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Official Report of Debates (Hansard)

Friday 7 September 2001

Journal des débats (Hansard)

Vendredi 7 septembre 2001

**Standing committee on
general government**

**Comité permanent des
affaires gouvernementales**

Brownfields Statute Law
Amendment Act, 2001

Loi de 2001 modifiant des lois
en ce qui concerne
les friches contaminées

Waste Diversion Act, 2001

Loi de 2001 sur le
réacheminement des déchets

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LEGISLATIVE ASSEMBLY OF ONTARIO

ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

**STANDING COMMITTEE ON
GENERAL GOVERNMENT**

**COMITÉ PERMANENT DES
AFFAIRES GOUVERNEMENTALES**

Friday 7 September 2001

Vendredi 7 septembre 2001

The committee met at 0900 in room 151.

**BROWNFIELDS STATUTE LAW
AMENDMENT ACT, 2001
LOI DE 2001 MODIFIANT DES LOIS
EN CE QUI CONCERNE
LES FRICHES CONTAMINÉES**

**WASTE DIVERSION ACT, 2001
LOI DE 2001 SUR LE
RÉACHEMINEMENT DES DÉCHETS**

Consideration of Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters / Projet de loi 56, Loi visant à encourager la revitalisation des terrains contaminés et apportant d'autres modifications se rapportant à des questions environnementales;

Bill 90, An Act to promote the reduction, reuse and recycling of waste / Projet de loi 90, Loi visant à promouvoir la réduction, la réutilisation et le recyclage des déchets.

The Chair (Mr Steve Gilchrist): Good morning. I call the committee to order for the second day of hearings on Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters; and on Bill 90, An Act to promote the reduction, reuse and recycling of waste.

**URBAN DEVELOPMENT
INSTITUTE/ONTARIO**

The Chair: Our first presentation this morning will be from the Urban Development Institute/Ontario. Just a reminder: you have 20 minutes for your presentation.

Mr Neil Rodgers: Thank you, Mr Chairman and members of the committee. My name is Neil Rodgers, president of the Urban Development Institute of Ontario. Joining me this morning is Mr Mitchell Fasken, a member of our executive committee, the president of Jannock Properties and a developer of brownfields in the GTA, as well as a member of the brownfields advisory panel, which offered the government several policy and legislative recommendations that in most part are contained within this bill.

Our organization appreciates the opportunity of being allowed to appear before this standing committee on what we consider to be a landmark piece of legislation that has certainly raised the bar and begins to make brownfields an attractive and alternative development opportunity to greenfields.

We are therefore pleased to offer our support to the government bill, a bill that has captured a majority of the recommendations of the joint ministers' brownfields advisory panel, while ensuring that the progressive measures of the bill do not in any way detract from the province's and the public's expectations of public health and safety, environmental management, integrity and enforcement.

UDI believes this bill acknowledges that the provincial government recognizes that brownfields represent substantial promise, as their remediation and redevelopment will foster and facilitate smart growth. This effort also recognizes that the existing regulatory regime needs new thinking in order to attract and foster private sector investment in urban renewal, serving as a catalyst to continuing to stimulate economic growth and job creation.

Given these points, we commend the government for addressing these tough issues. This bill will undoubtedly have its critics, who will suggest the bill has gone too far. However, our organization and other like-minded groups are requesting similar amendments that will truly make this legislation a significant element of the province's land use planning strategy and a made-in-Ontario smart growth initiative.

Since the early 1990s, our organization has worked hard with the Ministry of the Environment and recently with the Ministry of Municipal Affairs and Housing to develop a provincial brownfields strategy. Prior to Bill 56, Ontario lagged well behind most jurisdictions in North America in establishing a dynamic regulatory framework to encourage brownfields. If implemented, Bill 56 will help reduce risks to public health and the environment, renew urban cores, rebuild municipal tax bases and accommodate new population and employment growth.

UDI's efforts as part of this strategy and bill are to establish a level playing field with greenfields development with respect to the regulatory regime by adding certainty and clarity to the process. Notwithstanding many of the positive features of the bill, we feel it still has not addressed several key issues related to liability

and off-site impacts. Liability was the single most important issue the advisory panel set out to resolve and, in our respectful submission, still remains a critical area of concern for UDI and many other stakeholders.

Furthermore, we submit that the issue of liability, and addressing it in a fair and responsible manner, may alone separate this bill from being viewed by other jurisdictions within Canada and North America as being state of the art and establishing Ontario as a leader in brownfields redevelopment.

Clearly the approach taken in this bill is to encourage remediation of contaminated sites while maintaining protection of the environment and the public. However, there are many provisions of the bill that do not uphold the immunity branch of the legislative scheme and accordingly undermine the intent of the act significantly. First, there is no immunity for an innocent purchaser of a property from the date of purchase to the date of issuance of a record of site condition. Second, immunity for the non-polluter is clouded with respect to off-site impacts during and following the cleanup. Third, the immunity is not extended to officers, directors or managers of the corporation conducting the cleanup. And fourth, the Ministry of the Environment's treatment of soil from brownfield sites as waste remains a deterrent.

These regulatory gaps and policy omissions in the protection of immunity continue to threaten the ability of brownfields to be a viable and financially feasible alternative to greenfields. Several progressive changes with respect to the liability issue need to be incorporated through amendments to the bill to create a level playing field.

Foremost, in the opinion of UDI, is our support in legislation and regulation that the polluter-pay principle be upheld. This basic principle is captured in the bill; however, it has not clearly drawn the line. In our opinion, the regulatory regime must distinguish between parties who have caused contamination at a site—the polluter—and those who are innocent purchasers, termed as the non-polluter owner, such as developers who, having no prior legal and operational connection with the site, are interested in the site's future development potential and are prepared to undertake the site's remediation. For these innocent purchasers or parties, protection in addition to immunity from orders is required for off-site contamination.

With respect to civil actions, we believe that changes to the Environmental Protection Act and this bill in defining a polluter and a non-polluter owner will assist in mitigating claims against innocent purchasers.

If this legislation is to have any positive effect in remediating brownfields while meeting the intent of its promise, non-polluter owners require incentives to participate in the investment and remediation of such sites. Such legal conditions precedent should be similar in nature to those afforded to municipalities and financial institutions and particularly need to be greater than the protections made to the polluter.

We have attached appendix 1 of our brief, which recommends among others the following three key recommendations:

UDI recommends that immunity be extended to bona fide, arm's-length purchasers diligently pursuing a record of site condition. Therefore, this bill should define the term "non-polluter owner";

The bill requires a clear statement which indicates that the MOE director will not issue an order from the first day the new owner commences the remediation process to either the date the remediation is complete or the mitigation of impacts off-site is abated. UDI recommends that the bill be amended and impose the same two-year time limit given to municipalities and financial lenders to those parties undertaking a site remediation;

Failing the extension of an exemption period to a non-polluting owner, UDI recommends that the MOE give consideration to establishing a process for a non-polluting owner to obtain a stand-still agreement in order to protect them from liability during the site remediation. This process should be explicitly stated in the bill.

The bill limits protection for administrative orders to the boundaries of the contaminated site. Where off-site impacts occur, the bill provides no encouragement to deal with these impacts in an environmentally responsible manner. Sites having off-site impacts may continue to go abandoned and not be developed due to their continuing liabilities. UDI therefore recommends that the government extend liability protection for off-site impacts to non-polluting owners only, to encourage remediation and redevelopment as well as to mitigate and/or possibly reduce risks to public health and the environment.

0910

Bill 56, in our opinion, does not provide protection against prosecution for a non-polluting owner who enters into a brownfield remediation. UDI therefore recommends that such immunity be provided, particularly to individuals, shareholders, officers, directors or managers of corporations who embark on such brownfield remediations. Furthermore, we recommend that the MOE and other parties would not be able to pursue these individuals personally for the cleanup for environmental matters created by other parties, the polluter(s).

In this regard we have provided and recommended some language that was attached to our submission to the EBR. We believe this change to limit liability actions to the registered owner only would provide corporate comfort to pension funds and other institutional-type investors who today are not prepared to invest in brownfield redevelopment with their current implied risks.

We also wish to bring to the committee's attention the bill's omission to deal with off-site impacts that in turn leaves unresolved the exposure of property owners to civil suits in relation to those off-site impacts. The potential exposure to civil suits is a serious obstacle to redevelopment of such sites. UDI supports the recommendation of the advisory panel that the government clarify liability for property owners for both on-site and

off-site contamination. We therefore recommend that Bill 56 should be amended to reflect this point accordingly.

A key recommendation of the advisory panel, in the opinion of UDI, that remains unaddressed in Bill 56 is the classification of all soil from brownfields as waste under Ontario regulation 347. MOE's treatment of soil as waste will continually be a barrier to cost-effective brownfield remediation where the fill from the brownfield site is used as fill material, while being inconsistent with prevailing public opinion related to the three Rs—reduce, reuse, recycle—provided that public health and safety are always maintained. Thus UDI recommends that the province amend the classification of soil as waste in Ontario regulation 347, to promote recycling and reuse of soils.

Furthermore, the bill does not provide protection from orders under section 43 of the EPA to remove waste and restore a site to a condition satisfactory to the ministry. Clarity and certainty are necessary, and amendments to give effect thereto are strongly encouraged.

In conclusion, Bill 56 represents a significant step forward in encouraging the redevelopment of contaminated sites in Ontario. Our organization will continue to take a proactive approach in offering assistance to the province in any initiatives that will support smart growth for the benefit of all residents of Ontario. As a significant stakeholder, we are committed to advance the vision for brownfield revitalization as illustrated in Bill 56.

In addition to the foregoing, we are especially encouraged to learn that the government is seriously considering the inclusion of a positive statement in the growth management portion of the provincial policy statement to encourage the redevelopment of brownfields.

While the legislation and tools will be in place, municipalities may often require a form of motivation to move forward and accept applications from developers who wish to develop brownfields in their communities. Recognizing the importance of brownfields remediation through the PPS represents a strong signal to assist in achieving these ends.

The combination of the proposed changes to the provincial policy statement and the recommended amendments to this bill will establish Ontario as a leading jurisdiction in North America for brownfields redevelopment and send a positive signal to the development community, pension funds, institutional investors and municipalities that brownfields can be a very attractive investment and development opportunity.

Given the substantial promise in addressing many issues currently in the public domain through this bill, this committee and the government must consider the sentiment and recommendations of a broad cross-section of stakeholders and seriously consider amendments to the bill with respect to liability.

We want to thank the committee for listening to our presentation, and we would be happy to answer any questions if there are any.

The Chair: That leaves just over two minutes per caucus, and we'll start with the official opposition.

Mr James J. Bradley (St Catharines): The question of liability, of course, has always been the number one problem that people who want to develop lands have brought to the attention of members of the Legislature. I noticed that Dianne Saxe wrote an article in the Toronto Star some time ago, describing her concerns about the bill, that it didn't go far enough. On the other hand, you have some municipalities that are afraid they're somehow going to be left with some liability and the ball gets passed around from place to place.

What changes do you think would be necessary, in terms of the criteria that presently apply to the cleanup of lands, that would be useful? They're fairly stringent at the present time. I've had that in my municipality. Everybody here has had a problem within their own municipality. What specific changes in the criteria would you say would be helpful?

Mr Rodgers: I'd like to turn the question over to Mitchell Fasken to answer.

Mr Mitchell Fasken: We're not actually looking for any changes whatsoever in the criteria. We believe the criteria established by the Ministry of the Environment promote the safe reuse of sites for public health. The issue is not so much the criteria; it's the application of the criteria, the utilization of site-specific risk assessments. The municipalities have raised issues in the past concerning their liability. Much of those are clarified through this bill by ensuring that the obligations of parties to conduct cleanups and their required works—the test they must meet and the municipalities' responsibility in the approval process is clarified through Bill 56. So I believe the issue of the municipalities' concern about liability is strongly addressed. But we're not looking for changes to the standards, to the cleanup criteria. We can work within that within the industry. It's more the phantom liability risk that is the impediment we deal with with municipalities, their concern that issuing an approval puts them in a liability stream. We don't believe it does.

We feel that Bill 56 currently addresses those issues substantially. There are exceptions where the municipality takes ownership of a site, but that's a very different issue. If we deal with non-polluting owners, then a municipality is a non-polluting owner; they're not the polluter. So I think this extra piece helps us address that factor.

Mr Rosario Marchese (Trinity-Spadina): Thank you both for your remarks. You mentioned earlier on, Mr Rodgers, that there are some critics who say this bill perhaps has gone too far. Who are those critics? What do they say?

Mr Rodgers: I think it gets back to the issue of liability. Exactly what Mr Fasken just said, the perception that they haven't read the bill entirely and understood all the concepts and all the initiatives the bill is offering. I think there will always be, from the municipal sector, from some environmental-based groups, "Are the public health and safety risks still out there?" We're confident, and I think the drafters of the bill have been very careful in

never exposing the public to risks that are in practice today.

Mr Marchese: OK. To what extent is the off-site impact to non-polluting owners—what will the impact of that be? Will it prevent people from actually involving themselves in the cleanup? “UDI recommends that the government extend liability protection for off-site impacts to non-polluting owners.” To what extent will that limit people from getting involved if that isn’t put in as a change?

Mr Fasken: I don’t think it will limit a party’s ability to get involved. Where you’re dealing with contamination that’s off-site, the site-specific risk assessment process and the cleanup criteria are used. One of the tests for a successful site-specific risk assessment and/or cleanup is that there is public involvement and there is involvement from other parties. The issue really comes to the point of saying, where you have sites that have significant off-site impact and the polluting owner has gone bankrupt and disappeared, do you let the site sit dormant and do nothing, or do you say to someone, “If you’re able to clean up the site, clean up the source of the contamination, do what you can for off-site impact. You may not be able to clean up the off-site impact to where it should be perfect, but you’re responsible to do as much as you can”?

Otherwise, with many of these sites, nothing will happen. We see that in many cases in Toronto, Kitchener-Waterloo and Hamilton, sites where people have simply thrown up their hands because the cost to deal with that broad a problem far outweighs the value of the site. So you must stop the source of the contamination and ensure that you’ve done whatever is reasonably possible.

0920

Mr Morley Kells (Etobicoke-Lakeshore): I have basically a minor question. I’m not trying to deal with semantics, but you talk about soil and you don’t want the soil all to be considered waste. So what is it? Is half of it fill material? When it’s not waste, is it fill material?

Mr Fasken: Some years ago we did extensive work with the Ministry of the Environment on reclassification of waste in reg 347. Through that, there were a number of recommendations that would allow you to use soils from a contaminated site that were deemed to meet certain criteria, reuse them on other sites within the urban area. Today, unless it’s inert fill, which is soil that you’d find out in the middle of a farm field that’s never been used or never been touched, you really can’t reuse it on a site. There are very stringent guidelines, and what it forces you to do in many cases is that soil that could be otherwise reused safely within either an urban residential site or an urban industrial site ends up going to the landfill site.

The issue is allowing flexibility in using soils within urban areas and properly using the criteria. The MOE has made great strides on that. It just has never moved forward in regulation, and we’d like to use this bill to help advance that thought.

Mr Kells: So is the answer that there are different categories of soil?

Mr Fasken: Exactly. There are different categories today.

Mr Kells: Is the challenge for MOE to come up with the categories they can live with?

Mr Fasken: They already have the categories in place.

Mr Kells: They just haven’t changed the reg?

Mr Fasken: Today, if it doesn’t meet that category—

Mr Kells: It sounds like Catch-22.

Mr Fasken: They’re prepared to deal with it.

Mr Kells: I see, OK. They’re prepared to deal with that. No further questions.

The Chair: Thank you for your presentation before us today.

TORONTO BOARD OF TRADE

The Chair: Our next presentation will be from the Toronto Board of Trade. Good morning, and welcome to the committee.

Ms Elyse Allan: Good morning. My name is Elyse Allan and, as noted, I’m president and CEO of the Toronto Board of Trade. I would like to thank the standing committee on general government for this opportunity to speak on Bill 56, the Brownfields Statute Law Amendment Act.

First, the board would certainly like to congratulate the government for the introduction of Bill 56, as it will result in substantial public benefits for the residents of Ontario.

Bill 56 can and must be a catalyst for urban renewal. The facilitation of brownfields redevelopment was one of the key components of the board’s recommended smart growth strategy. As cities mature, redeveloping brownfields sites will allow urban areas to accommodate growth through higher density development, without increasing their boundaries that result in urban sprawl. They also create mixed-use neighbourhoods, provide a variety of transportation options, generate tax revenues and of course take advantage of existing infrastructure.

Many communities in urban areas are working to restore the vitality of their downtown cores through developing vacant or underused land and buildings. In Toronto alone approximately 860 acres, almost 30% of all industrial employment areas, are brownfields sites. The city estimates that over 400 acres of this land are suitable for residential, commercial and industrial redevelopment. Industry is an important component of the city’s overall tax revenues and an important aspect of the city’s strategy to attract new business and promote economic development.

By removing key impediments to redevelopment of brownfields sites, including environmental liability and cleanup requirements, this legislation offers the potential for new jobs, business expansion, and ultimately a more vibrant Toronto.

In November 2000, the provincially mandated brownfields advisory panel released its summary of advice to the Minister of Municipal Affairs and Housing, to the Minister of the Environment and to the Minister of Economic Development and Trade. As a participant on the panel, the Toronto Board of Trade is pleased that many of the recommendations are contained in Bill 56. However, we do feel that improvements can be made in three key areas to ensure the legislation is even more attractive for those who are willing to take the risk of cleaning up brownfields sites. This would involve amendments to three areas: environmental liability, financing and the planning process.

Despite the tremendous benefits to be gained from developing brownfields, financial institutions and developers are often reluctant to invest in these sites because of the potential financial liability resulting from future environmental problems. The board is concerned that Bill 56 does not extend protection from ministry orders to any party that remediates contamination on adjacent properties. One of the key recommendations supported by the board on the brownfields advisory panel is that the non-polluting owners should be required to stop any off-site migration of contaminants but should not be responsible for off-site contamination that has left the site prior to its purchase by the non-polluter. The board believes that this is a key requirement to attract investment for brownfields sites. In order to address off-site liability concerns Bill 56 must first provide clarity for those who are liable for off-site contamination and include a protection window for persons who do not cause or permit contamination to migrate off-site.

In addition, the proposed amendments to the Environmental Protection Act do not include protection for innocent purchasers or for officers and directors of corporations that might get involved in these brownfields. The board recommends that the legislation provide protection against prosecution for a party who enters into brownfields remediation, and be able to provide protection from prosecution to individuals, lenders, shareholders, officers, directors and managers of corporations that undertake the remediation of these brownfields sites.

Another key ingredient to encourage brownfields redevelopment is funding. Although Bill 56 enables municipalities to provide incentives in the form of municipal tax relief, there are no provisions for provincial financial support.

In Michigan, the state used its legislation to raise the maximum single business tax credit on brownfields projects from \$1 million to \$30 million and extended the sunset on brownfields laws to January 1, 2003.

In New Jersey, the Brownfields and Contaminated Site Remediation Act provides tax incentives to redevelop sites, offering reimbursement of up to 75% of the cleanup costs from newly created taxes to the state, and expanding the property tax abatement that municipalities can offer.

States like New Jersey recognize that they must get involved with committed financial resources to help their

cities revitalize their contaminated land. Many states in the US commit financial resources and/or promote new technologies that would help reduce cleanup costs.

The board encourages the province to provide financial resources through programs such as the SuperBuild partnership initiatives by placing perhaps special value on applications received for SuperBuild partnership funding under planned program criteria, and considering a brownfields partnership theme for future rounds of SuperBuild funding for site assessment and remediation.

In addition, the current Environmental Protection Act delays development of new technologies because the broad nature of the legislation requires a detailed review of product development work or a regular submission of an application for a certificate of approval. The board believes that any barriers to the development of new technologies must be removed. The province should promote applications for developing new technologies through many of its research and development programs that exist, such as the Ontario Innovation Trust and the Ontario R&D challenge fund.

We recommend developing a partnership with the Standards Council of Canada so new technologies that complied with a standard certification process would not require approval under the environmental legislation, and encouraging programs and incentives for new technologies.

In regards to the planning process, the third area, the board is pleased that the community improvement provisions of the Planning Act allow municipalities to provide for a broad range of community improvement activities. Bill 56, however, does not provide a deadline for the province to complete reviews of cleanup plans. This is necessary to avoid delays in processing the required approvals for developers to access municipal assistance. Unnecessary delays do add a financial burden on the developer that will act as a deterrent to interested parties.

Again, we say Bill 56 is a significant move forward in the redevelopment of brownfields sites in Ontario. To assist in better managing the risk of cleanup, the province must include provisions for off-site contamination, allow protection from prosecution, provide financial assistance in some committed form and place time limits on the planning process.

The province has the ability to dramatically change the landscape of its cities and provide the tools to allow its urban centres to grow smartly. The board believes that these recommendations will only strengthen what is groundbreaking legislation in Canada and reinforce the province's objectives of a strong economy, strong communities and a healthy environment.

Thank you very much.

0930

The Chair: That leaves us just over three minutes per caucus, and we'll start this time with Mr Marchese.

Mr Marchese: Thank you and good morning. Have you had discussions with the political staff of the minister

and/or the ministry with respect to issues of liability, and what have they said?

Ms Allan: Specific to the issues of liability, as a participant in the advisory panel we were involved in those discussions. To be quite forthright, our areas of focus have been primarily the planning process, as well as the financial areas. But we are very supportive of the work that the advisory board did and are supportive of those recommendations.

Mr Marchese: You mention here, "In New Jersey, The Brownfields and Contaminated Site Remediation Act provides tax incentives to redevelop sites." Obviously, in that particular instance, the state was much more actively involved.

Ms Allan: Yes.

Mr Marchese: In this bill, it leaves the municipalities a great deal of room to do whatever they can. The province is simply enabling municipalities to do that, but they themselves are not that actively involved in other forms of incentives. Do you have some suggestions for the province?

Ms Allan: Yes. I think one of the areas that we did speak of specifically would be something like the PST. You could provide some variation in the PST for the work that's being done on a brownfield site, and that would again show some form of more specific commitment. We certainly applaud the enabling legislation for the municipalities because I think that is very necessary and you hear that from all the municipalities.

But we feel that something such as a removal or delay of the PST, some of the moves toward tax-incremental financing—there are some specific options the province could participate in through taxes.

Mr Norm Miller (Parry Sound-Muskoka): Following up on that province participation theme, what other ideas do you have in terms of the way the province might participate?

Ms Allan: I think one of the other ones that we thought was interesting, through the advisory board again, was a recommendation specific to the education portion of the property tax, that that could be something where there could be some flexibility or contribution of the education portion of the property tax toward the development. There could be a delay in that, there could be a removal of that, it could be used later, it could be used to finance the remediation. So that was one of the other areas of suggestion, along with PST.

Mr Miller: What about some sort of reduction in corporate taxes to the company that's developing properties?

Ms Allan: I think those are some of the options. Right now, I think there are some fairly aggressive moves happening in the area of corporate tax, so I think we were trying to look at things that were specific to the brownfields. But the other thing we were very concerned about through the advisory panel, and the board certainly supports, was the idea that we're just looking for an equal playing field with the greenfields development. We are not looking for the brownfields sites to have significant

additional advantages, as much as trying to make the playing field more equal to what would be a greenfields site.

I'll just ask Paul, was there any comment?

Mr Paul Laruccia: No.

The Chair: Mr Kells.

Mr Kells: Very basically, in my riding I guess I have some of these acres that they're referring to in the city of Toronto. They're being held up, not necessarily because of the polluted brownfields problem; they're being held up because they're holding out to change it from industrial to housing. So it becomes a zoning battle over the value of the land. Of course, if you get it residential up goes the value of the land.

I have this great big brown hole, as I call it, in my riding and the argument is not over brownfields; it's over zoning. How we get around that, I'm not quite sure, and I don't know how brownfields is going to help that.

Just another observation: you quote the situation in New Jersey. I'm sure you're well aware that New Jersey is one of the most polluted states in the union and indeed that they have to be very active in this area. I recall about 15 years ago, 17 of the most polluted sites in North America were in New Jersey. So obviously they should be leading and they should be doing things in New Jersey.

I'm not saying that we're pious up here in the sense that we don't have these kinds of things. But we certainly don't have the chemical pollution that you can see in some parts of New York or in New Jersey.

Ms Allan: I don't think we're saying we're New Jersey either. I think we were trying to look at specific examples.

Mr Kells: No, and again, I don't mean to do a wedge here. It's simply that sometimes we use the American jurisdictions to tell us what we should be doing, when they come from vastly different situations.

Ms Allan: I think we were trying to use it as an opportunity of just a type of thinking, as well as the specific involvement in terms of participation.

Mr Kells: I'd have to ask you then, did the federal government participate? I'm sure probably.

Ms Allan: We think there are opportunities as well for federal government participation, I think some of which were identified in the advisory board.

Mr Kells: If the New Jersey illustration had some illustrations of how the feds get their money into the package, it might be something we could prevail upon our federal cousins to look at.

Interjection: We need more autonomy.

Mr Kells: We need more money.

Mr Bradley: I heard you make reference to the states of Michigan and New Jersey, and I heard you make reference to tax credits, which for governments translate into expenditures. Some people don't draw that conclusion, but I think many would draw the conclusion that it's actually an expenditure. So it's back to the grateful taxpayer having to pick up the tab when there's a real problem that exists with contamination of sites. Do you

think there would be any merit—and I think I know the answer to this—to a fund of some kind being established where there is a levy against those who have certain operations which could contaminate land, so that that could go into a remedial fund? It's not a superfund as such; it's in brownfields sites we're talking about. Would there be any merit to that at all in your view?

