensitive to joint several liability, since banks are deep pockets. They try to stay out of control of any properties they finance and are cautious of protection from liability. Banks will want to sever themselves from environmental risk associated with brownfields.
- From the perspective of academics: Reports were well done. At end of housing report, there is a need for coordination that is complicated because of the federal and provincial interests which are concerned. We need to grapple with this. Also, support best practices identified for each sector for which compliance could be encouraged. We need to get beyond platitudes toward buy in so that sectors internally accept and adopt these best practices. With regard to instruments, many were identified but there are more out there, e.g., rezoning, upzoning, downzoning or density to promote capital investment and defining how we calculate property values to promote clean up.

- From the perspective of municipal politics: We need to emphasize risk management rather than regulations and criteria. Education is needed. We are making mountains out of molehills for many of the contaminated sites out there. Rezoning is o.k. but we still need to provide services and pay costs. Value laden discussions put people on edge and don't get to the facts or practical discussions.
- From the perspective of a credit union's risk assessment management approach: If risks are not fully understood, capital is at risk. There is scarcity of capital in the system so we would allocate resources to sectors where we are going to get the best return. Lenders go to properties where remediation has already been done unless they are already involved.
- From the perspective of the trade association of B.C. credit unions: We're involved in the development of Bill 26: Lenders seek clarity and certainty. Commercial lenders have to understand real estate appraisal so they should also have to understand the technical aspects of contaminated sites. Brownfield has narrower definition in that all brownfields are contaminated sites but not all contaminated sites are brownfields. There are economic aspects which trigger whether we can do anything with a site. A site is easier to deal with in a region with high property values. We have to take a reasonable and not an overkill approach. We should not necessarily have the same standards for different types of development. We can't separate the amount of liability from what triggers it.

Summary: Key Issues Discussed

- I. The need to become more technically oriented: both,
 - internally within a sector; and,
 - externally (public and developers, bankers, etc.)
- II. The need to advance the good ideas in the reports of mechanisms to deal with redevelopment problems
 - e.g.. zoning/rezoning density (the national round table could advance these fairly new ideas)
- III. The need for reasonable standards.
 - Concerns over the high cost of overly conservative standards: How do we move all provinces toward more reasonable and site specific standards?

[The discussion then focused on what the different sectors should do to encourage the redevelopment of brownfield sites.]

We talk about the barriers to redeveloping brownfields but what are they?

- Uncertainty.** Banks take risks but they have to understand them. Environmental risks can't be understood. Decisions are based on information re: risks. Very few insurance companies will provide products and services for contamination and environmental pollution. Lack of certainty is a barrier to insurance and financial services sectors.
- Re: certainty:** there is none in the ground, none in the legal system and none in the regulations.
- Remediation is linked to site planning but environmental planning processes are unlinked to the planning process.**

Overcoming some of the uncertainty problems:

- Could occur with education.** Someone in the banking industry should have a strong environmental background who deals with these types of issues all the time.
- Environmental consultants will have to be accredited so that the report they produce is clear and reliable.** Need to have a stamp of approval to say they are qualified. There is an initiative on the go right now to introduce this type of accreditation but it is in the early stages.
- Banks are being overly conservative and could take initiatives.**
- Providing some coordination among planning and environmental regulation systems would be useful.** But it would be preferable to keep them separate for other reasons: environment brings with it public participation and involves both provincial and federal government departments.
- Giving municipalities more environmental responsibility would help to bring down some uncertainty in cases where contamination is minor.** Just as in the case of building codes, the municipality hires an architect to sign off on safety (is certified and insured). We could rely on a consultant to establish the extent of contamination of a site.
- Each sector should set their own best practices.** Regulators may be interested in providing some immunity from regulations to a sector adhering to their own code.
- You can't get uniformity of standards if you don't have it in the liability regime.**

Another barrier to redevelopment is the cost of clean up:

- This includes the cost of consultants. There are serious deficiencies in the risk assessment approach and there are limited options that the provincial government will accept.
- A problem is that there is no tax shelter for the cost of clean up. Remediation is not considered a cost of doing business.

