



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

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Financial Services: Brownfield Sites

**NATIONAL ROUND TABLE ON THE ENVIRONMENT AND THE ECONOMY
TASK FORCE OF THE FINANCIAL SERVICES PROGRAM**

SUMMARY NOTES

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I. Review of the discussion paper: Contaminated Sites Issues in Canada

The key highlights of the review of the discussion paper about contaminated sites are:-

- Paper gave a good overview of the issues involved and was comprehensive and accurate
- The question about liability was not well addressed. In general, it was felt that the question about liability was not well defined and not quantified.
- The issue of risk management was not adequately addressed
- The roles and responsibilities of various levels of governments were not clearly defined
- Possibility of national accreditation for consultants dealing with contaminated sites was not addressed.
- Issue of societal costs was not addressed adequately
- The opinions of various decision players were not captured in the paper. Particularly, the taxation issue was not dealt with.

General Discussion:

-In general, it was felt that the paper does accurately reflect the evolution of policy on contaminated sites in Canada. Site identification was brought out as a major issue in the paper. The fact that the paper had made reference to many Canadian examples as opposed to American examples was very useful.

-When the question about liability was raised, it was noted that the issue is not quantified and well defined. A question was raised as to what is real liability? In the ensuing discussion, a differentiation was made between perceptual liability and real liability. It was felt that perceptual liability is more important than real liability. Liability is less of a problem than is perceived to be.

-In terms of risk management, it was felt that the paper is addressing a myth since the risk of contaminated sites cannot be reduced to zero. A comment was made that for a number of municipalities, the question of liability was a rather confusing issue.

-The issue of costs for government was not well addressed. It was noted, but was not

quantified.

-A consensus emerged that the question of definitions was important. What a brownfield in the U.S. means is quite different from what it is in Canada. The word "contaminated" in one report may mean something different in another. In response to the question about the number and the definition of contaminated sites, there was a mixed reaction. After some discussion, the consensus was that this issue was not dealt with adequately in the paper.

- There was a comment that the general trade off for risks taken is not there. A related question was posed as to whether there existed a trade off analysis methodology. The response was that trade off analysis was not a scientific issue, it was a subjective issue.

-A question was posed about who is going to pick up the cost for orphaned sites and how it would tie in to joint and several liability. In the discussion that followed, several options were considered such as small businesses or polluters paying. There was a consensus that the paper does not address the question of qualifiers well.

-It was felt that the paper does not address the issue of societal costs well. There was a discussion about urban intensification and its relationship to land use. It was identified that there were qualitative comments on the Golden Task Force Report on this issue. There was an acknowledgment that the paper deals with a range of issues nationally. In reference to land use issues and contamination in one of the papers, there was a concern that the statistical numbers seemed too low.

-There was a general consensus that risk assessment was poorly done. The costs associated with risk assessment are high and there is a need to people more on this subject matter.

-There was an acknowledgment that there are jurisdictional differences between provinces on the policy of risk management. There was a question as to whether risk management should be left up to policy or made into regulation/legislation. It was suggested that if risk management was legislated, it would provide greater certainty for certain stakeholders such as banks. An argument was made that other stakeholders such as developers would want more qualitative information which would be better obtained through policy. To resolve this matter, a suggestion was made that initially, during a period of uncertainty in risk management, have a policy approach. Once some sort of certainty has been achieved, legislation may be a viable option.

-There was a question as to who should the risk assessment benefits and liabilities. Governments? Developers? Financial sector? There was a suggestion that the government deals with this issue in different ways and therefore would be the best decision maker. In response to this suggestion, it was pointed out that between different levels of government, there exists a problem of coordination of activities. A comment was made

that it seemed as though municipalities have a lesser responsibility on the liability issue. There seemed to be a shift of this liability towards the province. There was a general consensus that the discussion about roles and responsibilities of governments was not brought out in the paper. There was a need to clarify the roles and responsibilities of the federal, provincial and municipal governments.

-It was suggested that a summary section on the roles and responsibilities of governments would be useful.

-With regards to responsibilities, other questions were also brought up. There was a question as to who takes responsibility of what to do with public space and who is responsible for promoting sustainable living.