Ms Allan: I'm sure there might be. I think what we were trying to do was identify opportunities to work through existing vehicles as opposed to, in some cases, creating new vehicles. We felt there was an opportunity. We do have some excellent innovation and research development programs in the province, and we felt if somehow we could be leveraging those technologies and incentives into the area of brownfields, there we're leveraging off of something that's already existing, but focusing it; the same with the SuperBuild. But I think there's an opportunity for a lot of creative ideas in terms of how to try and share some of the costs in order to get these sites redeveloped, because at the end of the day, I think that's what collectively we're all trying to do.

Mr Bradley: The grateful taxpayer and government representing the grateful taxpayer would probably prefer that the owner of the property assume that cost. But the dilemma, as you have explained and as we have encountered constantly in this committee, is indeed, will they ever get developed if we go by very stringent rules that only the owner has to assume? So I think your suggestion about existing program and innovative funds that are there, that might be utilized for the purposes of finding ways of cleaning up sites and preventing migration of contaminants from sites on an ongoing basis, is a very good suggestion that we should take into consideration.

The Chair: Thank you very much for coming before us.

Ms Allan: Thank you very much for your time.

GREATER TORONTO HOME BUILDERS' ASSOCIATION

The Chair: Our next presentation will be from the Greater Toronto Home Builders' Association. Good morning and welcome to the committee.

Mr Sheldon Libfeld: Good morning, Mr Chairman and members of the committee. My name is Sheldon Libfeld and I am first vice-president of the Greater Toronto Home Builders' Association—GTHBA. I am also a principal of the Conservatory Group, a builder of new homes and condominiums in Ontario. With me today is GTHBA's director of government relations, Jim Murphy.

We have distributed copies of the GTHBA's response to Bill 56. This document is on blue paper and is entitled Presentation to the Standing Committee on General Government. In the next few minutes, I will highlight some of our comments but also speak as a builder who is familiar with developing brownfields sites.

First, GTHBA commends the government for proceeding with such legislation. In many ways, it is long overdue. We've heard a lot these days about smart growth, and this legislation will assist in making urban redevelopment easier. The committee should know that, in many ways, we are already building smarter in the GTA, where one third of all new home sales are condominium, 80% of which are in the city of Toronto. This is unheard of in most American cities.

The two main issues are liability and certainty for landowners. In our submission under page 2, we have addressed environmental liability. This is a difficult issue, but I must emphasize that it is the key issue if there are to be increased levels of activity on brownfields sites. GTHBA believes that the current legislation must go further. GTHBA recommends that the legislation be amended to clarify rules relating to the quality of remediation.

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We also believe there should be a definition of "non-polluter" in the legislation. It is vital that clarification of the liability for a non-polluter be added. The polluter must be responsible for the cleanup of their pollution, not the non-polluter.

Further, in order to encourage development on brownfields, increased certainty in the system must be provided and approvals expedited. I would like to refer to a project I am currently involved in. Mr Chairman, you'll be interested in this project because it is in your riding. The project involves approximately 200 units. It has taken over a year and over \$2 million to remediate. The development has been supervised by the Ministry of the Environment. We have deposited our record of site condition and have been told that the minister may do an audit on the site but have not yet been officially notified of this. This uncertainty has left the development in a state of limbo.

It is important to note that builders and developers build on greenfields because many of them find it easier. If we want brownfields to be developed, there must be increased certainty in the process resulting in streamlined approvals. I believe that the legislation will assist in attaining the certificate, but based on my experience there are always exceptions. But if liability and certainty are not addressed satisfactorily, many in our industry will still find greenfield development the path of least resistance.

Related to this point of certainty is obviously cost. There are different ways to deal with different contaminants. Obviously, our number one priority must be health and safety. However, within this there must be flexibility for dealing with contaminants in different ways. For example, burying non-hazardous material under fill is much more cost-effective than hauling such material away. By proceeding with this type of methodology, the existing community can derive substantial benefits. For example, by weighing the cost benefits of either exporting the material or burying it on the site, the result can be a park in a neighbourhood in which there isn't

one, and both the developer and the community win. There must be defined methodologies that address this issue which don't leave the developer exposed to communities that do not understand the relative risks of these materials and proceed based upon unfounded fears.

Financial incentives are also important. Our American neighbours are ahead of us. The US federal government has a large superfund for brownfield remediation. In addition, many American cities have creative tax financing mechanisms that assist in making these developments more economical.

While tax increment financing is referred to in the legislation and is a good step, we also believe that the federal government and the provincial government should allocate resources specifically for this purpose. Some of the funds for the Toronto waterfront should be earmarked for development on brownfields throughout the city. Again, it also benefits smart growth.

These are some of our suggestions and comments. I encourage you to read our submission. If you have any questions, Jim and I will be pleased to answer them. Thank you for your time and attention.

The Chair: Thank you very much. That affords us about four minutes per caucus for questions. This time we'll start with the government.

Mr Kells: Just at the end there I found your comment very interesting when you mentioned the \$500 million allocated to the waterfront. If I understand you correctly, are you suggesting it might be better spent spread farther away than just the waterfront in relation to cleaning up sites?

Mr Libfeld: It may be.

Mr Kells: I'd like to support you in that thought. I'm wondering how we do that. This is a rhetorical question in the sense that the government of the day has committed that kind of money, although I agree with you—I don't fully understand the parameters that they've committed it to. They used to talk about the eastern port lands and then they finally wised up and said we should talk about the waterfront generally. You're suggesting that some of that money should be used for brownfield cleanup. I think that's an interesting way to broaden out the benefits to the people of Toronto of that kind of large commitment. I don't know how the good people of SuperBuild feel, but I'm not too sure they had much to say about the \$500 million in the first place. But that's interesting.

Other than that, the blue paper submission anyway follows an interesting pattern from both the development and home-building industry, and I think it's logical. All I know is that the staff and even the political side are taking all this in, in great detail. I'm sure something will come of all this, as they say.

Mr Jim Murphy: I might just want to comment on the \$500 million. Obviously it was earmarked for a geographic area, but there are many sites in the city of Toronto, and Sheldon has referred to some of those that he's involved in, that might be former gas station sites that are in Scarborough or that are in your riding. There

may be some other things in Hamilton or in other urban areas that might benefit from such a thing. It's specific to a public policy that the government has decided and that you've all decided is a net benefit. So if some rules or some parameters for such a program can be created, it might be even more beneficial in terms of other sites specific to brownfields.

Mr Kells: I hear you. I suspect that the city of Toronto planning department might have something to say about that. I think it's an interesting proposition.

Mr Bradley: We have an unusual amount of time to ask questions on this occasion. You've been brief and to the point in all the material contained in your presentation. I was intrigued by your use of the word "superfund" for brownfield remediation. Of course a superfund, I think, is a great idea for a number of reasons. We used to have what was called an environmental contingency fund in the Ministry of the Environment to apply to the cleanup of sites, and then you could find the original owner and you'd hold that owner and try to assess the costs against that person. But a superfund suggests that somebody is paying into it. It suggests it's not coming out of the general tax revenues of the province. Who would pay into such a superfund for the purposes of brownfield remediation?

Mr Libfeld: I think you have to look at it as not necessarily a net expenditure. If you take a piece of land that is not being developed, and the sites we have looked at just don't work to be developed because of environmental concerns, then if the money is put into those sites, they will generate both revenue for the province and also for the municipalities by having those sites redeveloped. But someone has to kick-start the process and get this process started. So I would think that fund has to be developed first and the funds have to be expended, and we can derive substantial benefits out of expending those dollars.

Mr Bradley: I agree with you there. The question I would go back to is, who pays into the fund? Generally speaking, what criteria would you use for people paying into such a fund?

Mr Murphy: It might get back, Mr Bradley, to some of the questions we had with Mr Kells in terms of the fact that the province has already made a decision to allocate a considerable amount of money, some of which will go for remediation along the Toronto waterfront. So there's already funding that the province has earmarked. We suggested that the federal government should also come to the table and, as part of their urban agenda, whatever that might be, participate in that in terms of financing and funding.

It's a term, as you well know, that's derived from the United States, where they do have superfunds at the federal level, and many of the national home builder association members in the US are active on brownfield sites as a result of senior levels of government providing funding to the municipality to come in and help in remediating some of those sites in addition to the tax increment financing and some of the other things. I think

the government has already made that decision. They've already said, "We are putting aside a sum of money," which will be allocated to us, and our suggestion is that that should go further and not just be confined to one geographic area. As Sheldon has indicated, there's also a net benefit to the municipality and to the province in terms of new revenues, property taxes that would be developed as a result of these new developments.

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Mr Bradley: Do I still have more time?

The Chair: Very briefly.

Mr Bradley: It sounds as though you believe that the grateful taxpayer at large should pay for this instead of, as with the US superfund, for the cleanup of really contaminated sites. There's an allocation against, say, some industries that made the sites bad in the first place. So you are saying these should come under general revenues instead of out of a specific assessment against people who use the land for, say, industrial purposes.

Mr Murphy: The owners of some of those sites already have to remediate those sites and are paying themselves anyway.

Mr Bradley: Thanks very much, sir.

Mr Marchese: Just to stay in this field a little bit, the municipalities are very concerned about liability questions too that they might incur. You're talking about the industry's liability concerns as well. Certainly the Urban Development Institute talked about that; the Toronto Board of Trade talked about that. So there are some liability questions that linger both for the municipality and those who develop, particularly in terms of off-site contamination and how that connects to the new owner.

These questions are a concern in terms of whether we're able to develop these brownfields, and the province has quite nicely and kindly said, "Well, the cities can do that. You go off and do it and offer whatever incentives you can. And, by the way, this is good for you, city of Toronto or Hamilton, because in the end you'll have the benefits of taxing on those buildings." But some cities are concerned that they don't have the money and that there are liability questions. They're saying, "We should have a greater role of the province in order to get these things off the ground." I think you're also saying that. Are you saying that? And what else should the province be doing?

Mr Libfeld: First of all, I think there's a big misconception that it all has to be funds. If we start remediating smartly we can alleviate a lot of the expenditures that have to be done. There's one site that we have remediated which resulted in a park being created; 20% of the land that was designated on this site was put as park as a result of remediating it smartly because none of the contaminants were such that would cause any problem if they were kept there.

We're all talking about money but we have to get the methodologies in place, the ideas in place that the province can help us, through the Ministry of the Environment, to have the municipalities know that these kinds of waste and the sites can be remediated without any significant liability being obtained.

Mr Marchese: I understand that, but beyond that—and I understand that you could do it smartly and there are some easy things perhaps that could be done—I'm still suggesting some cities or municipalities are very worried about incurring liability questions that the law does not clarify sufficiently for them. They're saying the province should kick in some money for the cleanup itself of these brownfields in order for the development to start. So I understand what you just said, that some areas might be easier to deal with and how you do it is a question that all three levels of government could be involved in. I understand. I'm saying that unless there's a greater role of the provincial government, some of these sites might not be developed. Is that possible?

Mr Libfeld: I beg your pardon? That they will not be developed without provincial funding? Is that what you're suggesting?

Mr Marchese: Yes.

Mr Libfeld: There are sites that will not be developed, that just don't make any economic sense unless there's funding provided, and it has to be worked out between all three levels of government, how those funds are provided. We have to start putting the funds forward instead of just talking about it. If we start putting the funds forward, we can start getting things done.

Mr Marchese: There's another question as a follow-up. If the provincial government were to be involved and it would involve public funds, and the province would have to get into debt to do that, would we then support the province in getting involved in these matters?

Mr Murphy: I'll just make a comment. The province has allocated significant resources as part of the waterfront. That's within the current budget of the province; I understand from the Minister of Finance it still will be a balanced budget or a surplus this year. So those fundings are for this year and have been allocated. I would think that's a multi-year commitment, and perhaps it should be revisited in terms of an increase in allocation. I would turn to my comment that the federal government should also be involved in funding these, as they are in the United States. So that needs to be looked at: multi-financing. The initial steps have been taken. The legislation is another building block as part of that. I think what we're saying is that money also is an important component, obviously, as you've indicated.

Mr Libfeld: But the funding also can derive benefits for the province. If you put the money into remediation, it may make a site available for affordable housing, which is one of the goals of the province.

Mr Marchese: But they don't want to build affordable housing.

The Chair: Thank you very much, gentlemen, for coming before us here today.

ONTARIO ENVIRONMENT INDUSTRY ASSOCIATION

The Chair: Our next presentation will be from the Ontario Environment Industry Association. Good morning and welcome to the committee.

Ms Ellen Greenwood: Good morning, Mr Chair and members of the committee. I'm Ellen Greenwood. I'm chair of the advocacy committee for ONEIA. Just to clarify this, we used to be called, and some of you may know us as, CEIA Ontario. We have recently changed our name to ONEIA to properly represent our very strong Ontario roots. I'm here with Geoff Westerby, who is chair of our brownfields committee. Geoff represents some of the very sophisticated expertise that we have in Ontario. The environmental sector in Ontario, as some of you are aware, is incredibly well respected internationally. Some of the people, like Geoff, are used internationally on projects to advise on brownfield development. So we thought we would share some of our thoughts with you today.

I'd also like you to understand that our client groups are the landowners and the property people—the real estate industry—who are struggling with these problems. Our industry aims very clearly to provide them the best possible advice, to do things in an economical way that provides safe, environmentally sound cleaning up of sites. Of course, we recognize problems with liability too that our clients have to struggle with. So we very much welcome the opportunity to talk to you today. I'm going to pass my comments off to Geoff now.

Mr Geoff Westerby: We certainly appreciate the opportunity to appear before you today. As Ellen has indicated, ONEIA represents a wide cross-section of environmental consultants, technology providers and service companies that are very heavily involved in many aspects of brownfields development, from site investigation through remedial planning to implementation of remedial cleanup plans.

As a group, ONEIA certainly supports the intent of the Bill 56 legislation, which is to bring more clarity and certainty to the whole process of brownfields redevelopment and to reduce a number of the existing impediments that occur with respect to redeveloping brownfields.

When implemented, we feel that Bill 56 should result in quite substantial socioeconomic benefits to the province from the return of the many derelict sites that we now see around the cores and fringes of our city and putting them back into beneficial and productive use.

One of the general comments we have with respect to the legislation is that very many of the substantial details will be included in the regulations. These, of course, are not available yet. They will be developed over a period of time. We'd just like to make the comment that as the regulations are being developed, we feel we could make significant contributions to that, and we would certainly volunteer to provide whatever input and review services we could in the development of the regulations that will go along with the bill.

We have a number of specific issues that we'd like to comment on. I'll go through those now. What I've given you in handouts, by the way, is a copy of our original submission in response to the EBR posting, and then a series of what I was going to use as overheads, which are just speaking notes that I was going to follow along with.

One of the primary intents of the bill is to provide a degree of protection to non-polluting landowners who are involved in brownfields redevelopment from a variety of specified ministry orders. That, we think, is a very good thing. However, one of the issues we have is that there is a significant period of time between when a non-polluting stakeholder or purchaser first takes an interest in a property and the time that he has got the record of site condition filed and is then started to be offered the protection under the bill. During this period of time there are a lot of very important activities that would go on, including the due-diligence work that would normally be done to determine if a prospective purchaser wants to proceed with acquiring a property. This is normally followed by detailed site investigation and development remedial plan, the implementation of that remedial plan to the appropriate standards, and then filing a record of site condition, at which point the protection starts to kick in.

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There is also another fairly major activity that can be quite time-consuming, which is the rezoning of the property. In some situations it might be that the property has to be rezoned before the record of site condition is filed.

These various activities can cover periods of time that might run from weeks to a year or more. We feel it's important that the bill include provision for what is commonly known as either a standstill or a time-out agreement that does afford some protection to the prospective purchaser during this upfront period.

We also feel it's important to provide protection to non-polluting buyers from prosecution or civil liability, in addition to the protection from the regulatory orders that were just mentioned. As it stands, non-polluting owners may now still be held responsible for off-site impacts that they did not cause or permit. We think this could be potentially a significant impediment to brownfields redevelopment and we think there's a need to take a look at this issue. This also goes along with the support of the "polluter pays" principle, which we think is quite important. With this provision that allows non-polluting owners to be responsible for off-site impacts, we feel this is in a sense contrary to the "polluter pays" principle, since it allows innocent landowners to be held liable for environmental damages caused by others.

One of the things that's in the bill that we feel is significant to quite a number of our members is the requirement for use of qualified persons in conducting the various activities associated with the investigation and remediation of impacted sites. ONEIA feels very strongly and supports the requirement for the use of properly qualified persons. We feel this is one of the main keys that limits the liability of stakeholders by ensuring that the work is done in a competent and professional manner. At the same time, the use of qualified persons should provide a good level of comfort, both to regulatory agencies and to the public, that the work is being carried out in a proper and sound manner.

We recommend that this designation as a qualified person should be based on a certification process, rather than being done on the basis of licensing through professional associations. The main reason for this is that there are already a number of highly trained and quite experienced individuals who are currently working on and managing brownfields projects, who may not be covered by the licensing of existing professional associations. Examples of this could be toxicologists, risk assessors, biologists, chemists—people who may have spent many, many years doing this type of work but are not covered by professional licensing. So we feel that whole issue needs to be studied in some detail and, again, we would be quite happy to be involved in any further development of that process.

Another aspect about the use of qualified persons that we think is important is that the requirement to use qualified persons during the process should not apply only to the proponents of the brownfields redevelopment site and the people who are doing the work, the site investigation and the remediation work, but we feel that requirement should apply equally on the other side of the fence, so to speak, to the regulatory agencies. Any people at the Ministry of the Environment or municipalities or peer reviewers who may be retained by the municipality or the other regulatory agencies should have an equal requirement to make sure that the people they are putting on these jobs would also be considered as qualified persons.

One of the tools that has been used a lot under the existing Guideline for Use at Contaminated Sites in Ontario is the use of site-specific risk assessments as a tool that provides an alternative to cleaning up to the published generic criteria. ONEIA supports the ongoing use provided under the bill for application of site-specific risk assessments, since we feel in many situations it provides a viable alternative, in situations where use of the generic criteria may not be practical.

One of our main concerns associated with this, however, is that based on our understanding of the wording of the bill, there is a requirement that the director accept or not accept an SSRA within a time frame that is to be specified in the regulations.

Mr Bradley: What's an SSRA?

Mr Westerby: Oh sorry, site-specific risk assessment. It's a means of looking at the various impacts from a site, the pathways of exposure and coming up with remediation criteria that might be somewhat different from the published generic criteria. It allows you to focus more specifically on the characteristics of that site rather than using the generic criteria intended to cover a full spectrum of sites.

The concern is that the bill as worded does not appear to provide any requirement that the director or the ministry has to accept or not accept this SSRA in a particular time frame. This is very important because almost all the brownfields projects are very strongly driven by a variety of economic factors and most of these factors are quite time-sensitive. For a developer who is

looking at using the SSRA approach as part of the site remediation program, if there is no well-defined certainty or clarity on the time frame in which he can expect a response from the ministry with respect to an SSRA, it could in fact be an impediment to his proceeding with that whole project.

We think that it's good to maintain the SSRA, but we just recommend that there be some certainty available to developers in terms of the turnaround time for approval of the SSRA.

The bill also calls for regulations to set standards for phase 1 and phase 2 environmental site assessments. We support this approach since it will provide some uniformity and consistency in the work that's being done. Our main recommendation here is that consideration be given to using existing documentation that's already in place for this purpose.

The CSA, over the last number of years, has put a lot of time and effort into developing guidance documents for phase 1 and phase 2 site assessments, and it's our recommendation that consideration be given to adapting to, referring to or modifying these documents, rather than starting from scratch in setting these standards.

Our last comment relates to the environmental site registry that's proposed in Bill 56. This is the vehicle through which, when the site remediation is completed, a record of site condition is filed and installed on this registry. Then it becomes a mechanism by which the public can access this and obtain information about sites that have been remediated, what the conditions of those sites are and generally find out something about the history of the site to provide them with some comfort if they're looking at purchasing sites down the road.

We feel this is a good idea. One of our concerns is to make sure that the registry itself is as user-friendly and as accessible as possible. A number of the databases now in place are limited to referencing by alphabetical ownership. We feel the search parameters should be more extensive than that and include not only the owner, but things such as municipal street addresses, perhaps GPS or global positioning system coordinates, or the property identification numbers that are used under Polaris, the provincial land information system, so that people who may not be familiar with the history can still take any particular site and search the registry to see if there is a record of site condition for that piece of property.

Another aspect of this is that many of these brownfields sites are large industrial or sometimes commercial sites that typically, as they are redeveloped for other purposes, are broken down into a few or, in many cases, a large number of smaller lots. We feel it is important that the record of site condition be set up so that it can be tracked through the subdivision process, so that if you go from a very large site to a number of smaller sites, the ability to access that record of site condition is not lost in the process, that you'd be able to track it down to the level of individual residential lots, when you might have 50 or 100 of them on what might have been formerly an old industrial property for which one record of site condition was filed with the registry.

That's an overview of our comments. We appreciate this opportunity. We fully support the intent of the bill. We feel there are major benefits to the province to be gained from the redevelopment of these industrial sites, taking some of the stress off the developing of peripheral greenfields sites.

We feel ONEIA has the expertise and the capabilities to make a major contribution in this area, and we would certainly like to stay involved with the regulatory process. Thank you.

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The Chair: That gives us just under two minutes per question, and this time I think we're starting with Mr Bradley.

Mr Bradley: One of the concerns that people are going to express again is the timely approval of their application to proceed with the redevelopment of the site. Would you see then a need for an increase in staff for the Ministry of the Environment so that they can appropriately respond in a timely fashion? Because the alternative, it would seem to me, is to do a shoddy job—"shoddy" is perhaps too strong a word—to take a less intense look at the proposed application.

Mr Westerby: I certainly think the ministry has to be staffed in an appropriate manner to be able to respond to these in a timely fashion. Whether or not it's done through increasing staffing at the ministry or perhaps increased use of external peer reviewers and advisers, I'm not sure what the best approach is. The ministry, I know, is already using third party peer reviewers for this process. There may be opportunities to approach it in both ways.

Mr Bradley: Perhaps someone from your association would—

Mr Westerby: Well, certainly. We would—

Ms Greenwood: A qualified person.

Mr Marchese: They can do it for free too.

Mr Westerby: No, I wouldn't go that far.

Mr Bradley: I suspect you may get into a battle over that, and this will be something else to worry about. This will be many fundraisers down the line, but I suspect you will get into a battle with the engineers over whether you're going to have a non-engineer do the work. I suppose you'll want to draw up some kind of criteria for the government to consider, of using people who are not what you would call recognized professionals.

Mr Westerby: We're certainly aware of that issue, and I know it's going to be very contentious that both the professional engineers and the newly formed professional geologists will be taking a strong role in that. What we would like to see is not necessarily that they don't have a role, but that we would like to work with them. There are other organizations such as CEAA, the Canadian Environmental Auditing Association, that are currently looking at certifying various types of environmental professionals. Our main concern is that people who are well qualified and well trained to do this work—who just don't happen to be licensed professional engineers or licensed geoscientists—be excluded from the process,

because we think that would be a real loss. There are people out there doing this work now who have been doing it for many years, and they're very good at it.

I don't necessarily see it shaping up as a battle. I would like to see it as more of a co-operative front; we work with the engineers, we work with the geologists. I happen to be both; I'm a professional engineer and a professional geologist, but I work with a lot of people who aren't and who I have a lot of respect for.

Mr Marchese: That was my question, actually. I wanted to pursue the whole issue of qualified persons. The first question is, who are the non-qualified practitioners? Second, are you aware of cases where these non-qualified practitioners have been involved in some assessment of a site and have caused a problem that leads you and others to say that we need qualified professionals? So, who are they, and what examples are there where we have experienced problems because we haven't used professionals?

Mr Westerby: Some of the examples of the types of people who wouldn't be necessarily licensed as an engineer or geologist would include people like toxicologists, risk assessors. I'm aware of biologists who are doing this type of work through years of experience; chemists. So there are a number of different types of professional people who aren't licensed professionals.

With respect to situations of examples I could name where non-licensed people doing this type of work has resulted in problems, I'm not aware of any that I can put on the table. There may be some, but I can almost certainly say there are probably situations where professional engineers have got into situations where they may be working beyond their area of expertise and that has caused problems.

Mr Marchese: They would have to recertify, wouldn't they, like teachers? Shouldn't we recertify some of these folks?

Mr Westerby: Well, we certainly support the requirement for having a system in place to make sure that people doing the work are properly qualified and certified, and there should be a disciplinary process and there should be a decertification process if people don't meet those requirements.

Mr Marchese: Of course. Absolutely. I agree with that.

The Chair: Sorry, Mr Marchese, that's your time.

Mr Marchese: OK, thank you.

Ms Marilyn Mushinski (Scarborough Centre): I, like two previous questioners, would like to pursue your recommendations regarding the use of qualified persons.

You suggest that the designation be based on certification rather than on licensing by a professional association. What is entailed in the certification process? When I first read this, it sounds to me as if it's red tape. As you know, our government is in the business of reducing red tape to expedite good development so that we can get things like affordable housing and revenues from municipalities and all those kinds of good things for the provincial economy to continue to grow. Could you

tell me how this is going to meet with the parameters of incenting growth and development?