Cost Options:

- There are a couple of insurance companies in Canada that will cover the cost of clean up.
- Problem with the deductibility of remediation costs is that there is a public cost for this which is not transparent. Public costs of clean up should be transparent.
- Environmental Insurance is very exciting for banks. They would be able to lend money based on off loading some risk.
- There are insurance underwriters willing to do work in this area. They are interested in the notion of providing more detail in regulation. There must be some self-regulating body (standards or guidelines for consultants and engineers) that they can measure against. Until that happens, not much is likely to change in the insurance sector.
- The ministry does not want to specify standards for individuals and would rather provide a set of standards for what an assessment should contain.
- Maybe the best thing is to require people to be accredited.
- In the last five years insurance companies have found that this industry has been unprofitable. Without standards there is only so much the insurance industry can do. Bonding: we should be able to bond insurance contracts.
- When you go to an insurance solution, you shift the cost to one sector of society. You have solved the risk problem for the lender but it has not solved the cost distribution problem.

Green group: Breakout Group #3 - continuation of sessions on the Redevelopment of Brownfields and Improving Site-Specific Data on the Environmental Condition of Land

[To provide information useful to compare with the other discussion groups, the green group revisited the question: What can each sector do?]

Financial Services

- Insurance industry could work with NRTEE to discuss new products.
- Liability for lenders and ways they can come into the marketplace.
- They should continue to require more information on brownfield sites.
- Set conditions for liability that require a professional site inspection, allowing insurance to be put in place.
- Develop a data base for the information collected on the sites.
 - We have to define the level of assessment that will be necessary. i.e. initial inspections and thorough inspections implicate very different costs. (Phase I and Phase II)
- Assist or release funds to remediate brownfields. Release funds to take higher (or known) risk.
- Every group must be responsible to learn more about the issues in order to evaluate the risks. Financial services should be able to rely on the experts i.e. assessments, but there should be minimum level of understanding in order to read and understand reports and assessments from experts.
- Showing openness to site-specific assessment.
 - Yes. If the government backs us by supporting our reliance on professional certification or offers a guarantee against that certification.

Business/Development

- Educate themselves about risk reduction strategies, like new insurance products.
- Develop expertise about brownfield sites, there are development companies in the US. that focus on developing only brownfield sites. Form a partnership between environmental engineering and real estate development.

- Focus on prevention, pollution prevention.
- Develop information tools about brownfield redevelopment that can be sold as an economic venture.
 - Who would want this information? Would people trust it?
- Address how they combine their desire for less stringent standards with less public involvement. If you want to have less stringent standards, it doesn't go well with less public involvement.
 - No one said the standards should be less stringent, they should be revisited.
- Communication with the public - increased communication and dialogue. Especially if there is more trust given to the developer.

Municipalities

- Provide more flexibility in zoning requirements and benefits.
- Address the liability issue. Legislation to relieve the liabilities in making approvals. Work with the province to get a faster approval process.
- Work out policy for remediating municipal land.
- Reduce the cost remediating sites, i.e. tax incentives and other incentives .
- Offer trade-offs for density/housing.
- Make insurance available for municipalities.
- Rely on BC standards rather than impose standards of their own - consistency.
- Divorce the on-site and off-site cleanups - separate on and off-site approvals.
- Take on many of the functions that the provincial government would normally administer - expedite the processes - most of the functions can be delegated by agreement to the municipalities.
- Offer policy incentives for brownfield redevelopment i.e. at Official Community Plan level.
- Contribute a portion of the potential taxes gained from brownfield redevelopment towards the clean up and brownfield redevelopment .

Provincial Government

- Expand letters of assurance to the building code (up to high risk sites).
- Adopt Bill 26.
- Develop a regulated profession responsible for assessment.
- Be involved in the cost/benefit - finance if in province's interest
- Create an incentive for the private sector to function through tax incentives and/or credibility - when the site potentially contributes to the economy.

Federal Government

- Provide tax incentives for brownfield redevelopment. GST income and business income taxes.
- Expand existing research tax benefits.
- Compile data for standards, further funding.
- Address the specific application of the Fisheries Act/Harmonization.
- Cooperate between Federal, Provincial and Municipal Governments.
- Bankruptcy Insolvency Act (BIA) amendments are an improvement over the current law but does not address the complexity, it is too limited. Revisit it and compare it to the BC legislation.

Environmental Groups and First Nations

[Side comment - We have ignored First Nations as one of the groups who will have to deal with on site contamination issues.]

- Play an important role in education.
- Participate in process.
- Communication.
- Cooperation between environmental groups, government, First Nations and business.
- First Nations is a significant issue, many of the bands are very urbanized.

The benefits of site-specific data:

- Improve the management of land.

