

## PERSPECTIVE

### **Ethical Issues in Brownfields**

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When the editors announced that there would be a special issue on brownfields they indicated that it might be a good idea to have an ethics editorial on brownfield-related challenges. I pulled out my notes taken during the time that the brownfield solution was just beginning to be formulated in the early 1990s. The whole program stemmed from a bad situation created by good intentions. The intention to clean up polluted areas affected the landowner, the property sold at tax auction, and the unwitting investor: huge expenses were involved, and there was an economic inability to deal with past choices of correction. The selected solution was to redefine environmental regulations where a full cleanup might not have any tangible ecological or health benefits. The classic argument was that if it was acceptable to cap a landfill, why did a person need to dig up a parking lot to remove chemicals already well sequestered in the ground below? The pollutants were doing little to no damage where they were. Leave them alone.

The brownfields site definition is found in Public Law 107-118 (HR 2869), the Small Business Liability Relief and Brownfields Revitalization Act, which was signed into law January 11, 2002. The act revises Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 [42 USC 9601(39)(A)]: *The term brownfield site means real property, the expansion, redevelopment, or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant.*

The term itself was coined in order to highlight a contrast in development choices. At the time, all the prime development properties were the *greenfields* surrounding cities: the agricultural areas. Cities were growing outward into lands being sold as a result of high tax burdens and high potential profits for the usually struggling farmer. As growth expanded at the edge of the city, the core declined. Abandoned buildings, low property values, and poverty made these areas poor investment choices. In many areas, these old and often industrial downtowns were originally occupied well before environmental laws were in place, and the poverty was compounded by pollutants. Unwanted people, in unwanted buildings, with unwanted compounds in the soil & the brownfield name was perfect. It also set up a major conflict.

Nearly concurrent with the development of the brownfield philosophy came the awareness of environmental justice issues. Simply put, why do most redevelopment or NIMBY (Not In My Backyard) projects occur in a way that displaces the poor and minorities more than other people? There are two answers to this. First, there are remnants of actual prejudice, but more often the answer is economics. It is simply cheaper to tear down and redevelop slums than upscale subdivisions or successful office parks.

So, now the unwanted people in unwanted buildings with unwanted chemicals in the ground are captured in the embrace of laws designed to encourage their displacement. Even if the brownfield segment of the city is not residential, its redevelopment will have a ripple effect on neighbors, driving property values up and encouraging landowners to redevelop. Remember that the landowner is usually not in residence, and displacing the poor tenants for a profit is not much of a deterrent.

The environmental professional, whether as a government agent or a consultant is, and will be, faced with trying to resolve brownfields and justice issues. The apposition of philosophies may spawn the greatest number of challenges and be difficult for us to deal with as a profession. This is especially true when one acknowledges that the brownfields philosophy is founded in both legislation and public funding.

As individuals, however, there may be other challenges arising from the work in the trenches. The ethical challenge in brownfield implementation is nothing more simple (and yet so incredibly complex) than the fact that it is still new. The brownfield program inserts a new set of laws, regulations, guidelines, and philosophies into an existing and matured system of interacting regulations. From small single-parcel projects to large-scale developments, we environmental professionals are charged with integrating the spectrum of regulations, from municipal to federal, and producing building permits that meet the needs of clients. We know how to do this because we have education and lots of experience. The brown fields program has the ability to unravel known regulatory interactions, depending on who is at the negotiating table on any one day in any one office. The obscure nature of the interplay means that both regulators and consultants will be inventing new regulatory fabric on a project basis. As environmental professionals, we must ask about the effect of the precedent we may be setting. The law is passed; the administrative codes are there. Now we consultants and regulators will interpret them. Our actions will become the cannon fodder of case law.

What will you do when faced with satisfying the needs of an individual client (or applicant) while setting a precedent that may be burdensome to future generations?

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