Mr Westerby: I think there are ways of doing this that are at arm's length from the government, and I don't think it's the intent of the bill that, for example, the Ministry of the Environment should necessarily be responsible for the licensing or certification.

Ms Mushinski: I would agree with that.

Mr Westerby: I think they are looking at doing that with some arm's-length third party group, be it the engineers, the geologists or some other group such as CEA.

Ms Mushinski: So that's your concern within this?

Mr Westerby: My main concern is that, as Mr Bradley pointed out, the battle line is sort of being formed, that the engineers and the geologists feel they're best poised to handle this whole process. I think there's a lot of merit in some of the things they're doing, but the biggest concern I have is that it will exclude a number of what we feel are highly qualified and experienced people from the whole process. I would not like to see it as battle lines being drawn but more as a cooperative effort that looks at some sort of realistic and verifiable process that allows anybody who has the proper training, experience and qualifications to be doing this type of work.

There are many people who are licensed as engineers who have no knowledge and no expertise in this type of thing. So even within the existing professional groups it's very important to limit it to the people who are properly qualified and have the relevant experience and training.

The Chair: Thank you very much, folks, for coming before us here today. Our time has run out.

REON DEVELOPMENT CORP

The Chair: Our next presentation will be from REON Development Corp. Good morning. Welcome to the committee.

Mr Michael Peterson: Good morning, Mr Chairman and members. Thank you very much for hearing us this morning. My name is Michael Peterson. I'm the president of REON Development Corp. I have with me Bob Leech. He's one of our directors. My area of expertise is environmental law. Bob is an environmental scientist, specifically a hydrogeologist, who has decades of experience in the environmental area.

I want to speak briefly about who REON is, what we do; second, I'm going to touch on what we see as the special requirements for brownfield development; and third, I'm going to discuss some of the aspects of Bill 56. I have talking points that begin in writing on the second page of our presentation. I'm going to touch on some of those. Some of them, frankly, have already been dealt with in presentations this morning and I may just go by them.

Our company, REON Development Corp, is a consortium of scientific and professional firms whose competency and core business is the development of contaminated sites. We're a wholly Canadian firm. We

were formed in 1997 to do brownfields work, and I think we're unique in that we put PhDs in toxicology, hydrogeologists, environmental lawyers, planners and architects all together at the same table, at the same time, to find solutions to brownfields problems.

We're currently working on brownfields projects in Victoria, BC, and Waterloo, Ontario, and our marquee project at this point is the development of the former Stelco Swansea site situated in the High Park area in Etobicoke. In the material we've handed you there are a couple of excerpts or reprints from the Toronto Star and the Report on Business this week, which give you further details about that particular development.

What are the fundamentals required for brownfields in our view? First, and other people have said this, there has to be a high degree of regulatory certainty. We expect rigorous environmental standards, but they have to be clearly established. Vague cleanup standards with high levels of discretion are going to deter financing, and without financing you're not going to get it done.

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Second, complete environmental information has to be available or obtainable without risk. Where the information isn't already available, interested parties have to step in and generate information. They have to go onsite, dig holes, drill bore holes, take samples. A typical sampling and analysis program on even a small site costs in the tens of thousands of dollars. So if a brownfield developer is faced with actually taking on an unquantified and unknown liability as well as spending the cash, it's not going to happen.

Other people this morning mentioned as well that the parties who have to be protected from this liability include municipalities. They're major players in this. They're the ones who frequently have to deal with abandoned or orphaned sites. So the legislation has to protect the municipalities as well.

Finally, the process of investigation, analysis and regulatory sign-off has to be timely. You'll appreciate the properties are not normal properties; they won't attract normal financing. It's our experience that what we're talking about here is venture capital financing. It's exactly the same thing as financing a dot-com. The rates of return that people are looking at are very high, and you can't afford to wait six months, nine months etc for a regulatory sign-off when your financing costs that amount of money. If we can't get timely sign-off, again it's a deterrent.

Let me move to the bill and tell you, first of all, a couple of points that we think are very favourable. First—and this is a purely cosmetic change—abandoning the phrase “certificate of prohibition” is long overdue. You can appreciate that there are community concerns in environmental matters. Using the phrase “certificate of prohibition” frankly scares people, and just changing that to something more neutral like a “certificate of property use” is an inspired change, and we applaud it.

Second, and we touched on this, legislated standards: it seems clear that the regulations will capture the criteria

that now are only in the guideline. The guideline doesn't have the force of law. Putting it into the regulation will create more certainty. The only thing we should add is that the guidelines are based on science. Science changes from time to time, it evolves, and there has to be a process to be able to change those guidelines as new scientific information comes along. Those are things that we think are great additions in the bill, and we support them.

What can be improved? You already heard from at least one party this morning concerning the timing on a site-specific risk assessment. The specific time frame is going to be in regulations. We would like to see a time frame of 60 or 90 days. Second, the legislation as it's presently drafted provides that the Ministry of the Environment does not have to meet its own timeline. There will be 60 or 90 days—whatever it is—prescribed, but the ministry doesn't have to meet the deadline. That, in our view, can be a fatal error.

We have two suggestions to deal with it. Number one, put in a provision that if the Ministry of the Environment doesn't meet the timeline, the report is deemed to have been accepted. So if they can't do it within 60 or 90 days, it's acceptable. If that's not acceptable, give us an appeal, possibly to the Environmental Review Tribunal. If the Ministry of the Environment can't deal with it in 60 or 90 days, we can appeal to the Environmental Review Tribunal and have somebody else look at it if the ministry is too busy. That's one change we would propose.

A second change we have mentioned—the last of our talking points—has to do with the protection from liability for people before the record of site condition is dealt with. Geoff Westerby, who spoke previously, discussed that point. There's a whole host of activities that go on before the site condition is done. There has to be protection for the people who are doing that.

The last point I want to mention, which I think is a new one, has to do with the tax assistance provisions in the legislation. It's presently contemplated that the municipality has the ability to provide tax assistance on a case-by-case basis. In our view, that's a mistake. Nobody's ever going to see that money, because the municipality will give tax relief in the bylaw on one hand and claw it back in some other fashion on the other. Our suggestion is that the municipality be given the authority to give tax relief, but they make a single bylaw on an annual basis which sets out what they're prepared to give as far as tax relief. So their bylaw comes out, probably at the same time as they set the tax rates, it sets up a list of properties with the amount of back taxes that are owing and specifies, "We will be prepared to give X%, X%, X% on these properties on an annual basis." Otherwise, it's our suggestion that this is going to be an exercise in futility. A small developer comes along, and there are a half-million dollars of back taxes: "Well, we'll give him X amount." TrizecHahn comes along, Tridel comes along: "Well, they're bigger, they've got deeper pockets. We're not going to give them that amount; we'll give them a lesser amount." It's just going to be a poker game.

If you want to make it work, put an annual schedule with the amount of taxes they're prepared to concede, and put that up to anybody who's prepared to be a brownfield developer.

Those are our comments. We will be putting in a more detailed textual suggestion on the legislation. I understand the date for that is September 21.

The Chair: Thank you for your presentation. That leaves us with just over three minutes. We'll start this time with Mr Marchese.

Mr Marchese: Just to get into the questions quickly, with respect to the timeline—the fact that the MOE has "the power to reject a SSRA within an undetermined time"—it makes sense that they ought to be restricted as well, or at least be able to respond within a certain time frame. Have you had discussions with the ministry people about why they wouldn't give you such assurances or why they could not put in place something that would give such an assurance?

Mr Peterson: I haven't, but I can appreciate that it's probably a question of resources. They're concerned that they don't have the resources to meet it within the specific time, and they don't want to be in a position—I can appreciate that nobody in the government wants to be in a position where something goes through because nobody's had the time to look at it. But I fully support what Mr Westerby said previously. If the MOE themselves don't have the resources, there are tons of scientists out there who do these kinds of things. Outsource it and have the review done. SSRAs are peer reviewed now in any event. There are people who can do it.

Mr Marchese: I'm sure there are. I think you need such assurances, and the government ought to be able to give you some mechanism to deal with that. If it's lack of staffing, they should deal with that, and if it's something else, they should deal with that as well. In terms of municipal assistance, my concern has been that this government has been very magnanimous in saying to the cities, "Go out and help out in whatever way you can to develop the brownfields." But they themselves have done so very little in terms of helping out. Do you have any suggestions for them in terms of what else they could be doing? My sense is that some cities will have the resources and some not. Some are broke, and some are very broke and getting broke. The concern is that unless the province comes in with some contribution of sorts, it might be difficult to develop some sites.

Mr Peterson: That may be the case for some sites, but I suspect that in a lot of the cases we're dealing with, the municipality realizes they're already in the hole for X dollars and they're not going to get the money. The sites are abandoned, the owner has gone bankrupt or disappeared years previously, the taxes are just collecting. Unless we come in and deal with it, it's just going to get worse. What they're giving up is on paper, because it's not realistic.

Mr Marchese: So in your mind, unlike the United States, which is becoming more heavily involved in many sectors of culture, of infrastructure, of housing, any

sort of field imaginable—they're involved at the state level and they're involved at the federal level. I feel afraid that here we're not getting the federal involvement we desperately need, and/or the provincial involvement, to get some of these things done. What you're saying more or less is, "This bill is OK. It should work with a few areas of touch-up. It should be all right. We don't need any other provincial assistance"?

Mr Peterson: I guess we're dealing with the realm of the possible. Of course the assistance would be welcome, but—

Mr Marchese: Thank you.

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Mr Kells: I don't want to be provocative, but I would point out to the honourable member that when you talk about financial problems you might be talking about the city of Toronto. The cities that surround Toronto, in the greater Toronto area, are all in very good financial shape. I think you should check their reserves. You'll find they're not in bad shape at all. Sometimes we city members shouldn't take the Toronto experience and sort of generalize it too widely.

Mr Bradley: The ones that weren't forced to amalgamate; you're right.

Mr Kells: We can talk about that some other time.

I would like to commend you on your development plans for what you call Windermere Village. Just a small correction: that's not Etobicoke. Etobicoke doesn't start until after the Humber, although I'm happy any time anybody mentions Etobicoke any more. Actually, I drove by it for so many years wondering why and how come, and I'm pleased there's some action being taken there. I understand some of the neighbours aren't terribly happy, but when all is said and done I think it will be a great development.

I do notice, and wouldn't mind reading into the record, that David Miller, the ward 13 councillor for that area, said in the Toronto Star, "When we look at issues of urban sprawl, we all have to ensure that people can live successfully in our city. We can't as a council on the one hand decry development on the Oak Ridges moraine and stall reasonable development in the city." That's a kind of nice thing to get on the record from a left-wing councillor.

Mr Peterson: Councillor Miller was very supportive.

Mr Bradley: I remember you quoted me in one of your brochures.

Mr Kells: Listen, when you get a good quote, you use it.

You mentioned tax assistance in a general sense. You said the municipalities give and the municipalities take away. Could you be a little more specific? Are you talking about the city of Toronto, or could you give me a specific in that regard?

Mr Peterson: I don't think I want to be specific, but in general it's a negotiation. If you do this on a site-specific, developer-by-developer basis, it's just going to go back into the negotiation. As I said, Tridel will get one deal, some local guy will get another deal, and Minto

from Ottawa will get another deal. The whole point is that we need certainty. If they're prepared to put money into it, put it up front. If they're not, then it's zero and that's fine. But it's just going to be a waste of time, because you're not going to see any of the money.

Mr Kells: Then how do you suggest we remedy that problem in legislation?

Mr Peterson: You specify that they can pass a bylaw on an annual basis listing their contaminated sites, listing the amount of back taxes and indicating what amount of—

Mr Kells: And that's locked in for a 12-month period?

Mr Peterson: Fair enough, sure.

Mr Bradley: The proposal you have with the options you're talking about—I think you softened it after you said it initially—about the 60 or 90 days, that it would be deemed to have been approved, would not be acceptable to me. I had the job of being Minister of the Environment at one time, and I would not want to have faced a situation where somebody could come back at me, our ministry having approved something because it didn't get time to approve it. The second suggestion, that either they retain staff to be able to do so or they contract staff, if it's on a short-term basis in a short-term situation, would be the better of those two options.

I understand the importance of the timeliness of getting approvals. That's always a dilemma within government, where one minister is getting a lot of noise about slow approvals and another minister is getting a lot of noise about, "You better be sure everything is fine." So I think that suggestion is good.

When you get into municipal tax incentives, I'm a bit concerned about municipalities competing with one another using taxation. One of the good things about Ontario that Americans have and we don't have—and I think it's good we don't have it—is municipalities being able to play with the taxation system in such a way as to lure General Motors to somewhere, or something of that nature. I'm a bit concerned about that. Would this refer only to back taxes, so you're not thinking of any ongoing tax relief that a municipality would provide?

Mr Peterson: I wouldn't expect prospective relief. What we're looking at in most cases on these environmentally contaminated sites are ones that have been abandoned where there are large amounts of back taxes and the municipality has very limited ability to deal with those, to reduce them. So you're frequently stuck with properties that have little or no value and then, in addition, they've got a minus sign on them in terms of the taxes.

Mr Bradley: By the way, I think some good suggestions have come forward to this committee. Your suggestion about the one bylaw for the year, so we don't have unequal treatment depending on who the developer happens to be, is very wise for many, many reasons, because corruption comes about when you are allowed too much discretion as to who is going to get the better tax break sometimes. So that eliminates the potential of

corruption and also is much fairer when everybody knows the rules for that particular year.

I think that many of the suggestions you have are good. I saw Dianne Saxe's article in the Toronto Star, and I quoted it in the Legislature in early June. It talks about many of the problems all of you who have come forward today have brought forward. Hopefully the bill can address that. I think the minister wants to see those matters addressed with amendments that will be forthcoming from the government and the opposition. Thanks very much, sir.

The Chair: Thank you, gentlemen, for coming before us here this morning.

ONTARIO CHAMBER OF COMMERCE

The Chair: Our next presentation will be from the Ontario Chamber of Commerce. Good morning, and welcome to the committee.

Mr Doug Robson: Good morning, Chairman. I was curious about what I came in on at the end of Etobicoke there, but I won't pursue it any further.

As many of you know, my name is Doug Robson. I'm president and chief operating officer of the Ontario Chamber of Commerce. To my left is Mary Webb, the senior economist for Scotiabank. Mary is the chairman of our finances and taxes committee. Some of you know Atul Sharma, to my right, who has been spent a few years around here like I have. He is our vice-president and senior economist.

We appreciate the opportunity to present to the committee and make comments and recommendations with regard to Bill 56, the Brownfields Statute Law Amendment Act.

As most of you know, the OCC is a federation of 156 local chambers of commerce and boards of trade across Ontario, and through our federation we represent over 56,000 businesses.

Brownfield redevelopment is an important issue to our members, as many of them will benefit from the cleanup of contaminated lands, especially in communities like Hamilton and Toronto. There probably isn't a municipality that doesn't have at least one neighbourhood that would not benefit from the cleanup of contaminated soils, whether it is an old manufacturing plant or even an old gas station.

We congratulate the government for its progress in encouraging brownfield development and pursuing the goals to remove the main barriers to brownfields cleanup and redevelopment. The proposed legislation provides some clear rules for the cleanup of contaminated brownfield sites. It also aims to limit future environmental liability for municipalities, developers and owners of brownfield properties, as well as streamlining planning processes to expedite brownfield projects and help municipalities provide financial support for brownfield cleanup costs. In our opinion, all these are laudable goals.

Two of our members, the Hamilton Chamber of Commerce and the Greater Oshawa Chamber of Commerce,

presented resolutions regarding brownfield redevelopment at our annual general meeting and convention in May. Both of these resolutions were unanimously approved, and you'll find them at the end of this presentation.

The Hamilton resolution contains many of the points that are incorporated in the legislation itself. We appreciate the government's listening to our input on this matter while developing its legislation.

The second resolution was presented by the Oshawa Chamber of Commerce and contains an interesting proposal which we believe merits serious consideration. If adopted, the government would refund the land transfer tax on properties designated as brownfield renaissance enterprise zones and community improvement areas. We believe this is one of the arrows the government can use in its arsenal for the redevelopment of brownfield sites, along with TIFs, or tax incremental financing. TIFs have been successfully used in the US, and we believe this type of program will encourage redevelopment and can be easily adopted in Ontario.

One of the main concerns surrounding brownfield redevelopment has always been the issue of environmental liability for contaminated land. While this legislation addresses many of those concerns, there are some specific problems which we believe need to be addressed.

First, the issue of civil liability is not addressed in this legislation. This will likely cause developers and particularly lenders to remain cautious. Without interest from developers and approvals from lenders to finance the redevelopment, there will not be much remediation of brownfield sites.

Secondly, liabilities relating to contamination of neighbouring sites are not resolved. We understand that there is currently a court case under appeal which may rule that a neighbouring property owner is entitled to demand a higher level of cleanup than that required by the MOE guidelines. If that case stands up to appeal, then chances of success of the bill will be undermined.

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Thirdly, director's liability is another issue which needs to be clarified within the legislation. There is no specific protection for officers or directors of a corporation involved in developing a brownfield site.

Lastly, the economic incentives are limited to municipal and regional government support with no provincial fund or incentive.

Our understanding is that under the TIF program, municipalities and regional governments establish a baseline property assessment for designated brownfields sites or community improvement areas. The baseline assessment for property taxes purposes reflects the current condition of the site and is generally of low commercial or industrial value.

As a property is being remediated and once the remediation has been completed, the property has a higher value and pays more in property taxes to the municipal and regional governments because of increases in its assessment. Under the TIF program, the regional

municipality and the local municipality agree to reinvest any amount into the designated site in excess of the baseline assessment for a specified period of time; for example, 10 years.

Since a large portion of tax is set provincially, we are pleased that the provincial government has agreed to fully participate in this type of program by agreeing to reinvest its portion of the property tax collected in excess of the baseline assessment. If you review the Hamilton recommendation, you will see that it specifically calls for municipalities to be allowed to retain the provincial portion of the property tax for the tax increment fund.

The Smart Growth strategy is a provincial initiative. Therefore, the provincial government should also look at providing some seed funding to kick-start the redevelopment process. Once the time period for the TIF program has expired, then all levels of government will experience a windfall in property tax revenue from the designated site.

By addressing the concerns outlined above—civil liability, director's liability, and provincial funding—lengthy and high-risk remediations are more likely to be pursued, in our opinion, than if these issues remain outstanding. The greatest benefit to our province will be from the remediation of the most contaminated or high-risk sites.

The Ontario Chamber of Commerce would also like to see the government move expeditiously on implementation of the legislation. This includes establishing the registry and establishing standards of qualified professionals.

The Ontario government's Smart Growth and brownfields redevelopment initiatives are a balanced approach that will help Ontario's competitiveness with its neighbouring jurisdictions by making more urban land available for commercial, industrial and residential development. This, in turn, will help alleviate urban sprawl and the related issues of gridlock and congestion.

We support these initiatives and have spoken with members of the government and the opposition about the need to establish an Ontario transportation authority to help fulfill the Smart Growth vision. We would like to spend a few minutes talking about the Smart Growth initiative and how it links with brownfields redevelopment.

As an organization that represents business, we know that a vision cannot be achieved without a plan. This was the reasoning behind our proposal for the province to study the need of, and then creation of, an authority to take over Ontario's highways and public transportation systems. The authority, which we call the Ontario transportation authority, would involve all levels of government in order to support Ontario's priority of remaining the most competitive jurisdiction in North America.

Smart Growth embodies a visionary plan which understands that regions are the engines of the economy. It realizes the need to contain urban sprawl and to build community infrastructure. We believe that this legislation helps to achieve that goal.

Smart Growth also looks to provide public transit and transportation alternatives while protecting the natural and cultural heritage of its community. Smart Growth is by no means a novel or new idea; it is implicit in our understanding of development yet it is so often ignored, largely because levels of government don't work together to make it happen.

North America has seen countless examples where sprawl was not controlled, causing congestion and gridlock the likes of which had never been seen before. At the height of the urban disaster in Atlanta, showcased during the Summer Olympics of 1996, the dismal condition of their sprawl was displayed for the world to see. The United States quickly learned their lesson and implemented the innovative principles of Smart Growth. Today, American cities are becoming more livable. The vision of Smart Growth is becoming a reality, and American cities are becoming more and more attractive to Canadians.

Canada has proudly held the global reputation, designated by the UN, of being the best place to live on earth. As Canada's most populated region, Ontario cannot let our country down. We must seek to build better and more efficient communities, optimizing the link between land use and economic development through brownfield remediation.

A central tenet of Smart Growth is that it involves both the public and private sector. This system of public-private partnership ensures that the voice of both the government and the citizen resonates throughout any plan and ensures transparency is present in every aspect of its operation. The American model has already tried and tested this financial structure involving TIFs and has seen excellent results. We look forward to working with government to implement its rehabilitation strategy and implementing Smart Growth strategy.

Overall, Bill 56, the Brownfields Statute Law Amendment Act, is a good step in the right direction and goes hand in glove with the Smart Growth strategy. We have some specific concerns with the legislation, which we've outlined in this presentation, and we'd be happy to answer any questions that you may have.

The Chair: That gives us about three minutes per caucus for questions. This time we'll start with the government benches.

Ms Mushinski: Thank you for your presentation, Mr Robson. It's very interesting. Are you suggesting that brownfields remediation should not take place without a Smart Growth plan in effect?

Mr Robson: We're saying it's an integral part of it, in our view. Atul, do you have something to add to that?

Mr Atul Sharma: I think that it's probably one and the same. Part of the success of the Smart Growth, certainly in the US, has been the fact that they have been able to remediate brownfields sites. If you can have remediation of brownfields sites without Smart Growth, then certainly I think we should proceed on that basis, but Smart Growth is an overall strategy which involves not only the remediation but also public transit and trans-

portation and congestion, which are important issues as well. In our view, a lot of them are tied together. So I think the short answer is if you need to proceed only with one part of it, then certainly this would be a good part to go ahead with.

Ms Mushinski: OK. I'm thinking specifically of—let's use an example—Ataratiri. What you're saying essentially is that if there is this miraculous remediation of the whole of the Ataratiri lands, it should not be done without a Smart Growth plan being in place for redevelopment.

Mr Sharma: Certainly looking at Ataratiri in particular, you would have to look at the impacts to congestion within the city of Toronto and look at the transportation infrastructure that would be needed to support it. I don't think you can do it in isolation, because that may just lead to greater congestion and gridlock, which I think is the opposite of where the government wants to go.

Mr Miller: I have a question to do with the amount of taxes that should be forgiven in terms of developing a specific piece of property: you have a specific site and the cost of remediation is \$1 million. From my perspective, if I was the developer looking at that property, if I was going to buy it and receive future tax credits of \$1 million to cover my costs of remediation, that would be ideal. Do you have anything to add to that?

Mr Robson: The whole thing is to spur the developer to do the work. It's our belief that unless there are some incentives in there, people aren't going to spend the capital originally to move it along. That's why you need the incentive.

Mr Sharma: One of the proposals—and I think Mary might have some comments on it as well—was to do a tax increment financing, where you set up a baseline assessment and anything that's in excess of that assessment, as property is being remediated or once it has been remediated, goes back in to help fund the remediation. That way the municipalities and the province have agreed to accept a certain level of revenue from that property for a fixed period of time, and then, once that time has passed, they'll receive a windfall of the higher assessment.

Ms Mary Webb: The other very important part is that developers have generally conceded that it's not so much the tax incentive; it's limiting their liability going forward. So I would see that as being the centrepiece of this legislation. In fact, the municipalities have limited fiscal room right now and certainly that's not going to change in the near future. The liability issue is a key stumbling block that, if removed, would assist this area.

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Mr Bradley: The last comment perhaps partially answers my question, because I know that either a yielding of revenue sources or an expenditure has an impact on the deficit, on the debt. When the NDP was in power, I would meet with my local chamber of commerce and they would tell me the number one problem in the province with the NDP in power was the debt. It

seemed to me the day after the election all of a sudden the debt was no longer important, that we could have all these tax cuts and we could have designated expenditures in certain areas and it would not somehow impact upon the debt. The debt appears to be out of everybody's horizon right now, and it is amazing to me. So I was glad to hear you say that it was more a matter of the liability. I guess the general question is, Mr Robson, is the debt still a problem for the Ontario Chamber of Commerce?

Mr Robson: Very much so, as far as—

Mr Bradley: Because I just don't hear it now, with the Conservatives in power. I don't hear it any more.

Mr Robson: It comes every January when we come here for starters to make our presentation. The Treasurer has heard us. We indicated that the province wasn't paying enough down on the debt as far as we were concerned, and that they should target what percentage of the GDP the debt should be, because at one point it was like 31% and we said it usually runs around 15%. I think Atul may have some strong things to say about that as well.

Mr Sharma: Just to reiterate, it's been an issue which we've certainly been on record as saying needs to be addressed, and made a couple of proposals to the Minister of Finance. He has certainly taken up the challenge and reduced the debt more than has been expected in the last couple of budgets. We certainly applaud that but want to keep the pressure on him to continue to do so.

Mr Bradley: Lurking in the background, again, is a concern I have. It's tough for the committee, because I really would want to see brownfields development take place. I really do and I'm probably willing to sacrifice financially to be able to do so, and yet I see the economy seems to be slowing down considerably. We may be into a deficit position sometime if we have these calls for federal and provincial expenditures and municipal expenditures; we're liable to get ourselves into a more difficult situation.