- Identify contaminated sites, including brownfields.
- Reveal opportunities for the private sector.
- Clarify risk.
- Link environmental risk to the market price of land.
- The documents are focusing on the financial impact first, the environmental and health impacts are low in priority.
- Can we have a data base so that the history of land is recorded and future buyers can track that history?
- Our desire for data will always surpass our ability to collect it. Health data will be inevitably be missing from the potential data base you have suggested.

Issues

- Have to make a distinction between private information and public information. Who owns what?
- There is a lot of information already collected, a central source is not necessarily desirable, but rather make the existing information more accessible.
- The 5 Strategies for on-site specific data. What is your reaction?
- It's all wrong. There is no benefit to site-specific data or if there is, it is so small. It is a make-work project, the information will be outdated as soon as it is available.
- Part of assessments are historical, this information would be useful for that purpose.
- The alternative is individual assessment.
- Who will develop the list and inventory?
- For the most part it won't tell us about the sites that need to be remediated. There is a logistics problem - can't facilitate the data collection.
- We want a system to store information on sites, not to list contaminated sites.

Red Group: Breakout Group #3 - continuation of sessions on the Redevelopment of Brownfields and Improving Site-Specific Data on the Environmental Condition of Land

[The first part of the afternoon was focused on continuing the discussion of the second morning session and adding to the list of actions by sector started earlier.]

On attracting Capital:

- An issue which was not addressed this morning is capital (as opposed to loans and insurance). Capital is skittish. One of the problems with developing brownfields is attracting capital into the sites, not debt. Capital will go where it sees a reasonable return. Tax incentives have a large role to play in cases where capital would otherwise go.
- What is the product to attract equity in brownfield redevelopment? A reasonable insurance of profit. A brownfield is a development like any other but with a higher risk. Equity holders have to be the ones at risk not the bank. The key to development is money.
- Few real estate developers are large equity shareholders in B.C., especially in the case of contaminated sites. The biggest problem therefore is getting the financing.
- The concerns of the equity holder are the same as those of the lender (risk and potential gain). Equity/capital counts. If you want to get capital interested, you need to reduce the uncertainty.
- The whole issue here is that we want to steer investment toward the brownfield and not to the suburbs. In the U.S. there are companies that invest in at risk properties and they expect returns of around 50% and they would be willing to do it in Canada also.
- Talking about how to get financing before getting capital is putting cart before the horse. What are the questions that the equity holders have? Possibility of partnership is high in a good location.
- Encouraging joint partnership between industry and the public interest has been done before (New Westminster waterfront) and is viable. There is some benefit to the community in having an urban contaminated site developed.
- What about creating a market? Taking bids on contaminated sites? Problems may flow from ownership issues. Not all sites are government owned.

What about ENGO's?

- Aside from their advocacy roles, ENGO's often represent local community organizations. They are familiar with local environmental issues and participate. They may not be happy with the final result of the day but they do assist local communities in getting involved. They are concerned that there is a fair and open hearing on issues of public interest.
- The issues these groups deal with normally don't involve contaminated sites. This is not as high a priority for these types of groups.
- They may have an interest and constructive role in the use of site-specific risk management techniques. They would participate in the decision making process to determine procedures and criteria for risk assessment.
- Lots of decisions made without the participation of local community groups. If they are not involved there can be a backlash at the end of the day after decisions have already been made. They can have a productive role in this part of the process.
- The public are often viewed as an obstacle. Their constructive role is not always recognized.
- Public paranoia leads to unnecessary regulation. It can be counterproductive to involve them.
- It takes time to create a knowledge base in the community when one site is considered at a time. Involving ENGO's can help to bridge the gap.
- Problem is that ENGO's don't always represent the community. Community health centers might be a good model for communication with the public.
- ENGO's gain their legitimacy because other sectors fall down in their role of communication. This leads to issues of trust.
- What about thinking of the public as a substitute for regulators?

Summary: Recommended Actions by Sector

Municipal Government

- zoning/rezoning density
- narrowing bands between polluted / contaminated sites
 - developing definitions for contamination; smaller issues to be dealt with by municipalities according to provincial or federal standards

Provincial Government

- assessment values
- create clarity/certainty
- reasonable standards (transparency) - site specific
- best practices
- harmonization of liability regime
- risk management on-site

Federal Government

- accept alternate financial liability instruments
- deductibility of remediation costs

The Financial Services Sector

- risk assessment
- education
- certification of assessors and consultants
- creative insurance products for developers (e.g.. capping of liability on costs of remediation of land; and, bonding of environmental consultants' insurance)

All Sectors

- best practices
- government loans
- vehicle to promote equity investment (e.g.. joint partnerships of government and industry)

ENGO's

- participation and involvement for fair and full consideration of issues

Business in General

(no recommendations)

[The discussion then focused on the final paper: Improving Site Specific Data on the Environmental Condition of Land]

[The facilitator asked sector representatives to indicate how important information is to their sector.]