-There was a suggestion that it should be governments, but it was pointed out that the roles of different levels of government were not well defined.

-Another suggestion was made that financial institutions played a key role in financing the projects, thus they shared some responsibility. The liability issue was raised and it was suggested that the focus should be more on the developer. There seemed to be an agreement that investors/the financial sector could share some of the risks in terms of insurance, provided that the climate of risk was made reasonable. (perhaps through legislation).

-There was another suggestion that ultimate responsibility lies within the public sector. A comment was made that when dealing with a minor change, the private sector could take on the responsibility, but when the change was major, responsibility should be within the public sector.

-There was a suggestion that a legislative remedy could be provided as a remedy to victims of contamination. This could be under Private Actions: which provide rights outside common law to remedy victims of contamination. It was noted that this practice is used in some jurisdictions such as British Columbia where there is allowance for private right of cost recovery.

-Questions were raised about how private action cost recovery would work and who should be concerned about it.

-Another issue which was raised was that national accreditation processes for consultants were not addressed in the paper. In response to this concern, it was noted that the *Ministry of Energy and Environment is working on this matter.*

-The question about who should pay for research and development costs was raised. There did not seem to be a consensus as to whether the paper addressed this issue well.

-It was noted that since if it is less expensive to develop greenfield sites, the development of brownfield sites would be disregarded. Thus, there was a suggestion that emphasis should be placed on the cost factor of brownfield sites development.

-In response to whether national issues were discussed in the paper, the general response

was that issues in the paper were more “Torontocentric” and “Ontariocentric”.

-In identifying the consequences of not dealing with some of the outstanding issues, the following were the responses:

- The benefits of developing brownfield sites would be lost.
- There would be extra costs incurred through development of greenfield sites as a result of damage to the ecology
- Costs associated with the no action alternative are high. There was a general consensus that there should be a priority placed on the question as to whether the case of brownfield sites is getting worse.

II. DISCUSSION OF THE REDEVELOPMENT OF BROWNFIELD SITES

The key highlights of the discussion on the redevelopment on brownfield sites are:-

- The term “brownfield” does not convey a message of decontamination. There needs to be a redefinition of “brownfield” sites.
- Acknowledgment that the responsibility of taking on the risks associated with developing brownfield sites is a shared responsibility between the various levels of government, the public sector, the financial sector and the general public.
- Risk management could partially be handled by the insurance industry.
- A need to generate awareness about issues of brownfield site was acknowledged. Costs related to educating local residents about brownfield sites was deemed to be a shared responsibility between the developer, the provincial and municipal governments and the general public.
- There was a consideration for the possibility of private civil action as a legal means for compensation (if needed once the site was developed)
- A need to clarify the limits of liability was identified
- The need to establish a standard of care in the cleanup process was identified.
- Acknowledgment that there was a need for infrastructure for the development of brownfield sites.

General Discussion:

-There was a discussion about the definition of contaminated sites as opposed to brownfield sites. The term "brownfield" implies government involvement and due to the negative connotation in the definition, it was felt that people may have trouble relating to the concept of identified brownfield sites as there is an implication that these sites will get special treatment. A suggested alternative term for brownfield site was "*Restoration Site*"

-A question was posed as to whether a "potentially contaminated" site was the same as a "brownfield site". In response, a comment was made that if the City of Toronto was asked "how many brownfield sites exist in Toronto?", the response would be "Zero". If the City was asked "how many potentially contaminated sites exist in Toronto?", the response would be "Hundreds". The concept of brownfield sites had a connotation of being beyond restoration, whereas with potentially contaminated sites there was a possibility of restoration.

-There was a suggestion that one of the recommendations of this NRTEE should be an alternative term for brownfield.

-It was noted that the usage and acceptability of a term depended on perception, if an alternative term is to be suggested, the perception of that term should be noted.

-There was an acknowledgment made about a philosophical shift in who should be responsible for risk taking. Comment was made that this shift would not be made in the financial services sector because if brownfield development was not a good business proposition, the financial services sector would not take on the risk. When a question was posed if the financial services sector would finance a brownfield project, the response was that it depended upon what analysis was done on that site and what market value would be placed on that site.