But in total, I take it you believe that it would still be valuable to proceed with these tax incentives and these investments by senior levels of government even in view of the slowing-down economy and the declining revenues which governments are facing.

Mr Robson: Certainly, but Mary had a comment related to your other question as well. So I'll let her—

Ms Webb: Two points. First of all, as it stands, the revenue impact of the legislation is not that major. The second thing would be we actually did say, "Should the province be putting a little bit more in?" The reason we said that is it's a question of spending priorities or tax expenditure priorities, and I would argue that over the past year to two years the problem of managing urban growth, and in particular reviving older parts of the city, has been recognized as a key priority that can't keep being pushed to the back burner.

Mr Bradley: Yes, I agree with you.

Ms Webb: So definitely, the difficulty of a slowing economy is acknowledged. The net cost of this particular proposal makes it worth considering.

Mr Marchese: Thank you for the presentation. It was interestingly more balanced than some others, I thought. When you talk about Smart Growth, I take an interest in that because you say Smart Growth also looks to provide public transit and transportation alternatives. I think it's an important consideration. What you also said is that we should take an integrated approach to issues. It's not novel, but I agree with you.

Part of the concern we've had is that this government has a strategy called Smart Growth where that strategy includes building seven new highways, one just north of Toronto, and barely a cent on transit. Did you have a reaction to this Smart Growth plan that includes seven new highways and very little on public transit?

Mr Robson: As we mentioned, we talked about the Ontario transportation authority, and even if you were to implement that in a small way, what we would probably recommend is you take something like GO Transit, which is an authority technically, but if you use it as an authority like we're talking about, it desperately needs capital. It's a very efficient organization; it's the fifth largest in North America. But if you took it back from the municipalities that are funding it now, who sort of resent it, and you had the federal government at the table and you had the business sector at the table, you'd find that you'd get federal money there because they would be recognized. You'd have provincial government there and you'd have municipal money there. You'd also have the ability to get what they call 20-to-30-year money, the long-term investment, which the 20-to-30-year money people will not invest directly with government, because they say, "You guys are two, three, four, five years. You've got an election. You cost us money." We need the commitment which authorities can give of 20 to 30 years.

Last, Minister Collenette, whom we've talked to about this, has committed that he's very interested in this, and he's also interested in doing tax instrument things that aren't being done now. I don't think Minister Flaherty can stand up and say, "I'm going to forgive the provincial portion of your tax," but if the Minister of Finance of Canada stands up and says, "If you invest in infrastructure bonds or whatever, they're tax-free," then that's all the tax, and they're interested in doing that. So what we're saying is, as part of the Smart Growth, maximize the financing, and you've got to be very innovative to do that.

Mr Marchese: I was interested in your comments about the highways, but I'm also interested in your point about the economic—

Mr Robson: If I may, it takes eight years to build a highway.

Mr Marchese: "The economic incentives are limited to municipal and regional government support with no provincial fund or incentive." Do you think that without any provincial fund and/or incentives this development of brownfields will be very successful?

Mr Robson: We're cautious about that, because we know the municipalities are stretched. We think it needs

that provincial push to make it go over the top, along with the other concerns we have.

The Chair: Thank you very much for coming before us to make a presentation today.

PACKAGING ASSOCIATION OF CANADA

The Chair: Our next presentation will be from the Packaging Association of Canada. Good morning. Welcome to the committee. Please be seated.

Mr Louis de Bellefeuille: It's really an honour for me to address such a distinguished group. My name is Louis de Bellefeuille. I'm the chairman of the board of directors of the Packaging Association of Canada and also a director of sales and marketing for Winpak. Winpak is a material and machinery company listed on the TSE. With me today is Larry Dworkin, an economist and our director of government relations for the association.

The Packaging Association of Canada, PAC, is a trade organization whose diverse 1,200-member base includes suppliers of every kind of packaging product, materials, equipment and services. Our membership also encompasses the many user sectors that purchase a wide range of packaging technology and expertise for their consumer: industrial, commercial and institutional products. This includes food, beverage, pharmaceutical, personal care, automotive maintenance, hardware, home ware, agricultural and chemical product companies.

The packaging industry generates \$12 billion in sales annually, of which \$2.5 billion is exported. We employ 125,000 persons, with more than half located in Ontario.

PAC has established a solid track record and has consistently played a pioneer role in environmental protection and conservation. Let me give you a few examples based on independent data from StatsCan.

Annual packaging waste in 1996 was 2.6 million tonnes, a 51% reduction from 5.4 million tonnes in 1988. This was achieved during a period when the population increased 11%. Per capita, this represents 56% less packaging sent to landfills in 1996 than in 1988.

In 1996, 2.2 million tonnes of packaging material were recycled into new products and packages, compared to 600,000 tonnes in 1988. Also in 1996, Canadians reused about four million tonnes, or 47%, of the total amount of packaging used.

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This didn't happen by chance. As a result of our commitment to the national packaging protocol, our members invested millions and millions of dollars to reduce, reuse and recycle packaging. In fact, we were instrumental in the development of the national packaging protocol, which was a voluntary agreement between our industry and all levels of government to reduce packaging waste by half between the years 1990 and 2000. We achieved the target four years ahead of schedule.

Our packages have far less material in them than they did a decade ago. We also use significantly less energy to produce them. At the same time, our members have

maintained a high standard required to protect the product from a health and safety perspective. These accomplishments, which we continue to better, clearly demonstrate that we are one of the more advanced nations in the world in solid waste management in the packaging sector. A more detailed analysis of how we achieved the protocol's targets is attached to our brief.

Now I would like to give you some general comments on Bill 90 itself. The PAC supports in principle the need for greater financial stability for municipal recycling programs. We also support strengthening the infrastructure which will allow an increased amount of packaging material to be diverted from landfill sites. PAC believes municipalities' financial participation will create a definite incentive to maximize the efficiencies of their operations to drive down costs.

Our major concern with Bill 90 is its vagueness. For example, it doesn't spell out who pays, how it is to be paid or how much it will cost. We have heard that the levy is to be charged against brand owners and importers of first record such as a major food retailers. But this is not stated in the legislation. In fact, it could end up being the packaging material manufacturer who pays. And it will be a board of directors, which we have no say on, which determines who pays.

Reassurances also have been provided that no matter what type of levy, it would only be a fraction of a cent per package. This doesn't provide much comfort, since in many cases this could exceed the profit margin that allows our industry to compete both at home and abroad. We also don't know how it is to be paid. Originally, we heard the levy or tax would be based on sales. That seems to have been replaced by a material-specific levy that pits one material against another. Not only does this move away from the blue box collective basket of goods approach; it could have dire economic consequences for individual packaging material manufacturers.

I'll give you an example. Under this yet to be determined formula, if the cost of collecting and recycling non-alcoholic beverage glass containers is significantly higher than for plastic containers, food and beverage companies will make the obvious packaging choice in their economic interests. This could negatively affect 20% of the glass industry and the jobs that go with it.

We are strong believers in establishing a level playing field through legislation. But as Bill 90 now stands, certain firms, many of which are importers, would be exempt from paying a levy because their material is either not recyclable or their sales are below a certain threshold. This, in effect, subsidizes these firms while penalizing the domestic producer who is living by the intent and spirit of the act.

We would like to reiterate some of our concerns expressed to this panel last Friday by representatives of the plastics and paperboard industries in regard to perceived inequities in the legislation.

First, recognition is not provided for financial contributions already being made by specific industries to municipalities. PAC also believes the definition of re-

cyclable materials should be reconsidered. What we should really be addressing is productive waste management. If it can't be recycled, can the material be reused in another fashion such as a source of energy? It seems to us that this opportunity has fallen between the cracks.

We would be remiss if we did not express our concern that the consumer, who ultimately decides whether this initiative succeeds or not, is not part of the economic solution. In the United States, for example, there are thousands of communities operating user-pay programs. These programs, where householders pay for garbage disposal above a certain bag limit, have been very successful in influencing consumer behaviour. Under Canada's national packaging protocol, shared financial responsibility included consumers as well as industry and governments.

We appreciate the opportunity to present our perspective on Bill 90 as it now stands. We recognize that you have differing opinions which you must weigh and reconcile to the best of your ability. We strongly recommend you sponsor a thorough professional economic cost-impact analysis and make it public. We have concerns that many Canadian firms could find themselves at an economic disadvantage, especially to their US counterparts, where no such regulation is being considered. We also recommend that the board of directors be more representative of affected industry sectors, many of which may be paying more than their fair share either directly or indirectly through the supply chain process.

The Packaging Association of Canada supports your efforts and will welcome all opportunities to contribute to the finalization of the legislation. Thank you for being so attentive. We've love to address any questions you may have.

The Chair: Thank you very much. That leaves us with just over three minutes per caucus for questions.

Mr Bradley: There are some out there who would advance the argument that any packaging that is produced should ultimately be the responsibility of the packager and that all costs to society associated with that packaging should be assumed by the producer of the packaging. Of course the packager would say that would be reflected in the price. How would you react to that contention?

Mr de Bellefeuille: If you look at the definition of a package, it's to bring a product to market. Ultimately, the real benefit to a food company or a beverage company is to bring their product to market, and the package is only the vehicle to do that. It's the marketing vehicle. It's maintaining quality of the product and delivering it to a consumer. In our opinion it's not so much should it be the material manufacturer's responsibility or the brand owner's? What we are concerned about is that choices will be made based on specific materials as opposed to the fact that—and we agree with this in principle—some monies have to be returned to solidify the blue box program, for example, or the municipalities' endeavours in collecting solid waste.

Mr Larry Dworkin: Just to get back to your question, it's difficult to get milk to the consumer without a package. Without that package, it's not going to get there, or some 15,000 other products you'll find on the grocery shelf. So the package serves a useful function. I guess the question you really should ask yourself is, when the consumer goes to the supermarket they make certain choices. They can purchase certain foods without a package; certain foods, obviously, require a package. You're getting into social responsibilities and so on. But I think that to put it all on the package is sort of a red herring at this point in time. I've heard the argument before.

Mr Bradley: It is made repeatedly when this issue comes forward. It is made by some people at the municipal level, it is made by some people who have a very strong concern about the environment and it is made by some of your competitors who, depending on what you define as a package, would agree that that might be the case. In my view, the real problem that brings forward on the front plate of the province is that the municipalities are screaming because the province has withdrawn from the blue box field, which it used to partially fund, and municipalities are having to assume that cost more and more. So obviously they're looking for someone else to play a significant role in that, other than the property taxpayer. Do you feel generally that this bill, with the changes you've suggested, would solve much of the problem?

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Mr de Bellefeuille: Obviously, it would strengthen the program with the municipalities. We're all in agreement with that. What we really need to understand before we sign a blank cheque is what this all means, what the consequences are this year, next year and in five years time, and that it is a level playing field. We wouldn't want manufacturers to make choices just based on taxes and certain levies on certain materials. Ultimately, if you really want to get into all the details of glass versus plastic versus metal, they all have their needs and they all have their reasons for existing and they're all recyclable. It's a question of what makes more sense in the box and in the collection. That will naturally find its place.

Mr Marchese: There are a number of people who have made one of the comments you made on page 4, which is that the levy on industry is being designed in a way that will tax recyclables rather than the overall waste. You make that point on page 4, where you say that many "would be exempt from paying a levy because their material is either not recyclable or their sales are below a certain threshold." I'm not sure how the government is addressing it, but it is a serious issue that a number of other people have brought to our attention, and I hope the parliamentary assistant will pass it on to the minister.

Mr de Bellefeuille: I appreciate that.

Mr Marchese: The other point that was raised by Mr Bradley, and which I share, is that the Toronto Environmental Alliance talks about extended producer responsibility, which you call a red herring but I'm not quite sure

I agree with you. You do, on one hand, agree indirectly, because you've reduced the level of packaging. You recognize that at least at a cost level, it's a benefit to you as a corporate entity. So the overall effect is to reduce waste. Obviously the intent is to save money, but there's a recognition that there's a problem, right?

Mr de Bellefeuille: Definitely, and it's been heightened with popular demand. I guess everyone in his own right personally would like to see if he can do something to affect the environment. But they have been driven both economically and environmentally. Today you eat your yoghurt out of a small 175-gram container, and to the consumer it doesn't look like anything has happened. But there is 10 years of technology where they've thinned down that wall about 40%. In order to do that, you need specialized chemical people to develop resins that can do it and mould-making people who can actually make a mould that will produce the package. So a lot of those things have happened. Yes, there's an economic end, because packaging is cost driven.

I was told once by a reporter, "You guys over-package." I've been in packaging sales all my career, and I have yet to meet a customer who's asked me, "Louis, I'd love to spend more money on my packaging." It's quite the opposite.

Mr Marchese: But I think we both recognize, or at least a number of people recognize, that we've got to reduce, and that the focus of Bill 90, for the critics, is that the concentration is on recycling, which reproduces the same problem, rather than the hierarchy of reduction, reusing and recycling, which is at the end of that hierarchy. The concern of some is that while this is an OK step, we're not getting to the real problem of reduction and reusing.

Mr Dworkin: On that issue, we're continuing to reduce the packaging we produce. The metal container you're buying, say, Campbell's soup in is not the same can it was five years ago. They're still looking for ways to reduce the amount of material in that particular can. Similarly, if you're buying bread at the store and it comes in a wrapper, that wrapper is probably half the weight today that it was only two years ago.

Our first R under the national packaging protocol is reduce, and a lot of the achievement under the protocol was through reduction. We do reach a limit, however. For example, if you're filling a glass container with a liquid, it's got to maintain certain strength qualities so it doesn't explode on the filling line. Those are issues that we certainly continue to address, and that hierarchy has not changed for our members at all.

Mr Ted Arnott (Waterloo-Wellington): Thanks very much for your presentation. You indicate support for the principles that are inherent in this bill as articulated by the government. Do you support the bill?

Mr de Bellefeuille: Definitely.

Mr Arnott: Thank you. We appreciate that. You certainly have the commitment of the government to continue to work with you in terms of consultation as this bill moves forward. As you are probably aware, this bill

has only had first reading in the Legislature. There hasn't been substantive debate in the House as yet, and so we still have an opportunity to continue to work with industry and those who are affected by this bill to make modifications that may be required. You certainly have the assurance of the government in that respect.

You deserve credit for your voluntary efforts to reduce the waste stream, and you've quantified that in your presentation. How much of that was consumer driven versus voluntary action on the part of your industry?

Mr de Bellefeuille: I was there at the beginning. Actually, very little of it is consumer driven. Unfortunately, consumers usually buy price, not environment. That's been our experience. It was originally driven, if you remember, by the incident in the United States a number of years ago when that barge couldn't land its garbage off Long Island, and every municipality in North America was screaming, "Me too." At that time, our industry specifically met with the then federal Minister of the Environment, Lucien Bouchard, and we set up the whole notion of the packaging protocol, recognizing that something had to be done and that we had to somehow or other reduce the amount of material going to landfill. That was a priority, basically.

Since then, when we have put out specific products that say, "More environmentally sensitive," or "Uses less material," with few exceptions, most consumers don't seem to have gone overboard about it. I like to think back to an old episode of *I Love Lucy* when she had those soap suds and stuff like that. Even when they introduced new environmental products and soap didn't make as many suds, people would keep adding it into their machines because they perceived they weren't getting the same value. Similarly, when they hit the cash register at the supermarket, we experience the same kind of consumer reaction. They love to buy the environment as long as the price is right. So it was a combination, basically, but I think industry really pushed it a long way.

Mr Arnott: How much time do I have, Mr Chair?

The Chair: You have about one minute.

Mr Arnott: OK. You talk about the need for a level playing field for your industry. Other presenters have talked about that too, and I would concur that there needs to be a level playing field in this process. How much of your business volume is based on exports versus domestic sales? Do you have a number in that respect?

Mr de Bellefeuille: For total packaging, it was \$2.5 billion of \$12 billion. So approximately 20% is exported.

Mr Arnott: That's still a substantial component.

Mr de Bellefeuille: It is substantial.

Mr Arnott: And it would be affected if the American states don't do this kind of thing?

Mr de Bellefeuille: Definitely. We would be at a disadvantage.

Mr Arnott: Are there efforts underway in the United States, do you know, to move to this sort of model? We've heard that some other provinces are moving in this direction, and there's even been a complaint that Ontario might be moving ahead first and that might affect

industry sectors across the country. Nothing like this is happening in the United States?

Mr Dworkin: With one exception, possibly the state of California. It's the only one. Generally the other 49 states aren't even considering this. We would love to see a level playing field North America wide, including Mexico. We can live by the highest environmental standards anywhere as long as our competitors are doing the same thing. We've set some pretty high standards, and we're ready to take them on. It's just that they're not moving, and I don't think the Bush administration is pushing for environmental anything these days. That's my take on it.

Mr Arnott: They will in the second half of their term.

Interjection: We'll look out for it.

The Chair: Perhaps, gentlemen, that might form part of a future submission you'd like to make to us about how we can continue to protect our environment and protect our manufacturers at the same time by insisting that all packaging sold in this country meet whatever high standards you think are necessary in this day and age.

Thank you very much for coming before us and making your presentation.

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ONTARIO BAR ASSOCIATION

The Chair: Our next presentation will be from Teranet. Good morning and welcome to the committee.

Mr Steven Pearlstein: Good morning. First of all, let me introduce myself. My name is Steven Pearlstein, and I'm the chairman of the real property section of the Ontario Bar Association, although you'll see Teranet's name there. I'll explain how that happened. I think I just saw this morning that it also shows me as representing the Law Society of Upper Canada on your list, and that's not right. It's the Ontario Bar Association, although I've had some dealing with the law society.

The relationship with Teranet: I have nothing to do with Teranet. I don't work with them; I have no affiliation with Teranet. The presentation that I'm going to make is, in effect, procedural—how this act is going to work with the conveyancing real estate bar. It became apparent that Teranet's position was very similar. In order to save time, we thought we'd just do one presentation. So although my remarks really are on behalf of both parties, Teranet is the joint venture with the Ontario government that runs the electronic search and registration system for the land registry in the province. There's a certain community of position here.

I'm really here representing the day-to-day lawyers and then, through them, the members of the public who are going to have to deal with this act. I'm not going to deal with any substantive issues. The environmental law section of the bar association will be here later today and will be dealing with the environmental law issues. This is just mostly identifying this environmental site registry that's provided for in the legislation.

This legislation is going to create, in effect, a new register. Something called a record of site condition is going to be filed by the ministry. This record of site condition will have and has the potential for having a significant effect on the marketability, the use, the value of specific parcels of land. It's proposed that instead of depositing this in the existing land registry system, this ministry create a separate registry and deposit it there instead. This causes several concerns for the people that have to use the system. I've got it broken into three headings: duplication, cost and confusion.

Duplication, the first heading: there are something like just under 300 provincial statutes that affect land. I think the last time it was checked it was 284 statutes. You can imagine, if there were 284 separate registries all set up, nobody would know where to look or where to find them. In fact, from the public standpoint, when you're dealing with a piece of land, most people know about the existing land registry system. They know to look there. But if we create this new environmental registry, the public may not know to look there and/or these records may not be found. Presumably, at some point the bar will become familiar with this and have to look there. But there's no need for duplication. You have an existing system. It works well, and it's going to cause a problem if there are more—many more—registries. This is just one of the potentials for many.

That leads into the second area, which is cost. Obviously, from a public standpoint, running two systems is more costly: from staffing, setting it up, learning the system. The government is just spending a significant amount of money in setting up this new electronic registry system for the land registration system. We feel the money would be better spent being put into operating and having users continue to use the electronic system—this is Teranet's main point, I think—rather than spending public money to create another system. Certainly from a user standpoint, from the public standpoint, having to either pay the lawyers or do it themselves—learn how to search two systems and pay the costs of searching in two systems when you have an existing system—it doesn't make any sense. You could just put these records on the existing system, pay to search there and you'd be all set.

From an access standpoint, the government is trying to get open access and electronic access. I noticed in the paper, they're just announcing that they're going to allow access to marriage certificates and drivers' licences over the Internet. The government is spending a lot of money through Teranet to set up electronic access across the province, remote access electronically over the Internet, for this land registration system, and yet now they propose to create a separate registry which will not be electronically registered—or they haven't specified, but based on past experience, it wouldn't be. You'd have to write in and get an answer back, whereas if you use the existing system, it's there and it's readily usable. You put the record on title, and then it can be accessed electronically.

We have some past experience dealing with other ministries trying to set up registries. In my experience—I've got about 25 years' experience—this doesn't work. The Ministry of Revenue tried to have liens for corporation tax arrears set up in a separate system. You had to write a letter to the Ministry of Revenue and find out if there were liens there. It got so unwieldy with lawyers writing constantly for every transaction, trying to get an answer, that they couldn't run the system. They finally threw up their hands in the early 1980s and said, "You know what? We'll just put it on the registry system if we're claiming a lien. Otherwise, don't bother writing us any more. We're getting rid of our separate records." So there is precedent for this creating problems and not working in other ministries. I'm not sure why we propose to do this and not do learn from prior missteps.

The third area, and this is really our main concern, is confusion. Essentially, the way land is identified, this record will be to identify a specific site, a specific parcel of land. That doesn't stay the same. The identifier for a specific parcel of land has changed over the years, and in fact in the last few years it has changed more frequently. So when Lord Simcoe set up in the 1700s, there were these concession lots and you referred to parcels of land through concession lots. Then there were lots and plans. Then there were parcels. Now, you have these property identifier numbers, PINs. So when you have a Ministry of the Environment, they don't necessarily always have the expertise to file in their registry according to the most current system. Some people even just refer to the parcel of land using a municipal address—like 15 Avenue Road or whatever the road number is—which doesn't have any legal effect. We have an example of that with what used to be called Ontario Hydro under the Power Corporation Act. They passed legislation that said they could claim an easement for their power lines, and they don't register it anywhere, so you have to write them.

And what the bar is finding is they don't have as much expertise in identifying the specific parcel. When you write them, they may have filed their record under the concession lot, and yet now that parcel of land is being referred to by some property identifier number. If you write and ask on the current property identifier number, they write back saying they have no record, yet there actually is a concern on that piece of property. So there's a very well-defined registration system that's constantly updated and that's being utilized by the people who have the expertise. We have a real concern here that these records will be filed—not through any malice, but the party filing in the Ministry of the Environment may not have the expertise to properly identify, may not have the information to identify that particular parcel, so they file it by municipal address, road or concession lot number, and then the public can't find it readily. There's a huge concern for confusion here, whereas there's an existing system—why not use it? It doesn't make any sense.

I understand that the Ministry of Consumer and Business Services, which runs the existing land registry system, has expressed some concern with having these

records registered, because they have this view that only documents that deal with an interest in land should go on their system. But that has really been moved away from. There are lots of acts which require documents that don't really affect interest in land. The perfect example is, under the Planning Act, if you register a development agreement or a site plan agreement, which just talks about how the roads and parking are going to occur on a piece of land, those get registered under the existing system now. Airport zoning regulations, land near airports, there are certain regulations as to how those are going to be dealt with. Those are registered in the existing system.

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There are lots of examples where you have a document or a record which deals with a specific site, a specific parcel of land, and it just makes sense that for ease of use, for low cost and for a lack of confusion, it should all be in one system. It's a public record so it's not confidential. The environmental registry is going to be just as available to the public as the registry system. Everybody can look in one place.

I'm confident that, in coordination with the Ministry of Consumer and Business Services, a ministry which I deal with a lot, it's possible to allay their concerns if there's an effort to really look at what's in the public interest here, and in the public interest you don't need increased costs and confusion.

Those are my submissions.

The Chair: Thank you very much for those comments. That leaves us about two minutes per caucus for questions. This time we'll start with Mr Marchese.

Mr Marchese: Have you had discussions with ministry staff about your concerns, or have they consulted you in advance of this?

Mr Pearlstein: There are two ministries. Is this the Ministry of the Environment or the Ministry of Consumer and Business Services?

Mr Marchese: Whoever.

Mr Pearlstein: The Ministry of the Environment actually were the ones who originally contacted me, because they were concerned over some of this conveying issue. I think the Ministry of the Environment—and this is just my opinion from talking to them—would go along with what the Ministry of Consumer and Business Services would want to do, but that they had been told by the Ministry of Consumer and Business Services that they didn't want these documents registered in their system. As a result of that, I have had some preliminary discussions, but nothing formal, and certainly I don't have a position. I really believe it can be worked out with the Ministry of Consumer and Business Services and that this is in the best interests of the public. I really do believe that.

Mr Marchese: Do you have any connection to the Ontario Environment Industry Association?

Mr Pearlstein: None whatsoever.

Mr Marchese: I'm just reading their suggestions on this. They say this organization "supports the establish-

ment of an environmental site registry for filing RSCs and to allow public access to this information; to ensure that information is readily accessible, it should not be organized solely alphabetically; should be searchable by municipal address, GPS coordinates, owner name, or property identification number as used in the Polaris, the provincial land information system; if RSCs are filed for large portions of land, it should be possible to reference them after the land is subdivided into smaller lots."

Mr Pearlstein: That actually just highlights my concerns. They're saying, "We want all these things to be done," and our experience is that the only way to effectively do those things, which we support, is to use the existing land registry system, because you can't file—if you look at the way a lot of the environmental-concern lands are, some RR1 number is a big piece of land and then later on it gets subdivided into different municipal addresses. There's no effective method of bringing that forward and updating those records, whereas with the land registration system that happens automatically. You can go, in the existing system, to a municipal address and it will tell you exactly where to find the proper register for that, whereas with the environmental registry, our experience from this corp tax and the hydro registry is that that just doesn't happen. It doesn't exist.