What sort of data base should be developed?

- There are common law principles of not incriminating oneself or giving information about one's land. If there is a database we may have to consider rethinking these principles.

What are the consequences of mandatory disclosure and site registry?

- It is a real problem. There is a stigma attached to contaminated sites even after they have been remediated. In the U.S. there is a mandatory reporting service but exposure to prosecution has led to some sites being removed from their registry for this reason.
- It is not very useful. Phase I information is not that reliable or detailed enough to be useful. Lots of things have changed since the early 90s when it was first proposed.
- Having to report findings to government is a disincentive to doing the investigation.
- What if there was a requirement to file but a limited immunity to liability?

Re: Bill 26 Site registry with phase I or maybe phase II site information:

- Prosecution is an issue.
- Could the information be made part of the current property registry? The land title office is reluctant to deal with information that has legal implications.
- The stigma attached to the land can never be erased. Regulators can get information in other ways to help formulate policy without this type of mechanism. There is lots of this information which already exists (GIS, current and historic land uses)
- Property owners who have gone forward to try and have property values reduced (tax purposes) because it is contaminated have been registered already. The problem with the environmental registry is that only a few sites are included. Data exists Canada wide.
- Lenders have asked to have all environmental information be collected in one place. There is a drive from this sector to get this information together.

- Why do we need the data base? We would be creating a database with limited usefulness. Phase I assessment is very useful to a lender. Does more have to be done?
- Should the public be allowed to know about contaminated sites? Depends on how reliable the information is. If the purpose is to know the risk, the information is not necessarily reliable. Getting information from Environment Canada can be tedious.
- Maybe the question should be what information do we need? To not lose the information generated, it should be in some place. If a national registry was put in place, it would have to be used at risk of user.
- The goal should be to reduce transaction costs. Reducing the cost of finding out information will reduce the cost of otherwise collecting it. There is benefit to standardization and accessibility of information.
- Problems with such a data base are proprietary information. We don't know who did the assessment or whether you can trust it. Its efficacy and need (data base) given the cost is questionable.
- If contamination rather than pollution is included on the registry, it could be perceived as more than the problem really is by the public: unnecessary fear.
- There is a land management problem in southwest B.C. The information that is currently available is concerned with land use and historical use, not the environmental quality of land.
- What would happen if we put it all (land use and environmental information) out there?
- The public does not know the difference between pollution and contamination. That is, the difference between what's manageable and what's a threat.
- The value of land and taxes would shift to those who do not have contaminated land. This is not an incentive to develop brownfields.

Options:

- A better regulatory tool is vendor disclosure of environmental reports detailing material environmental problems at the site at the time of the sale of land. If the vendor doesn't know anything then the purchaser does a better job of investigating. Full disclosure would have to be accompanied by some penalties of non compliance.

- We don't need to disclose the information to the public because the market would regulate it. Lenders and equity holders would demand a full assessment. The exception is that this would not happen.
- Real estate does not have a defined life. The information about what has gone on the land many years ago is hard to find. Information is needed but the registry is not. A lender would prefer to have the most current assessment rather than trust information in a registry.

Who would use a registry?

- Financial institutions probably wouldn't put that much emphasis on it. They are still going to order a full review.
- Maybe it would be used for residential mortgages. Smaller businesses or individuals would find the cost of a Phase I inhibiting. Once the amount of the loan gets above a certain level, the bank will want its own assessment done.
- In Toronto, it is used as a municipal planners tool. There is debate now as to how to link to it to site clean up (planning but not financial tool).
- A Phase I signals a property that should be checked.
- A municipality will monitor land use changes. Municipalities are not asking for a data base but are finding the information in other ways. Just like banks will cover their investments, so will the municipalities cover their tracks.
- It is not the environmental organizations that are leading the charge for more information but the financial institutions.