-There seemed to be a general consensus that risk taking should be shared by all the stakeholders involved. That included various levels of government, the public sector, the financial sector, the developer e.t.c.

-The main problem in redeveloping brownfield sites was identified as the uncertainty involved. It was felt that once these sites are cleaned to the current level of knowledge, there will be more certainty on the issue. There was a suggestion that if some certainty is established, risk management can be transferred to the insurance industry.

-There was a consensus that areas of uncertainty should be identified. This could be done through a focus on environmental investigations.

-The major obstacle to developing a brownfield site was identified as local residents residing nearby the site as they will protest unless they are reassured that problems will not occur if the brownfield site is developed. How can this assurance be given? Through education and legislation.

-On the issue of education, it was suggested that peer review funding should be allowed to residents near brownfield sites.(Something like intervenor funding.). There was also a suggestion that education could be based on scientific evidence gathered from the site. On the question as to who should be responsible for education costs, it was determined that education was a shared responsibility between the different levels of government, the developer/proponent and the public.

- There was a suggestion that the education should be kept at a general level as opposed to disclosing site specific knowledge since this information has the potential of wavering public confidence if the level of contamination about that site is not known.

-It was suggested that risk communication can be carried out the federal government, provincial government and the developer of the site.

-The other way to obtain approval of local residents may be through assuring them a means of actions in case problems developed later on. There was a suggestion that private civil action should be allowed in case later there was a discovery that the cleanup was not sufficient. The question arose as to whether emphasis should be placed more on education at this time or should there be a concern about remedial processes for possible future problems. There was no consensus on this matter .

- The question of liability was raised once more. There was a discussion on future liability. It was noted that due to new technologies, new information and science, standards may change in the future. What are the limits of liability? Is it sufficient that if you meet current standards, you will not be held liable in the future? The ensuing discussion identified the requirement to clarify the limits of liability.

-There was also a suggestion that governments should identify and formalize the process for clean up of brownfields. The need to establish a standard of care in the cleanup process was identified. A comment was made that a report for contaminated sites which generates rules should be created. An example of such a report is the Building Code which is developed by technical expertise and over the years, rules have developed from it.

-It was determined that the level of confidence to develop brownfield sites needed to be raised. How could this be done?

-A good loan evaluation ratio can be established by banks. This would raise

investor confidence.

-There was a suggestion that security investment dealers should also get involved in funding.

-Another suggestion was that banks should be involved in the reform of central registry. Central registry gives information on sites in relation to certification of prohibition. One person or a squad team should be assigned to determine when a site is getting problematic. As soon as a problem is identified, deal with the problem right away in order to sustain the development of the brownfield.

-Venture capital business should be more active in funding of brownfield sites.

-Provide tax breaks as an incentive to developers in order to develop more brownfield sites as opposed to greenfield sites.

- A need to service brownfields sites was established. It was suggested that the federal government should play a role in funding for the infrastructure around brownfield sites. The municipal and provincial governments would also share the costs of servicing these sites.

SUMMARY OF ROLES AND RESPONSIBILITIES

□ FEDERAL GOVERNMENT

-Risk communication

-An infrastructure for brownfield development

-Support activities to create rules for standard of care

• PROVINCIAL GOVERNMENTS should be involved with

-Education efforts on brownfield issues.

-Risk Communication

-Take an initiative to identify and formalize the process of cleanups

• MUNICIPAL GOVERNMENTS

-Provide funds for and educate public about brownfield site development

-Generate public trust on brownfield issues

• PROPONENTS/DEVELOPERS

-Provide funds for and educating public about brownfield site issues

-Be involved in risk communication

-Be involved in creation of standards of care

• FINANCIAL SERVICES SECTOR

-Provide funds for development of brownfield sites

-Banks to provide a good loan evaluation ratio

PRIORITIES:

-For the financial sector, clarification of liability was a major issue. If liability was clarified, the question of how clean is clean would be addressed. The role of government was to clarify the liability question through legislation.

-There was a need for banks to clarify what they were looking for in order to fund brownfield projects.

-The need to educate people about brownfield sites was reemphasized.