Second, all of those concerns that he raised, that it's readily identifiable, that you bring it forward to further changes, doesn't happen, but it does happen in the existing system. I completely concur with those submissions, but what I'm saying to you is that our experience is it won't happen unless you put it into the existing land registry.

Mr Marchese: I'm sure Ted has the answer for us.

The Chair: Thank you very much. To the government side, Ms Mushinski.

Mr Marchese: Maybe not.

Ms Mushinski: Thank you, Mr Pearlstein, for your submission this morning. Would you by any chance happen to have a written copy of your submission?

Mr Pearlstein: I don't, but if you would like one, I will produce it on Monday. How is that?

Ms Mushinski: OK. I just want to explore a little bit the future scenario of brownfield remediation. I think what you're saying—and you're speaking on behalf of Teranet, I understand, are you?

Mr Pearlstein: Teranet submissions are identical to the ones I just put forward, but I'm not part of Teranet. They've asked me, when I'm here, to also indicate that they support this. Teranet submitted a letter, I believe, that sets out their position, but I'm actually speaking on behalf of the practising bar, the Ontario Bar Association.

Ms Mushinski: So you're basically in support of Bill 56.

Mr Pearlstein: Yes. I don't comment on the environmental law issues because I don't have the expertise. As I indicated to you, the environmental section will be here later today to give you their position. I'm really commenting on the procedural aspects, and to the extent that

there's a site registry set up that is readily available at a reasonable cost to the public, I support that and the Ontario Bar Association supports that. So we're in favour of that. What we're trying to say is that the way it's proposed to set it up, from past experience and from what we can see, it isn't really the best way it should be done. We're recommending that you utilize the existing system. So that should be changed.

Ms Mushinski: OK, that's fine. I don't have any further questions.

The Chair: Thank you for coming before us with that perspective this morning.

ASSOCIATION OF MUNICIPAL RECYCLING COORDINATORS

The Chair: Our next presentation will be from the Association of Municipal Recycling Coordinators. Good morning and welcome to the committee.

Miss Vivian De Giovanni: Good morning. We thank the committee for the opportunity to speak on this important issue. We are here today representing the Association of Municipal Recycling Coordinators, the AMRC. My name is Vivian De Giovanni and I am the executive director of the AMRC. With me here today is Janine Ralph, manager of waste policy and planning for the region of Niagara and an AMRC board member. Also here today is Russ Nicholson, chair of the board and waste reduction coordinator at the county of Simcoe.

The AMRC is an incorporated, non-profit organization formed in 1987 by municipal waste management professionals to address municipal waste reduction, reuse, composting and recycling issues. The AMRC does not formulate policy statements as such. We do, however, bring forward the issues and views of our members. The AMRC represents urban and rural municipalities and recycling associations throughout Ontario, comprising approximately 90% of recycling programs in the province. Our members are the people who work every day to deliver diversion programs to the public.

We say all this because it is important to us that the committee appreciate who we are in order to understand our concerns about Bill 90. Our members are generally supportive of the document and acknowledge that this is a potentially powerful tool to deal with waste diversion and help relieve the financial burden currently borne by municipalities. However, we feel there are some details of Bill 90 that should be addressed prior to second reading.

In regard to a statement of intent, the implications of this legislation have far-reaching effects at the municipal level. As the bill reads now, it is really a blank statement that establishes a process for implementing rules, regulations and potential funding and responsibility for waste diversion activities. There is no clear statement of intent that provides a detailed rationale on what the bill is supposed to achieve.

A statement of intent for this bill could, for example, use as its foundation the September 1, 2000, WDO

report. We recommend that a preamble be inserted before definition 1(1) that would establish clear objectives for this legislation. Environmental rationale of conserving resources and reducing pollution, both through avoided disposal and substitution in manufacturing, should be referenced in this preamble.

Ms Janine Ralph: In regard to the designation of waste, the bill as it is written appears to designate blue box waste as material that would require the new WDO to develop a waste diversion program. AMRC members would like clear confirmation that the definition of "blue box waste" includes all of the basic and supplementary blue box materials currently noted in schedule 1 of regulation 101/94 under the Environmental Protection Act, and that these materials will be designated as requiring development of a waste diversion program by the new WDO immediately upon passage of the bill. It should also be recognized that blue box wastes as currently defined under regulation do not include all recyclable materials currently collected by municipal programs, and that missing materials should be included via an immediate amendment of schedule 1, part II of the regulation.

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Secondly, while the bill provides for the designation of other materials by the minister in the future, no materials other than blue box wastes are addressed in the bill at this time. Members of the AMRC have spent over five years working with industry to develop a funding program for HHW, or household hazardous wastes. This was both prior to and during the previous WDO process. The September 1, 2000, report submitted by the former WDO to the minister clearly recommended that the cost of municipal HHW programs should be shared on a 50-50 basis between industry and municipalities. AMRC members are continuing to undertake the necessary data-gathering and analysis activities that would support the development of a WDO diversion program for HHW. Either HHW should be included as a designated waste within this bill or the minister should immediately designate HHW upon passage of this bill. Like our colleagues at AMO, we believe the priority for funding should be for blue box and HHW programs.

Municipalities have been without funding support for blue box and HHW programs for some time. AMRC members suggest that the bill include a requirement that funding for a designated material be provided effective the date of the designation to ensure that funding for at least blue box and HHW would be provided for the fiscal year 2002.

Lastly, the bill does not include a clear description of the mechanism by which additional materials will be designated by the minister. Thus it is not clear to us how additional materials such as used tires and compostables will be designated in the future. We do recommend that blue box waste and household hazardous waste, or HHW, be designated immediately and that funding to municipalities be effective as of the date of designation, by the addition of a new clause in section 22 of the bill.

Miss De Giovanni: Regarding the clauses related to the members of the board of directors, the bill provides for a board to direct the WDO. Many AMRC member municipalities would like to see an evaluation of the proposed board, as the balance of proposed members is heavily weighted toward industry representatives both as voting members and as observers. The proposed board structure also indicates that additional industry representatives would be added to the board with the formation of the industry funding organizations for designated materials. The question that should be asked is, is the addition of IFO representatives necessary? The addition of too many new industry representatives will further unbalance the board, and may lead to a large and cumbersome board structure.

AMRC members believe the goal should be to create an effective board structure that fairly represents all stakeholders in the process without becoming too large and potentially ineffective.

We recommend:

(1) That prior to second reading of the bill, the proposed structure of the WDO board in subsection 3(2) be reviewed to ensure that a reasonable balance is maintained between industry and municipal membership;

(2) That the proposed addition of industry funding organization representatives to the WDO board as noted in subsection 3(2), paragraph 8, be reviewed;

(3) That the addition of some municipal organizations as observers to the board in subsection 3(3) be considered to assist in balancing the proposed structure, and that the AMRC be considered as one of these observers.

Regarding waste diversion programs, the bill states that Waste Diversion Ontario, in conjunction with an industry funding organization, must come up with a waste diversion program for any material designated by the minister. There appears to be no timeline for the development of a plan and no opportunity for the minister to intervene in the event a plan cannot be agreed upon. We recommend that section 22 include a clause that a specified, limited timeline be applied when developing a waste diversion program for a designated waste. Further, if this timeline is not met, the minister should have the authority under the act to impose a waste diversion program.

Ms Ralph: In regard to the issue of the blue box program limit on payments to municipalities, the bill currently indicates in subsection 24(5) that, "A waste diversion program developed under this act for blue box waste shall not provide for payments to municipalities that total more than 50% of the total net operating costs incurred by municipalities in connection with the program." The bill does not clearly obligate industry to pay 50% of municipal blue box program costs, but appears to leave flexibility that industry could pay less than a 50% share, which would result in municipalities paying more than a 50% share.

This is not in keeping with the recommendations in the September 1, 2000, WDO report, which were: (1) that industry should provide financial support equal to 50% of

the aggregate provincial net costs of municipal recycling programs; and (2) that funds provided to municipalities through the WDO should be calculated on the basis of the municipal funding allocation model developed by the WDO.

A considerable amount of work has been undertaken by the former WDO on developing a cost allocation model to determine levels of funding to municipalities. This model is based on industry providing 50% of the net aggregate municipal blue box program costs and encourages municipal programs to exceed their diversion goals by potentially providing some programs with more than 50% funding depending on their program performance.

In subsection 24(5), the word "operating" should be changed to "net" costs that would include annualized operating, capital and administrative costs.

Lastly, the bill should also be clear that the fees under subsection 29(3) of the bill to cover off the administrative costs for the WDO, the industry funding organizations and the ministry are not to come out of the 50% funding to be provided to support municipal programs.

We recommend that subsection 24(5) be amended to read, "A waste diversion program developed under this act for blue box waste shall provide for payment by industry of an amount equal to 50% of the total net costs incurred by municipalities in connection with the program."

In regard to the definition of "steward" in the bill, the definition of the word "steward" is unclear, as it is described only as a person having a "commercial connection" to the designated waste or product from which the waste is derived and it is open to wide interpretation. If a municipality is obligated by law to collect and dispose of a particular waste, it could be construed that they have a "commercial connection" to a designated waste and could be interpreted therefore as being a steward. We do not believe that is what the bill intends.

We recommend: (1) that a steward should be defined as the "first seller" of a product or material in Ontario; and (2) that the bill should state that a municipality cannot be a designated as a steward.

Miss De Giovanni: Regarding the clause on voluntary contributions, the bill states that a steward designated by an industry funding organization may make voluntary contributions of money, goods or services to the organization. This clause is unclear as to the reasons for granting exemptions. In the past, when an industry has made in-kind contributions, these have not always adequately reflected true cost sharing. AMRC members do not want voluntary contributions to municipalities that are of no great benefit in lieu of getting real dollars needed to deliver programs.

We recommend: (1) that in subsection 30(2) a clause be inserted that states that voluntary contributions must realistically reflect equal value to the amount of funding that the money, goods or services is replacing; (2) that a clause should be added or an amendment should be made to subsection 30(3) that provides for approval by the

WDO board of the terms and conditions of a voluntary contribution, since the loss of funding for a designated waste will directly affect the waste diversion program developed by the WDO.

Ms Ralph: In regard to the proposed WDO and IFO organizational structure, the bill currently proposes the implementation of a complex organizational structure to fulfill the requirements of the bill. This proposed structure would have the WDO developing programs to divert designated wastes, and a number of industry funding organizations formed to implement these programs and deliver funding to the municipal components of these programs. The potential level of bureaucratic duplication and complexity of this proposed system concerns many AMRC members.

The structure envisioned by many participants in the previous WDO process, including AMRC members, was that the WDO would develop and implement the diversion programs and collect the information required to determine the annual industry funding requirements, and that the IFOs, or industry funding organizations, would be formed primarily to collect the funds from industry. Once these funds were forwarded to the WDO, the WDO would be responsible for administering the payments to municipalities.

Municipalities are concerned that under the proposed structure they will have to deal with multiple annual requests for program information, multiple funding submissions, and more than one industry funding organization for each material type that is designated.

We recommend: (1) that the proposed structure for distribution of funding to municipalities as set out in the bill be evaluated prior to second reading. A more streamlined approach would reduce the complexity and duplication that could result by the passage of the bill in its current form; (2) that if the results of the evaluation continue to support the proposed structure, the bill include a clause that states that only one industry funding organization be formed for each classification of designated waste; that is, only one IFO for blue box wastes, one for household hazardous wastes, and one for each additional material that is designated.

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In conclusion, we do feel it's important to note that the bill only addresses the diversion of material. It does not currently deal at all with material that will not or cannot be diverted but still has to be and will be collected and disposed of by municipalities. Also, it does not address the environmental costs associated with throwaway products. Based on this bill, altering a package from a recyclable material to a non-recyclable material would exempt the producer from any responsibility to fund the proper management of this material.

That said, we also feel that, if used appropriately, this act can become a powerful tool for industry stewardship and funding. It does provide the necessary conditions for "backdrop" legislation to create a level playing field where all industry players in a given material sector have

a legal obligation to participate and contribute to the fund.

The success of the bill in supporting waste diversion efforts will lie in how the act is interpreted and what plans are actually established. The AMRC is concerned that there are many details of Bill 90 that should be amended or reviewed very carefully prior to second reading.

Again, thank you very much for the opportunity to comment on the bill. Your time and attention today is greatly appreciated.

The Chair: Thank you very much. That leaves us just about a minute and a half per caucus for questioning.

Mr Arnott: Thank you very much for your presentation. I found it insightful, thoughtful and very constructive. Certainly, as recycling coordinators, you should have a big say in what happens with this bill because you are the experts in terms of the municipal recycling end of things.

I'm pretty confident that some of the concerns you've expressed can be addressed as we move forward, and I'm hopeful that's the case. This is an early, preliminary process that we're in right now—first reading of the bill and referred to a committee. So we will have opportunities to address some of these things.

You talked about the members of the board of directors and you made a general statement saying that your members believe the goal should be to create an effective board structure that fairly represents all stakeholders in the process without becoming too large and potentially ineffective. I think we would all agree that that would be desirable. How large is too large?

Ms Ralph: It depends on who you ask. From experience in dealing with multiple boards—for example, boards of management in siting landfills—you can reach the point where you cannot make effective decisions because you have too many members with too divergent interests, frankly. We recognize that it may not be possible to get to the point where you have 50% representation from both sides of the equation. However, it should be a fair structure and it should be as fair as possible, which is where we are concerned, for example, with the addition of additional industry representation in the future, which would create a very dramatic imbalance, frankly, where at some point in time the municipal voice at the board would be very small. That's one of our primary concerns.

Mr Bradley: I certainly share your concerns about the municipal representation and it being weighted in favour of the industries which are represented. I'm also concerned, as you appear to be, about the possibility of people converting from a recyclable container to a non-recyclable container, and who is in the game and who is producing waste and the fact that it appears to deal with those who are in diversion instead of those who haven't made the same effort in diversion.

Would you think that an assessment against those who are providing something that doesn't meet the 3Rs would

be reasonable, so that they could contribute to this fund as well?

Ms Ralph: That probably goes beyond the current intent of the act. We recognize it as being a potential problem once the act is implemented or once the bill is implemented. I think part of that issue could be assuaged by ensuring that the group of designated materials referred to as blue box wastes is as currently comprehensive as possible to fold in the majority of packaging that can be potentially recycled.

Our concern as municipalities is that every material that a given municipality collects in its program should be funded. There are programs that only collect five or six material types because they've made a choice not to collect certain materials which are very expensive to collect and process and for which there are minimal markets. Other municipalities have chosen to collect every possible material, knowing that they're going to spend more money but provide additional diversion efforts. So I think the key is to address the issue of in fact pulling in as many of the viable material types as possible at the outset.

Mr Marchese: I would just thank you for all the comments that you make and say to you that the comment you made in your conclusion, "Altering a package from recyclable material to non-recyclable material would exempt the producer from any responsibility to fund the proper management of this material," is something others have raised. I'm convinced Ted Arnott is listening, as are the Chair and others, and that they will have to address it in their bill.

Secondly, in your point re proposed WDO and IFO organizational structure, this government is so concerned about red tape, as you know, that they wouldn't want to contribute in any way to an increase of red tape. I'm sure they will take this into account when you say, "Municipalities are concerned that they will have to deal with multiple annual requests for program information, multiple funding submissions and more than one IFO for each material." So again, for a government that's concerned about red tape, I'm sure they will address that one.

Voluntary contributions: I support your second recommendation, which says, "A clause should be added or an amendment should be made to section 30...that provides for approval by the WDO board of the terms and conditions of a voluntary contribution, since the loss of funding for a designated waste will directly affect the waste diversion program..." So I support that one over your first recommendation. Other people have commented on that as well, by the way.

The concern about the blue box program limit on payments: a number of people have spoken to that. They want clear language on 50-50. I'm not sure, and Ted Arnott, the parliamentary assistant, hasn't commented on this, why they haven't used the language that was proposed by the WDO and its proposed variant. Hopefully they will get back to it. Others have talked about it. Ted has been very complimentary of all the submissions

people have made, and this is one of the comments that most have touched on, so I hope they will listen to that as well. Thanks for your submission.

The Chair: Thank you very much for coming before us here this morning.

MUNICIPAL WASTE INTEGRATION NETWORK

The Chair: Our next presentation will be from the Municipal Waste Integration Network. Good morning. Welcome to the committee.

Mr Todd Pepper: Good afternoon, Mr Chair and members of the committee. My name is Todd Pepper. I am president of the Municipal Waste Integration Network, or MWIN. I'll let my colleagues introduce themselves.

Mr Arthur Potts: My name is Arthur Potts. I chair the government advocacy committee of MWIN and I'm a principal of Municipal Affairs Consulting.

Ms Maryanne Hill: Good morning. My name is Maryanne Hill, and I'm the new executive director of MWIN.

Mr Pepper: MWIN was formed four years ago to be the voice and resource for municipal waste management and minimization in Ontario. Our members are primarily the senior administrative and program staff of Ontario's municipalities, together with our contractors and consultants, and who, with the approval of our respective councils, design, implement and deliver the waste management programs in Ontario's municipalities. While I'm president of MWIN, for example, I'm the general manager of the Essex-Windsor Solid Waste Authority. We deliver the waste management programs for the city of Windsor and the county of Essex in southwestern Ontario.

As you can imagine from that, Bill 90 is very close to the hearts of our members, as we work every day in the field providing waste management programs to over 75% of Ontario's population.

Two years ago, MWIN was selected by the Association of Municipalities of Ontario, from whom you heard last Friday, to provide technical assistance to their political representatives on the original Waste Diversion Organization that was established by the Minister of the Environment, the Honourable Norm Sterling, back in November 1999. Almost 100 of MWIN's members committed countless hours to the committee and subcommittee work of that original WDO organization, and we contributed significantly, we feel, to the report from the WDO that was delivered to Minister Newman on September 1, 2000, which I'm sure you're all aware of. It is our familiarity with the WDO process that brings us here today.

While we support wholeheartedly the intent of Bill 90 as you have it before you today, and while we encourage its speedy passage through the Legislature, there are a few details, as others have presented to you, that we feel need to be addressed before it moves to second reading.

I'll go through those subsection by subsection if I can, Mr Chair.

Our first comment is to subsection 1(1), or the definitions section. I believe our comment is very similar to the comment you just heard from the Association of Municipal Recycling Coordinators. We're asking that the definition of "blue box waste" be expanded to include both "basic and supplementary blue box waste." Why we're asking that is that currently regulation 101/94 to the Environmental Protection Act defines "blue box waste" as "municipal waste that consists solely of waste in one or more of the categories set out in schedule 1" to that regulation.

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Schedule 1 provides for two types of blue box materials: basic materials, which you're familiar with as the newspapers, the tin and aluminium cans, the glass; and then there's a supplementary list of materials that provides municipalities with an option, as my colleagues from AMRC mentioned. Some municipalities collect a wide variety of materials off the supplementary list, and some collect the basic two materials off that supplementary list. By expanding the definition, we believe the bill will now provide coverage for all materials currently collected in Ontario municipal blue box programs.

The second subsection of the bill that we would like to speak about, as you can imagine, is subsection 24(5). This is the most important issue to municipalities in Bill 90, the level of industry funding for waste diversion programs that are implemented through Waste Diversion Ontario that's proposed to be established by the bill. The recommendation from the former WDO was very clear on this issue. Recommendation 7 of that report stated, "Industry should provide financial support equal to 50% of the aggregate provincial net costs of municipal recycling programs." I emphasize "equal to" and "net costs" in that recommendation.

That resolution was unanimously approved by all industry and municipal representatives on the funding and regulatory committee of the previous WDO. It was then adopted unanimously by both the municipal and industry representatives on the board of directors of the WDO. Yet Bill 90 in its current form does not incorporate this recommendation from the voluntary WDO. The only reference that we can find in the bill to a 50% is found in subsection 24(5) of the proposed act. However, the subsection as it currently reads refers to money that is to be distributed to municipalities, and not the contribution by industry. We believe the regulation of the distribution of the money to municipalities is not required.

The Association of Municipalities of Ontario, whom you heard from last Friday, my colleagues at the AMRC, whom you just heard from, and MWIN over the last several years have developed a funding model that we propose to provide to the new Waste Diversion Ontario, when it's established by this bill, that will equitably distribute industry funding to Ontario's municipalities. The funding model will support the waste diversion

initiatives of Bill 90 by providing incentives to municipalities to add more recyclables to the blue box program and to divert more waste from landfill sites into waste diversion programs.

Therefore, we propose for your consideration the following rewording of subsection 24(5): "A waste diversion program developed under this act for blue box waste shall provide for payments to municipalities by the industry funding organization that equal 50% of the total net costs incurred by the municipalities in connection with the program."

Why we use "net costs" instead of "operating costs" as set out in the current bill is that in the municipal budgeting world, "operating costs" has an association that applies typically to things like fuel, labour, benefits, insurance, but it doesn't capture the capital costs to deliver waste diversion programs. In your communities, you know there are trucks driving up and down streets to collect blue boxes. Trucks in a municipal budget are capital projects. The recycling centre is a capital item. The equipment inside the recycling centre is a capital program. So when we're talking a net program cost, it includes the trucks, the fuel, the recycling centre, the equipment in the recycling centre, the person who drives the trucks and the people who work in the centre, so that it's all-encompassing. This is why the previous WDO and we are suggesting to you that the words "net cost" rather than "operating cost" be used in the bill.

Next, we're suggesting that you include a new subsection in the bill. We've called it subsection 24(6); I'm sure the drafters of the bill will come up with their own number. We're proposing that that subsection deal with household special waste. These are the materials—typically waste oil, used paint, pesticides, fertilizers, antifreeze, those types of materials—traditionally described as household special waste.

There were extensive negotiations between municipalities and that sector of the industry for some time, and they independently came to agreement to provide 50% funding for household special waste. That recommendation was recaptured in the September 1 WDO report to the minister. We're asking you to capture it in the current Bill 90 by essentially adding a new subsection 24(6), which would read, "A waste diversion program developed under this act for household special waste shall provide for payments to municipalities from industry funding organizations that equal 50% of the total net costs incurred by municipalities in connection with the program." Essentially, it is the same wording we've suggested for subsection 24(5), but geared toward household special waste.

Our last comment this morning is related to subsection 31(1), or the funds section of the regulation. Municipalities are very concerned about the timeliness of the implementation of this bill. We encourage you to get it through the House as soon as possible, with the implementation of waste diversion programs and its associated funding by each industry funding organization under subsection 31(1) of the act—and these are the words

we're asking you to add to the end of the existing subsection—"commencing as of the date the waste is designated."

We would suggest to the committee that they encourage the minister to designate through regulation both blue box waste and household special waste as of January 1, 2002. Municipalities are currently in their budget cycles for their 2002 budgets. We need certainty that funding from industry will be there in fiscal year 2002. Each year of delay is costing Ontario municipalities \$20 million to \$25 million in local tax dollars, as they continue to pay 100% of the costs of Ontario's waste diversion programs.

We appreciate your time today. The three of us are here to answer any questions you might have. We encourage you to proceed with the early passage of this act to promote the reduction, reuse and recycling of waste in Ontario.

The Chair: That leaves us just under three minutes per caucus. This time we'll start with Mr Bradley.

Mr Bradley: There are a lot of good suggestions here. I can understand the concern of the municipalities about the funding formula, because when you're establishing—in this case, most municipalities won't be establishing it; it's putting in additional capital. That is going to be a problem.

How to ease the mind of the Minister of the Environment? What kind of mechanism would you propose to ensure that those funds which are designated for capital for the purposes of the recycling program, for instance, go totally to that? Because they'll say, "Those municipalities will want to use those trucks for something else or the equipment for something else or the building for something else." What kind of audit would you propose for that to ease their minds?

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Mr Pepper: Of course, through the Ministry of Municipal Affairs and Housing there is a new financial information report that municipalities now are required to provide. There of course are also new benchmarking initiatives and performance measurement initiatives that are contained as part of the annual municipal FIR. Within those there are specific performance measurement criteria for waste collection and for waste diversion, including recycling programs. So I think, Mr Bradley, it would be captured within the financial information report that's already in place in Ontario's municipalities.

Mr Bradley: At one time the provincial government provided some significant funding for the blue box program, for instance. It now appears as industry 50%, municipalities 50%, and you're not even certain—I know there are some problems about what does 50% really mean, and you've been very clear on that.

Do you think there is a role the provincial government could play in terms of funding not necessarily operating, because we understand operating costs, but in terms of capital costs, in terms of providing information—although, heaven forbid, we don't want yet another provincial government program of ads on the television set or pamphlets from the Premier, but I'm talking about

basic information. Do you see a role for the provincial government in that regard?

Mr Pepper: In 1986 and 1987, when most of Ontario's waste diversion programs started, that provincial funding, particularly for capital, was very important. It essentially got the infrastructure in place today that we have in Ontario's municipalities. Over time, of course, many municipalities have moved to have private sector contractors, for example, provide recycling services. So when a private sector contractor is providing a price to a municipality, \$50 a household to collect recyclables, that \$50 includes all of the private company's trucks and capital equipment etc.