Summary:

There is diversity amongst the group but overall, there are strong reservations toward implementing a registry or data base. Strong cautions are being expressed against it. [The facilitator identified three themes from this discussion:]

- I. If there was a registry, it should not have full assessment information in it but be limited to information related to government action. It should be a record of decisions.
- II. Penalties for less than full disclosure of environmental information would have to be in effect if there was no registry. There may be legislative way to do this (by vendors).
- III. With or without a registry, there is merit in introducing mandatory disclosure by vendors and borrowers

Plenary Session - review of the findings of the breakout groups and selection of priorities

Action priorities and who might take that action?

- I. Develop realistic and pragmatic standards. Risk management properly incorporated into the process. Are the current numbers realistic? Who? Leading roles; Provincial and Federal Governments. CCME has had a dramatic effect and should continue to play a big role to encourage uniformity in business. There has to be input from business too. This theme came up in both groups.
- II. Provide education and understanding around the difference between contamination and pollution. The difference between contamination and pollution, high risk vs. low risk. What is threatening health and environment? There is a relatively small number of sites that are actually threatening. NRTEE should understand the definitions and make sure the public understands them too. Education role for the NRTEE.
 - Is there really a difference between contamination and pollution, which brings us back to standards. Consider whether there ought to be a difference first. There is no conventional definition between pollution and contamination. There is a scientific definition. This is a red herring. Test to see if it is within the conventional wisdom that there is a difference between pollution and contamination.
 - Need further discussion on risk and risk communication. Still lots of work to be done on risk, perception of risk and harm potential.
 - Careful how much time we spend on this issue - pollution is a defined term in our legislation (BC). We have a fundamental agreement as to the concepts. The mere presence of contamination in our environment does not necessarily mean the need for remediation. Can't spend a lot of time debating the definition of these words.
 - The definitions are different depending on different circumstances, jurisdictions, area and/or regions. It is not a scientific issue, it is a legal issue.
- III. Refine definitions. Ask the Round Table to consider which words they want to use. Make them aware that definitions is an important issue. Define brownfield, brownfield redevelopment and contaminated sites. Who? The NRTEE.

- IV. Adopt BC regulation. BC should move forward with adopting the regulations in Bill 26. Who? Provincial Government. Look towards consistency between Bill 26 and Federal Legislation.
- V. Pursue harmonization. Consistency between Bill 26 and Federal Legislation (Bankruptcy and Insolvency Act). Figure out what the positive elements are, so that we can have consistency. Three years from now, take a look at Bill 26. We can learn from other organizations as well. There should be a group that is responsible for looking at the various legislations in different jurisdictions.
- VI. Learn from experience in other jurisdictions. Stakeholders should meet to review national consistency (this would be a supplement to the provincial initiative; revisit provincial legislation).
- VII. Use alternate methods of overcoming the barriers, given the definitions, at the development level. Develop a handbook - and use it!
- VIII. Shift to focus on the outcome. What protection do we want against the impacts on health and the environment. Development of an agreed set of indicators to measure impact of legislation and other initiatives on the redevelopment of brownfields i.e. fairness of regimes, effectiveness of allocation mechanisms for assigning responsibility for clean up of orphan shares and orphan sites, and criticism around windfall . Is it working?
- IX. Attract equity capital to the development of these sites for those willing to accept the risks. This may involve some form of direct public investment or tax incentives. Who? Federal Government on the tax side, but there might be some incentive for the municipal government on public investment side, subject to a cost/benefit analysis. Cost and benefit have to be independently measured.
- X. Provide economic incentives for land owners to develop brownfield sites. Provide it for those who would not otherwise develop the sites and for circumstances which there is a return of some benefit to society. Who? Primarily municipal government but also provincial or federal governments regarding tax incentives.
- XI. Review Bankruptcy and Insolvency Act. The current amendment to the Bankruptcy and Insolvency Act is flawed. It gives exemption to small businesses putting environmental clean up ahead of securing creditors. This runs counter to provincial initiatives. Who? NRTEE, business, finance and federal government. This point was not a consensus position.
- XII. Develop cost effective creative solutions for disposal.

- XIII. Set uniform standards in the environmental field. This involves certification of individuals. Make it a public standard that stakeholders can rely upon. Who? the provincial government, accrediting associations membership (there is a reluctance on the part of practitioners for accreditation).
- XIV. Adopt Best Practices voluntarily (each sector). Take responsibility for articulating the future. These Best Practices could be Codes of practice for each sector.
- XV. Conduct cost effective cost/benefit analysis for societal costs and the public interest. Need to look at contaminated sites relative to other public needs.