III. DISCUSSION ON THE IMPROVEMENT OF SITE SPECIFIC DATA ON THE ENVIRONMENTAL CONDITION OF LAND

The highlights of the discussion on site specific data are :-

- There is a recognition of the benefits of improving site specific database.
- Reference is made to the good progress especially in British Columbia and Ontario
- Information from site specific database would be quite useful to certain stakeholders, especially the financial services sector.
- The idea of creating a provincial registry where all the information could be accessed was contemplated.
- Integration of other land registries discussed

General Discussion:

-Overall, the discussion group recognized the benefits of improving site specific data base

-In the discussion on this issue, there was a recognition of the progress made in this area, especially in British Columbia and Toronto

-Discussion started with the question as to what the benefits to getting site specific data are. It was noted that if a site study is not done, potential impacts of the site can be missed. The most critical information about a site is the form of land use .

-There was a suggestion to form a database in order o keep track of site specific data on an ongoing basis. A site registry would be a formal legislated place where information about sites can be amassed and legislated. A comment was made that availability of such

information would be a disincentive for developers to do their own assessments. On this comment, the question of interpretation was raised. It was determined that the information which was amassed on the registries could be interpreted differently by different stakeholders.

-Site registry information would be useful in providing information on title searches, certification of approval and other relevant information. Putting together a list of potential brownfield sites would also be beneficial for public concerns. The main idea was to get one registry where all the information about sites could be obtained. It was suggested that this could be done in phases.

-The idea of creating a provincial registry was discussed. The question as to whether such a registry was worth the effort was discussed. It was noted that for regulators, the process of creating such a registry would be costly and tedious. There was a suggestion that other land registries should be integrated to include brownfield sites. This idea was countered by the concern that integration of the registries would clutter them up.

-A question was raised that if the registry concept is a privately funded concept, is there a need for government intervention. The general response was that government information was important since the government needs to regulate what goes on in the registry.

-In response to the question of who should pay for the registry, the general response was that it should be a consortium made up of the municipal government, the developers, the financial services sector and other users of the registry. It was suggested that the municipal governments should take a lead in creating a site specific registry as opposed to the provincial government. Development of the registry should happen at the local level and once it is organized, it could be handled at the provincial level. The role of the province on this issue was to listen to and consult with the municipalities and general public. The provincial government should help in bringing municipalities' initiatives together and mandate a requirement that information should be provided to the registry

- The question of who would benefit from site specific database was discussed. It was acknowledged that the financial services sector would benefit from such a database as it would serve as a handy reference tool. The database would also reduce the costs of searching which the financial sector generally has to incur. The benefits to having the financial sector take responsibility of the database would be that it would bring order to data collection and environmental considerations would be dealt with sooner. The data base would also be useful for vendors, developers, consultants and other stakeholders.

-The issue of what was the most cost effective way of managing a site specific data base was raised. How can information be gathered and relayed in a cost effective way? It was noted that currently, information on historical land use data base is publicly available. It was suggested that Geographic Information Systems can be used for information purposes.

-There was a discussion on who should pay to maintain the site specific database? Many different alternatives were considered.

- User pays for the use of the registry (British Columbia example)
- Each landowner will have to register on a specific registry at their own cost (Quebec example)
- Since the financial sector is one of the main beneficiaries if the data base, there was a suggestion that they should incur part of the costs

-There was a recognition that the role of the federal government was to act as an information provider on such issues. It was acknowledged that this NRTEE could be considered a federal government initiative to high light the issue of site specific data.

SUMMARY OF ROLES AND RESPONSIBILITIES

• FEDERAL GOVERNMENT

- Should act as a facilitator to bring forth such issues
- Should act as an information provider
- Set some guidelines for data collection
- Statistics Canada should be involved in gathering national data

• PROVINCIAL GOVERNMENT

- Play a coordinating role in bringing municipal initiatives together
- Mandate a requirement that information must be provided for the registry

• MUNICIPAL GOVERNMENTS

- Should take the lead role in terms of development for the registry. Should partially finance the costs of a registry.

• FINANCIAL SERVICES SECTOR AND DEVELOPERS

- The financial institutions and developers may be a part of the consortium to pay for the costs of site specific data collection