What we're concerned about is that if a municipality is still delivering its own program and its operating costs, for example, are \$30, it may very well have a capital cost of \$20 per tonne that would not be reflected in that definition of operating cost. So it's just to level the playing field between the private sector operators, particularly in recycling, versus those municipalities who currently deliver the program themselves, so that they're both capturing capital within the overall cost of delivering the program.

Mr Potts: The municipalities have been very clear that whether it's a provincial taxpayer or a municipal taxpayer, some relief has to be given. So municipalities want to control the direction of how they run their programs as much as they can, and introducing another level of government funding probably doesn't solve the problem. The key here is to get industry to take its responsibility for materials that it is producing and make the contributions for a program that, since it was initially started, in great vision to the government at the time, hasn't lived up to its operating funding expectations. Now it's time for industry to step up, not additional taxpayers' dollars.

Mr Marchese: I forgot to mention to the other group that I also agreed with their suggestion of inclusion of household special waste. You touched on that as well. Of interest is that municipalities and industry had a working agreement on a 50-50 funding formula.

Mr Pepper: That's correct.

Mr Marchese: There was an agreement. It's not as if somehow they had opposed it. So it's a curious thing that somehow this isn't part of their mandate. Do you have a sense of why? Have the ministry staff talked to you or the political staff talked to you about this?

Mr Pepper: Yes, I have had the opportunity to talk to the staff at the ministry. I'm not sure that they had a sense of comfort that there was a consensus, but over the last couple of weeks I think they have developed that comfort, both in talking to the municipal sector and the industry sector, that there is support for 50-50 funding for household special waste. I hope the ministry staff would in the next draft of the regulation advance that, particularly as you're hearing today from ourselves, from the AMRC, and I believe you heard similar comments from the industry last week.

Mr Marchese: Ted is listening very attentively, as you'll notice, on his side. I'm sure they will bring that back to the table.

One of the criticisms of the Toronto Environmental Alliance is that in terms of the hierarchy of reduction, reusing and recycling, this Bill 90 focuses much on recycling, which is a continuation of the problem rather than dealing with the other aspects of reduction and reusing or even dealing with compostable material. I suspect you might say that this is a good step, obviously, in terms of that process so that until we get to the others this is something that is supportable, obviously.

Mr Pepper: Ontario's municipalities continue to provide programs on the other 2Rs. We don't stand just on recycling programs. Certainly our staff and the members of the Municipal Waste Integration Network are providing waste reduction and reuse programs every day through public education, staff in the schools, speaking to community groups. So we do that every day, as well as also operate recycling programs and programs to collect household special waste etc. So we haven't lost that focus of the 3Rs.

The real issue here is that municipalities are paying \$40 million to \$50 million a year in assessment tax dollars to provide waste diversion programs, particularly the recycling programs. We think, as Arthur mentioned previously, it's time that industry provide part of that funding.

Mr Miller: Thank you very much for coming before us today. Certainly, as you mentioned, a number of groups are making it clear the funding is 50-50 between industry and municipalities.

My question has to do with the net costs versus operating costs. You said net costs include the capital costs of the recycling centre and the trucks etc. Are you assuming then that the municipality owns the recycling centre? What happens in the case, as in my riding, where they're privately owned? This past week I toured the recycling plant in Bracebridge and the composting plant. I guess I would want to make sure there wasn't a bias against the private operators.

Mr Pepper: Thank you, Mr Vice-Chair. What we're trying to do is level the playing field between municipalities which deliver the program themselves versus municipalities who contract the service, such as in your particular riding. There's a mix, of course, as you can imagine, throughout Ontario. Some municipalities provide all of the infrastructure, the trucks and the staff etc, to deliver the waste diversion program in their municipality, whereas another municipality will have a private sector contractor.

I used the reference before: let's say the private sector contractor, because the service is being delivered as a municipal service but is privately contracted, is charging the municipality, and I use an example, \$50 a household. In that \$50 will be capital costs for the private sector trucks, the private sector's recycling centre and equipment etc, as well as their operating costs: their

drivers, their fuel, their insurance, and those sorts of things.

On the municipal side, if we use the word "operating," if you understand municipal budgeting, there's an operating budget and there's a capital budget. Those trucks and the recycling centre will be over here in a capital pot, pool of money, and the operating costs will be over here in another pool: the drivers, their salaries, their wages, their benefits, fuel for the trucks etc. So by using the term "net cost" you level the playing field between the municipality which provides it, for example, with CUPE workers or whatever, and the municipality which chooses a private sector contractor to deliver the service for them. If you use the word "net" instead of "operating," you level the playing field and you don't prejudice either one.

Mr Arnott: Do we still have time?

The Chair: No, we don't, I'm afraid, Mr Arnott.

Thank you very much for your presentation. We appreciate your coming before us here today.

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ONTARIO BAR ASSOCIATION, ENVIRONMENTAL LAW SECTION

The Chair: Our next presentation will be from the Ontario Bar Association, environmental law section. Good afternoon. Welcome to the committee. Please proceed.

Ms Rosalind Cooper: My name is Rosalind Cooper. I'm appearing on behalf of the Ontario Bar Association, environmental law section. I'd like to briefly introduce my colleagues as well. To my left is Dianne Saxe, and on my right are Janet Bobechko and Katherine van Rensburg. They'll be assisting with any questions you might have at the conclusion of our submission.

We're making our submission today on behalf of the environmental law section of the Ontario Bar Association. As a background, this section is comprised of over 500 lawyers who devote some or all of their practice exclusively to the area of environmental law in the province of Ontario. For the purposes of our submission today, we would like to focus on a specific aspect of Bill 56 which we believe is critical to the success of this legislation in actually achieving its objective, which is to encourage the development of brownfields.

Based on our extensive discussions and analysis, the failure of Bill 56 to distinguish between the protection afforded to polluters and non-polluters is absolutely critical. It's our view that non-polluters need to be provided with enhanced protection from liability in order for this legislation to be successful.

Prior to providing you with our recommendations, which we've limited to three for today's purposes, we want to explain our expertise and the perspective that we, as environmental lawyers, bring to this issue.

Since 1990, we've had in place environmental laws that impose financial liability and responsibility for contaminated lands on a broad range of parties. Our

system is supposed to be based on the polluter-pay principle, but in practice it's become a situation where it's a search for deep pockets. This is because of the wording of the legislation, which imposes liability on any person who might be connected with contaminated lands.

The result of the wording of the legislation is that we, as environmental lawyers advising our clients, are compelled to warn prospective purchasers and developers of brownfields that in acquiring or developing such lands they could be subject to environmental liability. The result of this advice has had a chilling effect, in that many owners and developers of brownfields will not become involved with such properties. All of us practising in this area, and my colleagues here today, have encountered numerous examples of this situation and could advise you of situations where potential purchases of contaminated sites have not proceeded because of the potential liabilities.

We believe that the current version of Bill 56 takes important steps in dealing with some of these liability issues. But as environmental lawyers regularly advising clients in these matters, we can tell you that it simply does not go far enough. We have carefully reviewed and analyzed Bill 56, and we've concluded that, notwithstanding its positive aspects, the cautions we currently issue to clients who are acquiring and developing contaminated sites will not change sufficiently to promote the development of brownfields as a result of Bill 56. In our view, we still have to advise clients that the moment they acquire a contaminated site, even if they do everything reasonable to investigate and remediate the property, they will continue to be exposed to liability for historical environmental conditions.

What can we do to ensure the legislation actually works and achieves its objective? Again, we believe the most important deficiency of Bill 56 is the failure to distinguish between property owners who have caused pollution or historically occupied the contaminated sites, and developers or new owners who have not caused or contributed to the environmental condition of the property. I'm going to refer to these latter parties as innocent parties. We believe these innocent parties have to be encouraged to come forward and acquire and develop brownfields. In our view, the only way to achieve this objective is to provide these innocent parties with enhanced protection from liability. We also believe this can be achieved through a handful of small amendments to Bill 56 that do not fundamentally alter the policies and principles behind the bill and that will achieve the objective of revitalizing contaminated lands.

We have three recommendations to put forward for your consideration that we believe will provide the necessary protection to actually encourage parties to become involved with brownfields. All the recommendations, again, focus on the innocent owner, and we have defined the innocent owner as a party at arm's length from any party that caused or contributed to contamination at a site or at arm's length from any owner, occupant or party with charge, management or control of the site.

The first recommendation we would like to put forward is that Bill 56 must provide protection to an innocent party prior to filing a record of site condition. Currently, the way Bill 56 works is that protection is only obtained once a record of site condition is filed with the Ministry of the Environment. Given that this document is only filed once the remedial work at a site is completed, a party that acquires the site is exposed to liability from the time of acquisition until they file the record of site condition.

When we as lawyers advise clients of this, they don't want to purchase these lands and incur that exposure to environmental liability during the investigative and remedial phase of the work. Therefore, our first recommendation is that Bill 56 must provide the innocent owner with protection from liability from the moment they acquire the land for a period of two years. We believe that a mechanism such as filing a notice of intent to file a record of site condition could easily achieve this objective. We are also suggesting a two-year period, because this would parallel the provisions found in Bill 56 that are applicable to lenders and municipalities. In essence, it would parallel those provisions.

Our second recommendation, again hinging on the innocent owner, is protection against all ministry orders upon filing a record of site condition. Currently, Bill 56 as written only provides protection from orders that pertain to the subject site. We believe that protection from orders relating to historical off-site contamination is critical to encourage parties to acquire and develop contaminated lands. We still expect that such parties have to address and remediate current discharges from the site and that they are obviously liable for any new contamination or condition they create. It is important to note that in making this recommendation we believe that in the absence of an innocent party that is acquiring the contaminated site in the first place, the ministry would not be able to issue an order against that party at all. Therefore, we believe that providing protection against orders relating to historical off-site contamination does not deprive the ministry of an enforcement tool it would otherwise have against that party, but it is critical in encouraging that party to undertake the remedial work and the development of brownfield sites.

Our final recommendation relates to non-statutory or civil liability. We as lawyers are increasingly seeing private litigation in the courts over contaminated sites. This continues to be a significant concern for our clients who are considering the acquisition and development of brownfields. Although Bill 56 provides protection from ministry orders, we will still need to advise them that they nevertheless could become a target of a civil claim even after they've cleaned up the site and filed the record of site condition.

It's our belief that an innocent owner should not be liable for any claim by a third party, provided certain conditions are satisfied. Those conditions are that the owner did not cause the contamination, they've remediated the site and they ensure there's no further

discharge of contaminants from the site. As such, the legislation should specifically state that an innocent owner who meets these conditions, upon filing a notice of intent to file a record of site condition, will not be subject to any ministry order or any civil tort claim by any third party based on historical discharge of a contaminant from the site.

We believe this recommendation will not result in the exemption of any responsible party from liability, and does not deprive any third party of its rights against a responsible party. Again, if the innocent owner never acquired the site to begin with, the third party would not have a right of action in any event. Also, the party would still be liable for current discharges or new contamination which they create.

In conclusion, we believe Bill 56 will not achieve the objective of encouraging brownfield redevelopment if the concerns we have identified are not addressed. We also believe these concerns can be addressed without significant changes to the structure, approach and overall policy objectives of the bill. We believe that unless these concerns are addressed, we will be forced to continue to advise our clients of the exposure that comes with the acquisition of these sites. This will undoubtedly continue to discourage the development of brownfields and undermine the true objective of Bill 56.

We would be pleased to answer any questions you might have.

The Chair: That affords us just under two and a half minutes per caucus. This time we'll start with Mr Marchese.

Mr Marchese: I appreciate the deputation. We have heard much of what you said from many deputants. Presumably they sought legal counsel as well before they came here. I'm not quite sure.

Ms Cooper: Probably so.

1230

Mr Marchese: But they're still very similar. So I suspect the government will have to address these matters; otherwise the liability questions will, I think, prevent many from developing the sites. That was my sense. Although a number of deputants made the case that in spite of it they still are likely to get involved in the development of brownfields, I'm not sure.

Ms Cooper: We're a bit sceptical about that. Again, in our position, providing the advice and having seen numerous situations where parties have walked away from brownfield sites because of the legislation, we believe those changes are critical to its success.

Mr Marchese: Right. You're the only ones who talked about putting in conditions, which I find useful; that is, that they did not cause it—I think they might have mentioned that; have remediated the site—I'm not sure they mentioned that; have ensured that there is no further discharge of contaminants. I think those are useful conditions to put in. With that, I think the government ought to be supportive of the kinds of things you've addressed and other people have raised as well.

Mr Kells: Part of Mr Marchese's speech I could have given. I thought he nailed it right on.

Mr Bradley: We like your daily post in the Toronto Star.

Mr Marchese: I do too.

Interjection: I like Bob Hunter.

Mr Kells: They only publish them if they're negative to the government, so I haven't been writing lately, boys. Anyway, I'm sorry to get off topic.

Actually, you've hit the nail on the head. You've encapsulated what we've heard from a number of groups in various ways. In our own briefing of the bill, I think that we have discussed your concerns and, although I can't speak for the minister or the ministry at this time, I think it's safe to say that they'll get a thorough review and your concerns will be taken into very serious consideration. As you say, if you can't advise people to get into the redevelopment of brownfields, then we haven't achieved what we're trying to achieve. It also follows that if the legislation isn't sound, then we're going to be back into more legislation, or litigation anyway, related to the legislation. So thank you very much. It's bang on from my point of view.

Mr Bradley: It was interesting to note that I read into the Hansard the Toronto Star article by Dianne Saxe about the potential for problems with this legislation. I was hopeful that the government had, as they always do, followed that Hansard carefully to determine what the problems are. You have today, of course, elaborated upon those, which is very useful.

There are two former environment ministers on this committee right now, and both would understand, if not necessarily agree with, the desire of the Ministry of the Environment to find somebody with deep pockets to deal with these matters. Otherwise, the grateful taxpayer, if we cannot find the original owner of the property who is responsible for the polluting, will end up paying for off-site pollution. I have some sympathy for that view, though I think the compelling arguments you have made probably override those.

My question would be, what obligation—and someone else asked a question or made a point about having information available to prospective buyers—should a prospective buyer have when purchasing a property such as this? How should that person be able to get the information about the contamination that might be in the property?

Mr Marchese: Buyer beware, right?

Ms Cooper: I'm going to ask Dianne to respond to that question.

Dr Dianne Saxe: At the moment, there is a common-law responsibility, and someone who doesn't disclose contamination of which they have knowledge runs a very substantial risk of being sued. Obviously, this isn't good enough. You're probably aware of the case that started all of this almost 20 years ago now where the municipality wouldn't disclose, the ministry didn't disclose, and the owner very carefully concealed the contamination so as to stick the purchaser with the hazardous waste site.

One of the things the bill would usefully create is a registry for records of site condition. One of the things

that might also be on there—I brought a sample of a notice of intent to remediate. This is the one that is used in Pennsylvania, which I could leave for members of the committee if you'd like to see it. This would also be on the registry, and it starts off with a list of what's on the site. So in order to get any kind of protection, you first have to disclose what's here based on a reasonable examination, and that has to be available to the public generally.

I think we all agree that people need to know what's on the site, within the limits of current science. To date that hasn't happened, and there is no workable structure to date to have access to information. So that part of the bill I think would be a considerable improvement.

Mr Bradley: The other point I would deal with is the difficulty sometimes in determining what is historical contamination and what is new contamination. How do we ever solve that problem?

Ms Cooper: Janet, do you want to address that?

Ms Janet Bobeckko: Sure. I guess it is a difficult question to distinguish between the two, and as science progresses maybe we'll be able to make that distinction. Obviously, if it's a similar use on the site, that's more difficult. If they were different historic uses, the question might be more easily answered.

I think we would take a look at it and say that if you can't distinguish between parties of similar uses, then they may all be potentially responsible, but that still doesn't deal with the innocent party who did not contaminate. They are using it for a completely different purpose, for redevelopment purposes, as opposed to a continuing commercial or industrial use.

Mr Bradley: Is that my time up?

The Chair: It is indeed. That is our collective time up.

Thank you very much for taking the time to make a presentation before us here today.

With that, committee, we've hit the end of our time. I would remind everyone we're on a pretty tight time frame to make it to Brantford for the resumption of our hearings in that fair city at 2:40 this afternoon. The committee stands recessed until 2:40.

The committee recessed from 1237 to 1440 and resumed in the Best Western Brant Park Inn, Brantford.

The Chair: I'll call the committee back to order as we resume our hearings today on Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters; and on Bill 90, An Act to promote the reduction, reuse and recycling of waste.

It's my understanding we've swapped positions. First up will be the mayor, Chris Friel.

CITY OF BRANTFORD

The Chair: Good afternoon and welcome to the committee.

Mr Chris Friel: Thank you for the opportunity to speak today. The city of Brantford has been involved in an agenda of brownfields for the last four years. We

started a committee in 1997-98 to deal with a large number of properties that we have in this community which have caused us some difficulty.

The first property was industrial in the 1860s through the 1880s and then stopped operating in the 1970s or 1980s. We had recognized that there were very large parcels of land in this community, in the middle of residential areas, generally, which had literally achieved a Wild West frontier kind of feel. We were no longer collecting taxes and nobody was assuming responsibility for them. Whoever wanted to go into these buildings and set up business did, and they continue to do so even today. There are businesses operating in brownfield sites probably across this province where there is no ownership. They are not paying taxes and they are operating probably with very little regard for any other laws that are going on currently. I've found this is quite a problem for us but it's not uncommon, having spoken to a number of mayors across communities in Ontario, and it has proved to be very frustrating.

Our issues are pretty specific. We have as a community moved forward. First of all, we've set aside money. We've already expended probably over \$800,000 now to deal with brownfield legislation property. We've been hunting down properties to determine who owns them so that we can go after the owners, one of which will turn out to be the province of Ontario, and we'll see your property very shortly that we're about to demolish.

We have been dealing with finance people provincially and federally. Although we know that we need to get the provincial liens taken off a property before we can move on it—and this is a specific property where we were just told by Mr Flaherty a week ago, "It's got nothing to do with us; it goes back to municipal affairs and housing"—we have been indicating for two years this is not the case. You are the minister responsible for this. Every other ministry, including your own individuals, have told us that you are the minister responsible for this, but nobody seems to want to address this issue. Unless we get the liens off these properties, we can't actually access some of them.

We've dealt with insurance companies that didn't want to insure us if we assume the liability for this property. They have no concept of how to insure a brownfield site taken over by a municipality. We've dealt with property owners, squatters, just about anybody you can possibly deal with on these properties. We have expended tens of thousands of dollars and hours and hours of taxpayers' money and energy to be able to, at the very least, figure out what is going on with these properties. Unfortunately we've also reached a point where we're very frustrated because we've figured it out for the most part, but now we can't get any of the action going.

I want to show you some of the pictures. I believe you're going to tour Northern Globe, which is one of the properties I have here. You're going to get a sense of it. You'll get an idea of its relationship to the community from these pictures; you'll get a better idea of the

relationship to the community once you've had a chance to see it. It's important to get an idea of these properties. You will see three properties out of 16 in the community, and they are of varying degrees, the first few properties we've been working on.

This is what you'll start to see. I don't know if any other community in Ontario is going to be putting up signs like this in the next little while. This just went up about a month ago, as we started the process to go after this property; 186 Pearl Street is owned by the trustee of the province of Ontario. Bay State Abrasives went bankrupt and, through the process of our lawyers' hunting it down, it was finally determined that it reverted to the public trustee. They had no idea they owned the property and they were not that happy to find out they did. We are in the process of arranging to take this property down. Some of them are a little bit dark in spots, but this is a good idea. This building is coming down. This is the work that has already started to advance. You can see the trailer there of Bay State Abrasives. In the background you'll see a building that's set back a little bit, sort of salmon-coloured. That's a co-op in the area with a large number of children in it directly across the road from this property.

This is the back end of the property. You can see the stop signs there. You can see where that sign was for the city of Brantford. So that's the corner. Directly across the road is a subdivision development. There's the co-op across from the property. If you were standing in front of that sign on the corner and shoot across, that's what you'd see. You will also note the giant H there. That's the Brantford General Hospital; that is our hospital. There are cranes because we're getting a brand new tower built as we speak. But that is the idea of this property and its relationship to the hospital. You'll see that even more closely when you see Northern Globe. It's one block over from the hospital. I'll show you, and you'll get an exact picture.

This is Northern Globe. We identify them by the name of the last corporation to hold it, or the sign that's withering on the side of the building. This property we refer to as Northern Globe, although Northern Globe has told us numerous times that they no longer exist, that they're American and they no longer want to have anything to do with this property. We have letters saying, "We've got nothing to do with it," although they keep interfering with it.

This is the fire that happened, what? Two months ago.

Interjection.

Mr Friel: I didn't think it was two months ago. This is the fire. This is the back side. This is a business, Robert Lancaster Construction, that garage that's right there. Our fire department was on it immediately.

Those are the remnants of what happened after the area burned. This was arson. It was seen by numerous people and it was suggested that it was likely a group of kids with a case of beer who went in on an afternoon in May when the weather was starting to get better and torched it. They started a little fire in the back. They

probably came off the train tracks that are adjacent to it and went into one of the easy—every brownfield site can be entered. No matter how many times we bolt them back up, they find a way of getting into them. Again, this is what's left of the property after all that.

Nobody owns this property, although everybody thinks they do. There are squatters that have been on this property. We actually had to go through a court case with a squatter who went on that property and said he had ownership of it. We literally had to go to court on two occasions to prove that he actually doesn't even have a position in the building. He'd just been squatting there.

We also had some nasty surprises when we finally got agreement. The medical officer of health allowed us, through his powers, to be able to finally get at this property. We assumed responsibility for it, we demolished it and, when we got into it, we found a number of tanks. Peter, can you tell me the nasty chemicals that we're dealing with?

1450

Interjection.

Mr Friel: So we found tanks, we found highly flammable solvents and nobody knew what was in them. Sorry, Hansard, about that. I'm just trying to find out what the names of the nasty solvents were.

So this is what we found. We had no idea when our fire department went in there, because we can do tests, but we don't have any authority to go in and do full-scale tests to know what was in the tanks, wherever. When the businesses walk away from these properties, what they leave is what they leave. We have no authority to find out what's in there, and they have no responsibility to tell us what's in there. So we didn't know, and we had our best guess from our fire department that there was not a product. Anecdotal evidence from the people who closed it up was all we could go by. When we got on the property, we were all horrified to find out that there were two tanks of solvents. If those tanks had gone up, more than likely we would have had extreme problems immediately around the site, and possibly our firefighters would have been at great risk.

Those are more tanks. The blue side just to the left of them is our hospital. This is what we've been dealing with. Now you can get an idea. There's the Northern Globe sign and there's the residential property across the street. During the course of that fire I had the opportunity to stop and speak to a lady who had lived there for I think she said 54 years, directly across from it, and she had seen the four fires in the last few years. They had been used to it, even when it was operational they knew it, but she no longer felt safe on a number of issues; not just the fire, but the fact that it was becoming a property for people to sleep in, to hide in, for kids to come in and out of. You never really understood who was in that property, and she was living alone and she was very concerned. So she had to close up her windows and her doors because the smoke was billowing and she had to live with this for a couple of days.

The fourth fire: there's a view from just up the street. You can see the nice hedges. This is actually a very charming neighbourhood. Again, you can see where the houses are. That property is the one you will see. We had \$800,000 that we had set aside two or three years ago; actually, it's probably closer to four years ago. We set aside this money and we were going to use it. We were going to build interceptor trenches; we were going to phase 2 surveys; we were going to fight the court cases. We can't do that any more because every penny of that money has gone to clean up and demolish that property. Now we have to start all over again. So the work we were doing anywhere else in the brownfields, all that money is gone. We've got to build into our budgeting process and our tax base the ability to put money aside on an annual basis, which is what we're going to be debating this year, this time around. But I think we should be in a good position to be able to do it. We've talked about ideas of taxes directly from these properties being brought back into use, going into the pot for a period of time. There's a whole series of possibilities, but we're not even at that point yet because we don't have any money any longer.

This brings us to the point, of course, while I'm on the subject, that it is essential, just as is happening in American jurisdictions, that either provincial or federal governments come forward with money to help municipalities on an emergency basis. This is what an emergency basis is. If you need a criterion or standard, Northern Globe, with four fires in five years in the middle of a residential neighbourhood and next to a hospital, is an emergency situation.

We just expended all of our dollars. We did it in good faith, but we really would have appreciated some help in managing this. We'd also like to point out that on all these properties, particularly the older ones, the taxes came to the municipality but, more directly, they went to the province and the feds. They say the province and the feds have been collecting taxes there since 1920. We're not asking for that sum of money back, but we're asking for regard for these properties just so we can decommission them.

This is one of my favourite properties. This is the Greenwich and Mohawk Streets brownfield area, a very large number of acres. This is where Cockshutt farm, which turned into White farm, and Massey Ferguson had their paint shops. Literally from the 1880s on, almost every tractor or combine that was produced and shipped around the world by White farm and Massey Ferguson was made out of this facility, this property, at one point; either painted, or tools or whatever was coming out of here. This is the state it's in now. Actually, the yellow building on the left has been taken over. At one point somebody had come in and was going to try and turn it into lofts and apartments, and it was done very nicely, and there are some offices in there, as an example of what can be done.

Tires on this property had been a major issue. We had a major tire fire. The province has been chasing a particular tire fire gentleman around. He's responsible for

a couple. He was moving tires in and out and in and out, collecting his money and piling them up in buildings and then locking them up.

This is one of those great stories that make you wonder why you're in government. One of these times after this tire fire we went into a building that had been used at one point and was filled from the ground to the ceiling—long, old industrial building—with tires, just piled high with tires, rubber everywhere. The Ministry of Labour came down because they found asbestos in the building and they slapped a stop-work, do-not-enter order on this building, and it has sat there ever since. It sat there until the roof collapsed. Wasn't that the building where the roof collapsed in the snow? Yes. Once the roof collapsed in the snow, we had the opportunity to go back in again. That cost us about two years of work, dealing with that particular situation.

More of the property; tanks. This is Go Vacations property, which is at 66 Mohawk, taken from a residential—this would have been basically on a sidewalk. It's in front of somebody's house. That's the roof that collapsed on that building. These are the backs of these buildings.

This is from the Greenwich Street side, which runs by the old canal, which runs directly into Mohawk Lake, which runs directly into the Grand River, which is upstream from Six Nations' drinking water supply.

This is another angle. You just get an idea of the acres and acres. This is actually a nice story. This is the Cockshutt building and time office. This was the original building for Cockshutt Plow when the office took over. It was originally Able Plough, and then Cockshutt got it when they sucked up all of the plow companies during a period of expansion. They built this facility. There's a group of Cockshutt plow enthusiasts particularly in Brantford, in Canada, and in the United States who are working now to turn this into an industrial museum that would house Cockshutt as well as other operations.

This property was sold for the brick and wood rights, the salvage rights, to an individual who went through. We didn't want to lose this building which was adjacent to it, so we met with this individual and said, "You can have a demolition permit on the rest of the property. We want you to sever this property and not get a demolition permit on it. We want to talk about it." He agreed to that, and since then he waged a campaign in the newspapers. He threatened to come in and take it down anyway until we told him, "You don't have a demolition permit. You're not going to be allowed to do it." Letters to the editor, name-calling, a whole series of other really nasty situations over something that could have been very positive.

But again, because the owner of this property lives somewhere in Barbados or Bermuda or somewhere and we can only ever talk to him through his lawyer—he hasn't been disagreeable about stuff but he doesn't want anything to do with his property any more—it makes it almost impossible to get anything done.

This building is actually very beautiful. It's still in terrific shape, and we'd like to go after Sheila Copps's

heritage money at some point to be able to have a proper industrial museum. I have a feeling she's going to be throwing around a lot of money in the next little while. I'm just cynical; I can't help thinking that, though, and we want to be first at the trough. Nothing like leadership to—

The Chair: Right after Hamilton, you're first in line.

Mr Friel: Yes, right.

Interjection.

Mr Friel: We're all one big happy family, right?

We've been very aggressive about this. I don't think you're going to find another municipality throughout your tour or talk to any other community that has been as aggressive as we have been in dealing with this. We've gone at it from every possible angle. Originally our purpose was that we are going to get these properties back into useful shape in one form or another. With Bay State Abrasives it could be a park. It's beside a rail yard, so the residential is not going to be there. It could be a park. The Brantford General Hospital would like to talk to us about parking for that property. OK, we're going to use it; we'll sell it, whatever we can get out of it. We know we're not going to make any money on it. We're not going to turn a profit on these. We don't expect to. What we want to be able to do is put back into long-term use acres of land within our community.

As municipalities we have no choice but to plan across generations. The generations before us benefited from these properties. We are the generation that has to deal with that benefit, that has the fallout from it. Our decisions and the choices we make have to be made for the generations who are going to live with it next, and we have the ability to do that.

We've taken the legislation very seriously. We've come through a number of things and we would like to recommend, from our experience, what we've been able to find, actually getting to the point where we're demolishing these buildings, assuming responsibility for them, hunting them down, fighting with everybody, connecting with everybody. These are the items we would like to recommend for Bill 56.

1500

Do you know what? Are you making a presentation today, Matt? Come here, Matt. The reason I am asking Matt to come forward is because he is a lead on these. I have always believed in my heart that people who understand the issue should be the ones who appear. If there's an engineering issue, I would get an engineer to explain it to you. Maybe Matt can just highlight some of the recommendation points of what we were looking for as we were going through it.

This is Matt Reniers, who is our chief heritage—

Mr Matt Reniers: Policy and heritage planner for the city of Brantford.

The Chair: You'll have to speak very quickly too. You have about two to three minutes left.

Mr Friel: We'll go fast.

Mr Reniers: The first point with Bill 56 is that right now, as it's worded, records of site condition will be

required for every change from industrial/commercial use to a residential or park use. The point we're making is that it should be required where there is a potential environmental concern, but not in all changes of use do we have that environmental concern. An example is where we converted a commercial building downtown to a university residence, and there wasn't an environmental concern. The way it's worded, it should be a little bit more flexible and allow for situations where records of site condition aren't appropriate.

The legislation allows receivers and trustees in bankruptcy and fiduciaries to abandon their interest in the site when there is an environmental order, if they wish to or don't have the assets to do that. Where a municipality acquires a property under a tax sale, it's not given that right to walk away from a site or there is no cap on the amount of resources they can put into it. Our thinking is that we should be treated in a similar fashion to trustees and fiduciaries.

The other thing is that the legislation is not clear on who picks up the environmental order when people have walked away from it. If a trustee says, "No, we're not going to deal with it," or a fiduciary says, "We don't have the assets to deal with the order," who is responsible? The act is not clear at all as to who is responsible. Our point is that whoever issues the order should be responsible for ensuring that it's carried out. These are orders when there are environmental concerns that the Ministry of the Environment feels very concerned about that have to be dealt with.

The other thing is, we appreciate the ability, after a tax sale, if it's successful, to get on site and do environmental assessments. That's an improvement, but we think the act should go further and allow us to go on site even before the property is put on for tax sale. As long as it's eligible for the tax sale, we should be able to get on.

One of the problems is that business will not buy a property if they don't know what their problems are. Uncertainty creates inaction. If we can have the phase 2 assessments done when we put it up for power of sale or tax sale, then we can provide that to prospective purchasers, and hopefully it can be made more attractive and perhaps someone in private industry might be more willing to pick up the site because they'll have more knowledge about it. So we want to get on earlier.

Liability protection to two years: most of the projects we're going to be working on are going to take a lot longer. The Bay State Abrasives we'll do in two years, but I think everything else, we can't. We'd like to be able to negotiate with the Ministry of the Environment with a remediation plan and have the assurance upfront that we'll have the liability protection right through to the end of the process. It will allow us to probably take remediation strategies that might take a little longer but are less costly to implement. Two years is not enough time. We need more. We would preferably like to negotiate that on a site-by-site basis with the ministry.

Cancelling and reducing of taxes: our understanding of the act is that the municipalities will be able to cancel

and reduce taxes during the rehabilitation period and the development period, whereas the province with their school taxes would only do that through the rehabilitation period, which is only an 18-month period. The development period is a lot longer and it's capped by the total remediation cost.

We feel, on these tax breaks that go to private industries, that the province should be a full partner with us and match our tax relief programs that we have in place or that we can put in place under the legislation. We want fuller participation by the province.

The community improvement plan: in the bill you're taking out the phrase "or for any other reason." Community improvement project areas are used for a wide variety of purposes, and we want to maintain the flexibility that is currently in the Planning Act for that. So if you can keep that phrase in, we would be happy.

The legislation doesn't deal with provincial liens. The mayor has talked about them briefly. They are a concern. We understand that the province is looking at some protocol to deal with how to remove liens or what kinds of circumstances it would take to do that. We strongly believe that liens have to be dealt with and we urge the province to move forward with that.

Mr Friel: I know we went over our time. I appreciate the extra time just so we had the opportunity to present the recommendations. That would be the presentation on my behalf.

The Chair: Thank you very much, gentlemen. We appreciate your recommendations and your presentation here today.

Mr Friel: We have copies of the presentation for you.

The Chair: Thank you.

BRANT COUNTY HEALTH UNIT

The Chair: Our next presentation will be from Dr Doug Sider, medical officer of health for Brant county.

Mr Robert Hart: Hello, Mr Chair. Dr Sider couldn't make it today. My name is Bob Hart. I'm the director of environmental health with the Brant County Health Unit. I have a prepared statement which I'll read.

I think Mayor Friel did an excellent overview of what's going on in a number of the brownfield sites here, and Northern Globe in particular. As he alluded to, we were in an unusual situation, perhaps unique, where the Brant County Health Unit issued an order under sections 13 and 14 of the Health Protection and Promotion Act to remediate that particular site. That work is ongoing, and you will be out there this afternoon to take a look at it. It's that particular issue and the recommendations the city put forward around that, and that whole issue of environmental orders, and perhaps the Health Protection and Promotion Act orders as well: what do you do when you have a site where there is clearly no one who is able to pay the bill or who has responsibility for the site? How do you bring about remediation of those sites?

I'll just read through my prepared statement, and then if you have any questions, feel free.

As the committee has learned, the brownfield site located at 22 Sydenham Street, in other words, Northern Globe, is the subject of an order under sections 13 and 14 of the Health Protection and Promotion Act. This order requires action to both secure this property and remove all structures on the site. Again, you will see that this afternoon when you're touring.

As you will appreciate, the medical officer of health for the Brant County Health Unit had very serious concerns about the risk posed to the community by this property and he saw fit to issue a Health Protection and Promotion Act order. This concern is best illustrated by portions of the description of the property that were included in the order. You've had a lot of details, but I think it bears going through this again so you can hear the particular issues that caused the concern that brought about the issuance of the order.

The premises comprise an abandoned industrial site located within a dense residential area that includes a school, community centres and a church. A major railway artery runs adjacent to the northeast perimeter of the site, and the property is in close proximity to the Brant Community Healthcare System; in other words, the Brantford General Hospital.

The premises are unsecured and consist in part of derelict structures that have been deemed unsound by the city of Brantford building officials. Again, you've seen the slides. These conditions serve as an attractant to local youth and other unauthorized persons. These individuals are at risk from physical hazards on site and from exposure to hazardous chemicals and materials that may also exist.

Additional intact structures exist on the site. The previous industrial activities carried out on the site suggest that these structures could contain hazardous materials. As you've seen from the mayor's presentation, they did in fact find a number of solvents and other materials there that were quite hazardous.

1510

Four fires caused by arson have occurred on the site in the past five years. The most recent—again on the slides—occurring on May 15 of this year resulted in the evacuation of local residents, hospitalization of some residents and property loss. The high probability that additional fires could be set on this site raises the following additional concerns: noxious fumes and smoke could have potentially serious adverse health consequences for neighbourhood residents. As well, it may be necessary to evacuate the hospital, something that causes us grave concern. This could lead to disruptive and potentially devastating consequences as emergency health services are suspended and critically ill patients would have to be moved.

The involvement of rail traffic in a fire—again, we have a rail line in close proximity to this site—particularly with regard to hazardous chemical freight could have severe, if not disastrous, effects on the community as well.

I'm afraid I'm boring you because you've heard about the Northern Globe site, but the point in providing the

committee with this degree of detail is to underscore the fact that there is nothing particularly unusual or unique about this particular site. Many or all of the variables noted above, as well as other potentially hazardous conditions and characteristics and materials etc, may well exist on other sites just the same throughout the province.

It follows, then, that there probably exist numerous—although they can't be quantified—potential health hazards related to brownfields throughout Ontario. It is important to notice too that the word "potential" is not synonymous with the word "theoretical." We know in this particular case that the conditions described posed a very real risk that brought about very real adverse health effects in that particular community. There is no reason to assume that this couldn't occur in other areas throughout the province.

The use of a Health Protection and Promotion Act order to remediate risks associated with brownfields is, to our knowledge, uncommon and perhaps unique to Brantford. However, as health units become increasingly involved with issues pertaining to environmental health risk, such orders could become an immediate, powerful and common instrument of corrective action.

But an order is only as effective as the potential for it to be obeyed. If it's not obeyed, then the condition continues to exist. In situations where an order can be served upon a responsible entity, there will likely be a high degree of compliance, and even in situations where the entity fails to comply, there is recourse for the public health unit to undertake the work themselves and recoup the costs, either through the courts or through the tax rolls.

However, as we've heard and I'm sure you've heard through your tour, in the case of most brownfield situations there is no responsible entity. If a health hazard is to be mitigated, the cost must be borne by the local public health unit or, as evidenced by the Northern Globe situation, by the local municipality. It is significant to note in this particular case that the only reason the remediation at Northern Globe is occurring is that the city of Brantford council had the willingness to act on this even though they didn't have resources specifically set aside. We heard from Mayor Friel what the cost of mitigating the problems at Northern Globe has done to the continuity and the ongoing plans they had for brownfields in general in the area. It's quite a negative impact in that way. Again, this willingness will not always exist or the resources are simply not going to be available among other municipalities, or in this municipality, should anything happen again.

The health unit believes that health risks associated with brownfields cannot be effectively managed by placing the burden of remediation upon the shoulders of local municipalities. Adequate resources are simply not in place, and the very real danger exists that a hazard could go unmitigated. A provincial role in completing the work required in an order would remove this danger.

Those are my comments. I have copies of this which I will provide to you.

The Chair: Thank you very much. The clerk will hand those out. You have left us time for questions, if you're willing to take them.

Mr Hart: Certainly.

The Chair: We'll start the rotation this time with the government members. We've got about two and a half minutes per caucus.

Mr Miller: Thanks for your presentation today. The property you are outlining sounds like a fairly severe case in the total picture of all the brownfields out there. I'm wondering if there should be a categorization of more hazardous sites and less hazardous sites across the province. Obviously this sounds like a more hazardous site and one that is more contaminated.

Mr Hart: I think being able to do that would be a great thing. Part of the problem with doing that is the ability to gain access to the sites, to be able to find out ahead of time what's actually there. I think Mayor Friel spoke to that issue, that sometimes there's just not the legal authority to get into these places and determine what's actually there.

This was a good situation where, after we had the fire, it was very plain that there were situations—the site was unsecured; kids could get in there, people with their cases of beer, and start a fire; the potential for evacuation of the hospital; the issues with the rail line etc; and a suspicion that maybe things had gone on there, but only a suspicion. It wasn't until we invoked the Health Protection and Promotion Act and were able to get on the property that we were able to get in there with a demolition crew and find out that, yes, there were other things.

I think having the strength or the teeth to be able to access these places and, where you have sites that you haven't had access to, to be able to get in and do some sort of triage, would be a really useful thing. I think you're right that not all sites will pose the same level of risk.

Mr Frank Mazzilli (London-Fanshawe): Thank you very much, and thank you too, Mayor Friel, for your presentation. What you've outlined is exactly why Minister Hodgson came out with this legislation. These sites exist across Ontario and have existed for many years, with many governments choosing to do nothing about that. Minister Hodgson did say that this legislation has come out in order to start doing something about brownfields.

Some of the recommendations you've put in your presentation I believe are valid. The point about going in and inspecting a site when you have the authority for ownership under the tax liability, whether that be done with some sort of warrant, where you have to obtain an order before you go on site, that would be reasonable too. It's built into other legislation and I don't see why it can't be built into this legislation, to give municipalities that authority to inspect sites prior to taking ownership.

I just want to thank you for your thoughtful process, not just complaining about the problems but how to better the legislation. Again, thank you.

Mr Dave Levac (Brant): To start, I'd like to welcome my colleagues and the staff to Brantford and the riding I

represent. I hope as many of you as possible can get a chance to see the site that you've actually seen pictures of, to get another first-hand view of exactly what problems the municipality faced during this particular crisis and the fact that this city was very proactive in trying to establish a rule of thumb or a best practice of how to recapture these brownfield sites. I've talked to my colleague, and he assures me that Hamilton needs some help to try to correct some problems it has.

That being said, I'd like to ask you if indeed you support the mayor's contention that there should be consideration given to an emergency fund by the province to draw on in the case of something as extreme as the Northern Globe fire.

Mr Hart: We do definitely, yes. In the written summation that we haven't provided yet, that is spoken to specifically. I think we really need that, as I said before, for the continuity of brownfield plans in areas where brownfield plans exist. When funds have to be diverted to take on emergency work like this, it really hampers the overall brownfield plan. Again, in other municipal areas there may not be resources at all to actually undertake this work and you may be in a situation where you have a significant health risk that's going to be left unmitigated.

Mr Levac: In part of your recommendation, then, I would include what we've heard from the presentations I've been present at, that there was encouragement and acceptance and support for the legislation and the fact that the brownfields legislation was being introduced and looked at. I would suspect very clearly that over the years municipalities have been coming to the province, time and time again, to talk about recapturing these pieces of property so that they can be value-added.

One of the pieces of the legislation that's been recommended by both opposition parties has been the right-to-know legislation that provides municipalities and, in particular, fire departments with information directly in their hands as to what's in those factories or on those sites. Could that be part of this legislation? I think Mr Mazzilli likened it to the first step, getting in ahead to be able to decide whether or not there are materials on site, for the protection of citizens. I think that's what you were referring to?

1520

Mr Mazzilli: The tax portion—

Mr Levac: Ahead of time.

Mr Mazzilli: Before taking them over.

Mr Levac: Right. And by taking them over, that provides you with an opportunity to identify, in terms of the health and safety that you're responsible for—would it be inclusive of that? Would it be a wise thing to do as well?

Mr Hart: I think anything that would assist us in having more information about what's going on or what has gone on in the past on these sites and the kinds of materials that potentially may be stored there certainly would be a good thing. What legislation it would actually link to I couldn't say, and what would be the most

appropriate way of doing it I'm not sure, but having the ability to get hold of that information would certainly be a useful thing to do.

Mr Levac: Thank you, Mr Chairman. I appreciate the time.

Mr David Christopherson (Hamilton West): Thank you for your presentation. I also take this opportunity to thank the mayor for an excellent presentation. Probably you could take an awful lot of what you said and apply it to just about all the older communities across the province in terms of the nature of the problems and characterizing the challenges we face in trying to deal with them.

I found in the immediate presentation a real interest in the fact that you used the Health Protection and Promotion Act. In the city of Hamilton—and Dave Levac is correct: Marie and I are part of a community that has a huge problem here. I wanted to give one example that points to the creativity you've used and that others have had to use.

A few years ago we had a case of an abandoned building, similar to any of the pictures that you showed here, where a bunch of kids broke in and it was determined that they had accessed liquid mercury. Because it was one of these abandoned buildings, you couldn't readily identify who owned it. Nobody knew what to do, except that we had a minor emergency. The mayor of the day, Mayor Morrow, declared a state of emergency, and there were quite a number of people in the community who thought he had actually overreacted—sort of à la calling in the army for a snowstorm. But those of us who understood the legislative framework the mayor had to work under realized that the only way he could coordinate and access all the services that he needed immediately to track down the kids, to find out where they were, to determine how much mercury there was, to make sure that was all found and taken out of the community, as well as secure the site, as well as accessing immediately without question provincial and federal assistance to do this, the only way he could ensure that would happen in the timeliness that he felt the situation demanded was to declare a state of emergency.

I wanted to follow up on your use of the act and ask two questions. One, did you have any follow-up from the province in terms of concerns on their part that you had misinterpreted, shall we say, or exceeded what the expectation of the act was for? Second, did that allow you to access any other dollars vis-à-vis what Mayor Morrow was looking at when he made the declaration? Did using the act provide you with access to dollars that you otherwise wouldn't have had at your disposal?

Mr Hart: The answer to both questions is actually no. In the first case we let the ministry know through the public health branch what we had done with regard to using this order. They were quite interested in it and have asked us to write it up for internal circulation among the health units as a publication as a novel but appropriate way of using the Health Protection and Promotion Act when a health hazard is identified. So not an issue there.

But, no, unfortunately, using the Health Protection and Promotion Act and issuing an order doesn't free up money from any particular pot in order to deal with that situation.

Mr Christopherson: Does it give you any further assistance in enforcing the order from either of the other two levels of government or does it still keep you within your own—

Mr Hart: With our own. It's a very powerful act. It allows us to do quite a bit if a health hazard is actually identified. But again, it always boils down to dollars and cents, where the money will come from to do it if you can't find a responsible party to carry out the work.

Mr Christopherson: Thank you for your presentation. It was fascinating.

The Chair: Thank you very much for coming before us here today.

COLIN ISAACS

The Chair: Our next presentation will be from Mr Colin Isaacs. Good afternoon, Mr Isaacs. Welcome to the committee. Just a reminder: we have 10 minutes for your presentation.

Mr Colin Isaacs: Thank you very much indeed, Mr Chairman, members of the committee. It's a pleasure for me to be with you this afternoon. I have provided the clerk with an expanded copy of my remarks. I'm going to abbreviate them in order to fit within the time we have available.

I am an environmental policy and program consultant who works primarily with the private sector to design and implement initiatives which benefit both the environment and the economy. My clients include companies in the agri-food, consumer products and energy industries, as well as others. I have been working as an environmental consultant since 1989—my experience in the environmental field goes back to 1980—and I'm a chartered chemist, recognized by the Association of the Chemical Profession of Ontario. I have been involved in Ontario recycling issues since I sat on the advisory group on recycling that was appointed by Environment Minister Susan Fish back in 1985, during the Frank Miller government.

I'm appearing today to share my own views on Bill 90. I'm not representing any company or interest group but I'll explain later why I think it's important that Bill 90 be got right.

Bill 90 is environmentally perverse legislation; that is, it's likely to do the exact opposite of what would be best from an environmental perspective and, in this case, the exact opposite of what its title says it seeks to achieve.

Every study of economic incentives to achieve environmental objectives makes it clear that the most effective approach is to provide economic benefit to companies or individuals who take measures to reduce their impact on the environment and/or to penalize those who cause increased harm to the environment.

Bill 90, as proposed, does the reverse. Under Bill 90, as proposed, those companies which use recyclable packaging or which market recyclable products will be forced to pay a levy to help pay for the cost of recycling. Those companies that use non-recyclable packaging or which market goods which are not recyclable will not have to pay a levy. This is a clear example of an environmentally perverse incentive. Companies, always looking to reduce costs, will make every effort to move their packaging from recyclable to non-recyclable materials; for example, from recyclable PET to non-recyclable PVC, or they'll seek to stay in non-recyclable package types. Opportunities to increase recycling of both packaging and products will be resisted because getting involved in recycling, something which is obviously environmentally preferred over disposal, will increase distribution costs in Ontario.

I want to stress that I am in no way blaming the Minister of the Environment or the ministry staff for this bill. The bill seeks to implement a proposal put forward by the interim Waste Diversion Organization, a group made up primarily of industry associations and municipal representatives. The biggest challenge we face is that recycling is the new activity on the block for Ontario municipalities. For more than a decade, municipalities have been worrying about how to pay for newly introduced recycling programs even though every respected study on the subject shows that recycling is cheaper for municipalities than waste disposal. So municipalities want money to help pay for recycling, and the interim WDO has tried to devise something to address that municipal demand.

Can the situation I've described be fixed? It's difficult. I prefer a major rethink of the bill applying the principles recently laid out so clearly by Val Gibbons in her report, *Managing the Environment: A Review of Best Practices*, prepared for the Ontario cabinet.

Put simply, companies that use environmentally preferred solutions—recyclable packaging and recyclable products—should pay less than those whose products or packaging must go to landfill or disposal. However, there is one simple change that may be worth considering, and that is to permit an IFO to collect fees based on the cost of collection and disposal of a waste where products or packages are not recyclable. This would not be a perfect solution, but it would at least allow an IFO to collect monies from companies which are not taking their environmental responsibility seriously. I have provided a rough draft of a proposed amendment on the last page of the full paper which I'm providing to the committee.

Finally, why am I here today? First, I want to help make sure that my home province has world-class environmental legislation. Bill 90 is not world-class. Second, as a member of a company within the Ontario environment industry, and in particular a company that exports environmental management services to countries throughout the Americas, it will be embarrassing if Ontario adopts legislation which is so obviously environmentally perverse. The environment industry in Ontario

currently numbers roughly 2,000 companies, employing almost 65,000 people. Environmental exports from Ontario to other countries total over \$750 million. Clearly, anything which diminishes our strong reputation as a supplier of environmental technologies and services to the world is of concern to me.

1530

My company and others are currently working with governments in Brazil and Argentina to design and implement household recycling programs based on the Ontario model, the blue box model. I do not want to have to explain to government officials overseas why my own province has introduced legislation which is environmentally perverse and exactly the wrong way to encourage reduction, reuse and recycling of waste. We already have a tough time winning environmental contracts in the face of strong European competition. We need good legislation at home to prove to foreign buyers that Canada and Ontario are truly environmental leaders.

I've focused on only the most major of the concerns I have with respect to Bill 90. Many of my other concerns have been addressed by other presentations before this committee. I thank the members of the committee for their interest and I'd be pleased to answer questions.

The Chair: Thank you very much. That affords us only about two minutes. I'm going to give the time to the next party in rotation. That would be the official opposition.

Mr Levac: Having heard your presentation and your using such language as "environmentally perverse"—why do you think this kind of legislation was put forward?

Mr Isaacs: First I should explain that "environmentally perverse" is a technical term from the economic community. It is not as bad as it might sound. It does mean something in the context of the OECD and the UN etc.

Second, I think the biggest problem, as I've indicated, comes from the pressure from municipalities for money to pay for recycling programs. There is a problem with the way municipal accounting works under the Municipal Act in that municipalities basically deal with all of their costs on an annual basis and are not required to account for the costs of capital investments such as new landfills, which are incredibly expensive. If you look purely at year-to-year operating costs, recycling can look more expensive than landfill, and municipalities are therefore saying they want money to pay for their recycling programs. I think that's understandable. They are the new kid on the block. On the other hand, if you take into account the costs of a new landfill, which are enormous in Ontario today, then clearly every time you divert a tonne of waste from landfill to recycling, you're extending the life of your landfill and saving a tremendous amount on capital costs down the road.

I think the ideal would be to go back to municipalities and talk to them about the fact that they really ought to be asking for money to pay for their waste disposal programs and that the products and packages that go to

the dump are the ones that should be charged a levy, and let's start the process all over again and get it right. On the other hand, I recognize that municipalities are eager for revenue. I'm not sure that anyone wants to hold up this legislation. So if we at least give the WDO the power to charge a levy to those companies that are marketing a product or package which is competing with a recyclable product or package, then the WDO will have the power to redress the concern I have by the way it charges levies, and it will be charging not just the people who produce recyclables but the people who produce non-recyclables. I'd encourage that approach.

Mr Levac: Very good, Mr Chair. I assume that's enough.

The Chair: Thank you very much, Mr Isaacs. I would just point that out right now there is a consultation paper out on the new Municipal Act. You may wish to offer some comments relating to the way that municipalities currently do their bookkeeping.

Mr Isaacs: It's not really my area of expertise, Mr Chair, but I was a municipal councillor once upon a time, so my knowledge is general, not professional. But thank you for the suggestion.

MAXINE MOORE

The Chair: Our next presentation will be from Ms Maxine Moore. Good afternoon. Welcome to the committee.

Ms Maxine Moore: Thank you. You'll have to just bear with me; I'm not a public speaker. I haven't had a speech since grade 7, but I'm here today for my own moral issues and the moral concerns of every single person in this community.

I am an employee at a large corporation in the city of Brantford. I have been a valued employee for nearly 12 years. To date my work record "shines," quoting one of my supervisors, and I'm "one of their best," to quote the other. I have been asked to train new employees up until last year, when I declined to do so for personal reasons. I have been chosen for special projects when that extra sparkle was needed for the media. Approximately two years ago I was the first in my department to earn an Excellence in Service Award.

I have never filed a grievance with my union or in any way been labeled a troublemaker until May 22, 2001, when I brought forth a health and safety concern to my employer. Now I am a thorn in their side. I have been emotionally abused almost daily by several management personnel. The pain in my heart that you cannot see has changed my life completely. My marriage and children have suffered deeply, and not always along beside me. Many days I have walked alone with no support whatsoever except my silent supporters, intimidated by their desperate need for a paycheque. This not only includes several of my co-workers, but also the unsuspecting contractors on and off site who have been deceived, along with government officials, doctors and many management personnel following their line of duty.

My human rights have been violated beyond repair. I'm not sure I'll ever be able to trust in the so-called system of procedures again. Since May 22, 2001, I have been lied to and intentionally deceived by many management personnel whom I trusted without hesitation for several years. These last three and a half months have been for me a nightmare. I'm not so sure I'll ever recover. The destruction that has been going on would be unthinkable to humankind.

I am here today to tell you why I think Bill 56 and Bill 90 are being considered for change.

That's all I've written. So, any questions?

The Chair: You've certainly afforded us just over two minutes per caucus. This time we would start with Mr Christopherson.

Mr Christopherson: I don't know what to ask.

Ms Moore: I work at the Brantford General Hospital. I'm a housekeeper and I believe I have been exposed to asbestos, and intentionally lied to and deceived as their reaction. I can prove that. I have all the documentation. I have over 100 pages of documentation where management has actually contradicted themselves in a single report.

They had a joint health and safety committee about me that I was not allowed to attend, and the manager of maintenance, Anne Overhoff, the occupational health and safety nurse, picked the union representation who were there to represent me in this meeting and they weren't allowed to speak to me before the meeting. They said they had enough information from management. That's a violation of the union contract, never mind my human rights.

In this meeting they were all given a chronology of events, which was untrue. Then they had everyone sit around the table and discuss me. All the facts stated in that joint health and safety meeting were not true to the real picture of what went on. However, it allowed them to have a document they needed to show officials that I'm crazy, that I don't know what I'm talking about.

They had changed several statements in that report when they sent in a response to the Ministry of Labour's appeal that I proceeded with until yesterday. I have dropped appeals with the Ministry of Labour because I'm aware now that they have been lied to as well by hospital management and, yes, I can prove that too. I have all the documents anyone needs to see to prove this but no one wants to get involved—no one. Everyone, including the Brant County Health Unit, tells me, "What steps are you taking?" and I tell them and they say, "You're doing a good job, you're doing a good job. Keep going. Don't ever lose your confidence. You're doing the right thing. Give us a call and let us know how you're making out." I'm tired of it.

My son was threatened two days ago—threatened—on his way home from school because the construction companies in this area believe something that's not true. They believe that I started this whole thing because construction people told me misinformation. You know what? That is a flat-out lie. There are a lot of people

waiting silently to back me up when the time is right, and let's do it today because I have had enough. You want to mess with me, that's one thing, but not my son. Not my son.

The Chair: Any additional questions? We went a little long on the first one. Perhaps, in fairness, Mr Levac.

Mr Levac: Maxine, as you are aware, this was brought to my attention and we're still dealing with it. There's a letter going out to express the concerns that you've voiced to me to the appropriate places, and I've been assured that there will be a response to the letter I sent, that you're aware of.

1540

Ms Moore: Are you aware that the construction companies that are in the building right now were not informed of any asbestos location until after I asked my question on May 22? Could I have been exposed to asbestos from cleaning all the ceiling tiles in several different areas of the building over the last two and a half months? Are you aware that I was informed by an expert in asbestos who states that the hospital is not willing to put out the kind of money it would cost for them to have an asbestos location survey, which by law they have to have? Are you aware that none of the contractors were notified?

I was told by someone in the sprinkler crew that they were wrenching up in the ceilings for as long as they needed to do their jobs, and a week later the asbestos hoarding went up and they removed asbestos. This young worker was not told about any asbestos locations and didn't even know what it looked like. Do you call that something we can be proud of in this community?

The structural walls are full of asbestos, the plaster ceilings, the plaster walls; the old fireproofing spray that the hospital states, in a document that I have, was all removed in 1983 and 1984 from the buildings. That is a lie, because I have another document, which in fact was the first document they gave me to shut me up, that states otherwise. They removed old fireproofing spray this year in May, before I asked my question, on another area, not just on the first floor. They state that it's only on the first floor and it was all removed in 1983 and 1984. That is a lie; I have a document that proves it. The only reason they admitted to SPI having any is because the day I asked my questions the ceiling tiles were down and wide open, and anybody with any knowledge whatsoever of asbestos would have known it was there.

Mr Levac: Mr Chairman, it will continue and I have pledged to Maxine that we will continue to look into her situation.

The Chair: Thank you for coming—not exactly on topic, but as MPPs we're certainly eager to hear concerns at any time.

Ms Moore: I do think it has something to do with the bill, in my opinion, because these walls that these construction workers didn't have any idea were full of asbestos, where do you think they went? Anybody have an idea?

The Chair: Presumably to a landfill.

Ms Moore: Bingo. It's not the construction contractor's responsibility to go into a building and say, "Where's your asbestos?" It is the responsibility of the building they enter to notify them where the asbestos is, by law. It is not any contractor's responsibility whatsoever. Do you see the mess we're in here? The ventilation system alone in that building is a disaster.

The Chair: Ms Moore, I appreciate your putting your concerns on the record here. I'm comforted that your local MPP has also been apprised of the matter, and we have to take it on faith that people you've written to will in fact meet their responsibilities.

Thank you again for coming before us here today.

Our next presentation will be from Mr Paul Urbanowicz.

Mr Friel: Paul's one of our councillors and he's not here, so I'd be happy to come and talk for another 15 minutes.

The Chair: I'm sure you would, but let's move along to the city of Waterloo then. If Mr Urbanowicz shows up, we will accommodate him.

CITY OF WATERLOO

The Chair: Welcome to the committee. Just to remind you, we have 20 minutes for your presentation.

Mr Brent Needham: Ladies and gentlemen of the committee, thank you for granting us the opportunity to speak to Bill 56, the Brownfields Statute Law Amendment Act. The city of Waterloo has a history of involvement in brownfield redevelopment. I'd like to take this opportunity to highlight a few of our success stories, touch on areas of the legislation we feel should be expanded and offer a solution to what our experience has shown to be the main deterrent to the revitalization of brownfield lands.

We won't go into any great depth on the specific sections of the act that the AMO submission has already detailed. The city of Waterloo generally agrees with the comments and would instead like to offer suggestions from our experiences.

As you can see from this picture to the right, the core of the town of Waterloo was highly industrialized in 1891. A set of tracks divided the area and a CN rail yard was housed just to the edge of the core. The early 1990s witnessed the closing of four area industries, representing a combined 61 acres within the central area of the city: Seagram's distillery, representing 11.2 acres, Labatt Brewery with 6.1 acres, Canbar with 14.8 acres and the SunarHauserman Furniture site of 29 acres. The obvious result was large tracts of underutilized land in our core, a loss of jobs and a concern for the viability of our community.

The city took a proactive approach instituting a vision to encourage new employment opportunities and replace jobs, foster mixed-use development, encourage residential development as a support base for the uptown, promote compact design, provide public and private recreation opportunities and foster creativity, just to

name a few things. This aerial shot of the same area taken in 1999 gives you an idea of how the landscape changed. By this time, redevelopment had occurred on most of the lands; however, it is still ongoing and the city continues to work for the revitalization of our uptown.

As an example, here are a few sites where the city worked with developers. The Luther Village site, now a seniors village, was previously the home to Sunar manufacturing. When TransAmerica Life became the owner of the property after a defaulted mortgage, they found themselves in trouble with an environmental mess. Underground storage tanks for solvents were removed, along with 800 tonnes of leachate toxic soil and 1,000 tonnes of non-hazardous waste along a previous rail spur line. Test wells encountered sporadic low-level findings of TCE. A pumping and treatment program began and is ongoing.

The city worked together with TransAmerica and the Luther Village people to get this site cleaned and the use changed. However, without the significant dollars at TransAmerica's hands, this project may have never gotten off the ground. The city was also involved with land conveyances, granted a development charge credit and a smaller parkland dedication. The region of Waterloo contributed to the cost of traffic lights.

Waterloo city centre is now home to the city's council chambers and municipal offices along with three other private office spaces, an investment office, a chiropractic office, a hair salon, our business improvement area office and a restaurant. CN Real Estate was the original building owner, with the city leasing 40% of the space. Land was assembled between the city and the existing CN rail yard to form the necessary parcel. Test holes were dug; however, they missed wells storing coal tar that was later uncovered during the excavation of the foundation. The \$2.5 million-cleanup of this project was cost-shared by CN Real Estate, the city and the province.

The city purchased the Seagram lands and have sold parcels to make up the Barrel Warehouse Lofts, Euclid Avenue townhouses, and leases this building to Waterloo Maple, a local computer software manufacturer, a local high-tech success story. It was important for the city to become involved in order to speed up the redevelopment of these lands. However, we did assume liability for certain environmental unknowns.

The city of Waterloo generally supports the comments made by AMO on behalf of the municipalities of Ontario. Bill 56 is a positive step by the province in their Smart Growth strategy. It recognizes the importance of cleaning up brownfield sites and encourages infill development. However, the following issues should be addressed.

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Prohibition on certain changes of use: the definition of what requires a record of site condition to be filed under the environmental site registry needs to be expanded and should also provide direction where a property could comply with zoning bylaws under the Planning Act. That may require a record of site condition to be filed with the environmental site registry under Bill 56. For example, site A is zoned to allow mixed uses, the current use being

commercial and the proposed use being a residential apartment building. The zoning bylaw currently allows for this development. However, Bill 56 considers this a change of use requiring a record of site condition to be filed under the environmental site registry. Those issuing a building permit might not realize this, since the property conforms to the zoning bylaw. It must be determined which act takes precedence. Checks and balances will need to be put in place.

In addition to that, the repeal of an amendment bylaw governing tax assistance: a provision is needed to allow for the bylaw to be repealed or amended where the conditions of the bylaw have not been met. For example, a bylaw is passed, but the developer is slow to act or shows no sign of attempting to clean up on-site. A mechanism should be in place that would allow council to repeal the bylaw. A provision is also needed to allow council to extend the time for tax assistance without going through a full public process when complications beyond the control of either party have arisen.

The city agrees with the AMO position regarding the definition of a community improvement area and that the “for any other reason” should remain. However, the city finds value in keeping environmental, social or community economic development as a component of community redevelopment. We suggest the definition read, “‘Community project area’ means a municipality or an area within a municipality, the community improvement of which, in the opinion of the council, is desirable because of age, dilapidation, overcrowding, faulty arrangement, unsuitability of buildings, environmental, social or community economic factors, or for any other reason.”

With all this in mind, the city examined the main deterrents to brownfield site redevelopment and found the following two main deterrents were not adequately addressed: liability and cost of cleanup.

First, liability: the proposed legislation addresses this concern with respect to environmental orders; however, it needs to be further expanded to include protection from environmental prosecution or civil suits. Municipalities should also be afforded the same protection as receivers or trustees. The city of Waterloo agrees with those comments made by AMO and encourages the province to make the necessary changes.

Second, cost of cleanup: this is a major deterrent to developing brownfield sites. Property taxes owing can be more than the value of the property. Federal and provincial liens, coupled with the actual cost of the cleanup, make brownfield sites unattractive to potential developers. The city of Waterloo has come up with creative solutions in the past. For example, a recent brownfield site was acquired by the city through a tax sale with over \$1 million in back taxes owed to the city. We were able to reach an agreement with the developer whereby the city forgave a portion of the taxes owing. We worked closely with the developer and the Ministry of the Environment to see the site redeveloped. We recognize the city has benefited from past businesses on this site and will benefit from having this site revitalized. How-

ever, there also has to be recognition from other levels of government that these sites are an investment in our future. Collectively we can all gain through their redevelopment.

The city of Waterloo recommends the province establish a super rebuild fund, available to municipalities and private businesses that are willing to partner with all levels of government—federal, provincial and municipal governments—for the quick cleanup and redevelopment of brownfield lands. This fund would recognize the redevelopment of these lands as an investment that would quickly be paid back through increased property assessment, the creation of jobs, income tax and corporate tax dollars.

This fund also recognizes the social benefits of cleaning up brownfield sites. Health and safety concerns are removed, along with improving the aesthetics of the community. With this fund, the net is cast beyond the financial responsibilities of the municipality, to all levels of government. The city has often written off back taxes to encourage redevelopment, and we’d like to see all levels of government which benefited from the previous use of the property, and will benefit from future uses, become financially involved.

In summary, we’d like to thank the committee for the opportunity to speak to the bill this afternoon and to respond to any questions before the September 21 deadline. For myself, thanks to Julie Finley, Rob Trotter and the committees at the city of Waterloo who helped to put together the presentation.

The Chair: That gives us just under three minutes per caucus, and this time we’ll start with the government.

Mr Mazzilli: Thank you, sir, very much for your presentation. Your first point is well taken. Essentially what you’re saying is, be careful that this legislation doesn’t contradict other pieces of legislation or in fact have unintended consequences with other pieces of legislation.

On the second point of the rebuild, did you see the proposal from AMO on a rebuild fund? Would it be one third partners by the three levels of government? Is that the type of funding you see?

Mr Needham: I think there has been some discussion about that. My sense is that’s the direction we’ve been going in our thinking. I’m not sure that the person who could most clearly answer that question is here today, but I’ll double-check with Rob to see if he would disagree with what I’ve said.

Mr Rob Trotter: Rob Trotter, planner with the city of Waterloo. The past practice in the municipality on the cleanup of a couple of sites we’ve had has been a three-way split. So we would likely encourage that.

Mr Mazzilli: I have a further question on that. Who would qualify for this? What you have are obviously some properties you have difficulties with that were owned by a private company; others that are owned by different levels of government. An example would be defence sites, which are probably some of the biggest costs to clean up. Are they going to be able to apply to

the rebuild fund if they're in a municipality, and would they come after provincial and municipal dollars in this fund to clean up those sites or would they be excluded from applying for a cleanup under that type of plan? Has AMO thought some of those things out?

Mr Trotter: I can't speak for AMO. I don't know what that association has done. In terms of the rebuild fund itself, this isn't something the city of Waterloo has mapped out in terms of a procedure or a policy in any regard.

Mr Mazzilli: I'm only throwing those out as cautions as you pursue this, because different levels have different responsibilities for different properties, and I don't want to see an agreement in place where it's, "Now we don't have to clean up our own. We'll just apply to the fund." So I throw that out as a caution and something for you to consider as you're pursuing this.

Mrs Marie Bountrogianni (Hamilton Mountain): Thank you for your presentation. It's excellent. I understand your concern about the municipalities taking on the cost of the liability and I like your solution in addressing that. Of course, the policy needs to be further developed. Are you concerned at all, though, that perhaps with this legislation, environmental liability might be lessened, and what effects that would have on the environment or on the municipality itself? Do you have any concerns about that?

Mr Needham: That could be a potential problem. Unfortunately, our environmental coordinator isn't here today. That's certainly a question we can take back and resubmit for consideration.

Mrs Bountrogianni: You have proposed a solution for the financial aspect of that problem.

Mr Needham: I think Julie is going to address that.

Ms Julie Finley: When we were looking at the sites, our primary concern was to get them cleaned up and get the health and safety concerns removed. So what we're hoping is that, just thinking on a very basic level, this fund needs to be established, and obviously there need to be guidelines and policies in place. The sites we feel would qualify are sites that are abandoned, that municipalities have acquired through tax sale or for whatever reasons, receivers and trustees. It would be the same scenario.

We haven't thought this out to the full extent when talking about defence sites. I don't know if they would be able to apply. We're hoping that people won't run away from the liability once this fund is established. The sites that we're thinking of more so are the ones that people have acquired through abandonment or foreclosures.

Mr Christopherson: Thank you for your presentation. I think you've focused on the two key concerns that the opposition parties have with this. One is the question of liability, and the issue of dollars, which is not too far from any issue that comes before us.

I was interested in the projects that you presented here today. Just to refresh my memory, you talked about private-public partnerships, but I don't recall whether you said anything about whether, even on a one-off basis,

you had any kind of participation or assistance from either of the senior levels of government in any of those projects. You did mention that you had that from the one—

Ms Finley: Yes, we did.

1600

Mr Christopherson: OK, I must have missed that. Maybe you could give me that again.

Also, I wondered if you'd had a chance to get any federal feedback on the idea of a fund, your "super-rebuild"—is that what you called it?—whether you had any comment at all, feedback from the feds on that.

Mr Needham: I don't think we have received any at this point. In terms of one of your previous questions, the city hall site was certainly one example where we did have some direct funding from the province. But I think we're still waiting for further comment from the federal government.

Mr Christopherson: That was the only one you had any participation in? Did you make application on the others?

Mr Needham: Some of these occurred prior to my coming on board, so I'm not able to—in fact, I think the only one that occurred during my stay on council was the Euclid Street townhouses on the Seagram site. Those I don't believe did, but I understand that the city hall—

Ms Finley: I just wanted to add that one of the things we wanted to focus on with Waterloo is that we've been very fortunate. We have very good corporate citizens who have a lot of dollars in their pockets, to be very blunt, and they've been able to spend the money to get these sites cleaned up. Waterloo has been fortunate because of that. Council very early on set this as a policy as well, so they've put significant dollars into the pot. We have been much luckier than Brantford or Hamilton. Our sites are minimized, the environmental concerns and contaminants aren't as serious, so we've been able to within our own resources. On the one occasion when we had to go to the province, we were able to get assistance. That was a few years ago. I don't know what the state would be now.

Mr Christopherson: It never does any harm to have a local cabinet minister either, as experience tells me.

I want to make a statement, and if you want to comment, that's fine. I know in Hamilton this legislation will be helpful. But without addressing the serious concern around liability, and again back to the dollars that you've raised, without that, there's just a real sense, certainly in Hamilton, that we're not going to get the same kind of economic bang in terms of redeveloping these lands as I think the government legitimately would like to see. I understand they're tight for money, but if you really want to move on this, then—especially as you've mentioned, Julie, in terms of the extent of the environmental damage, some of the sites we have are really—to get back our waterfront property when we were government, we had to put in \$10 million to clean up one particular site, which has now become a jewel in the community. But big bucks, and unless the dollars are

there from the senior levels of government, it's just not going to give the kind of momentum that we need. At least, that's our sense. I'm hearing something similar coming out of your part of the province.

The Chair: Thank you for coming down to Brantford and making your presentation here today.

PAUL URBANOWICZ

The Chair: I'm told Mr Urbanowicz has now joined us, so he will be our final presentation. Just a reminder, Mr Urbanowicz: we have 10 minutes for your presentation.

Mr Paul Urbanowicz: Thank you very much, Mr Chairman, members of the committee. My apologies for my appearance here. I had one of my employees who ended up off sick, so I'm doing the chief cook and bottle washer routine. I just came from the office and the plant.

I'll be very brief today. I've outlined what I have to say, and it's actually focused in on the site you will be seeing, which is in the ward that I've represented for over 11 years. That's the Northern Globe property. I'll certainly, as I've said in this brief here, be happy to answer any of the questions or elaborate on these points that I've made here after. It's pretty straightforward.

Basically, Northern Globe, which was formerly Domtar—most of us who have been around recognize the name Domtar—was closed down in 1996 and the machinery itself was sold. A receiver in the United States formally abandoned the site, leaving the site unsecured and open to vandalism. The parent company in the US left owing the city back taxes that have now amounted to \$810,000, without any recourse left to the city to collect, and we have on all counts tried to get money from this. We've been in touch with the US Attorney General, but to no avail. Through this period of time, break-ins and fires have caused a strain on municipal departments in manpower as well as dollars themselves in order to contain this site.

After the third fire, the medical officer of health in Brantford, Dr Doug Sider, after close scrutiny of the magnitude of the fire, the close proximity to the Brantford General Hospital and the evacuation of the neighbourhood, ordered the building demolished. The city does not own this site. We are the ones who have borne the brunt of having to get rid of this contaminated site, which in part is being done as we speak, which you will see when you arrive over there.

Basically, the actions that I view in this municipality and others of my counterparts throughout Ontario and through FCM across Canada—we've spoken a great deal about this. To date, just on this site alone Brantford has spent in excess of \$400,000. That was a fund we put forward to try to help remediate not just this particular site but Bay State Abrasives, which is another one that's not even a block away from the existing site that you will be visiting.

We also have the former Cockshutt's site down on Mohawk Street—I'm trying to think of the number of

acres—which is also contaminated, we know that for a fact, and you have the Massey property which backs on to that. So in excess of probably 20-plus acres of land, and we have not even scraped, at this point, the surface down at that end of the city.

Both the federal and provincial governments, in my estimation, must come forward with the appropriate funding to help to remediate these sites. Cities in Ontario and Canada, as we all know, are not in a financial position to do this. It is impossible, especially with the sites of the magnitude of what used to be Massey Ferguson, the foundry site area as well as the machine shops, as well as Cockshutt Plow Co, or White farm, as some of you might know.

When we initially moved in on the Northern Globe site, more problems were found. We found large containers containing solvents. We're not exactly sure what are in these, what the solvents are and what we have to do to get rid of them at this particular point in time. The medical officer of health, along with our own people, Terry Spiers and the environmental group of engineers here in the city, are looking at this. This is going to be undoubtedly another major cost for the city on top of this.

Federal and provincial governments in taxes would, in my estimation, make them accountable when cleaning up, and that is the companies that have left or are in the throes of leaving. If they are long-standing, good corporate citizens—and there are some good corporate citizens; we heard from the city of Waterloo and the Kitchener area and we have the same here within the city of Brantford that have remediated their own sites, cleaned them up and left them clean, and they are up for sale. We thank them for that.

We can't do it on our own. The taxes that have been garnered over the years from the sites at Domtar, Massey Ferguson and Cockshutt's from taxes that were brought back to the province and the federal government in everything from taxes on the goods that were being produced and income taxes that were given back to the governments over the years—there has to be something done. We have to have money back in order to clean these sites.

In my estimation, with this particular site, and I'm asking this committee to consider this, we're looking for at least 75% of what we've, at least at this point, put in to try to remediate this site. At \$400,000 the math is pretty easy. It's going to escalate to a lot more than that by the time we're through, that's obvious. We do not have the funds.

The other sites in this city alone, as I said briefly before, are going to run into the millions of dollars. We know that already. With back taxes, we're not going to be able to collect the money through these sites either. The one Massey site is in excess of \$3 million itself. If we take it over, legislation kicks in and we're going to be the ones left holding the bag upon the loss of the taxes that are owed as well as to remediate these sites.

I really hope that your committee, when you're considering not just Brantford, not just the Northern

Globe site but across Ontario—something has to be done. We're quite prepared to assist the province in lobbying the federal government as well to help out in whatever way they can. We will do whatever we can from the municipal end here in the city of Brantford. I'm open to your questions.

1610

The Chair: We've got about three minutes left. I'm going to split that, because I gave you one chunk: half to the NDP and half to the government.

Mr Christopherson: More than anything, Councillor, I want to thank you because I think you have underscored the need for dollars to be upfront if we're really going to see some movement.

Obviously, if the government does decide to free up some money—at this point we're not hearing a whole lot suggesting they're going to—if they do, that argument will take care of itself. In the absence of that, where do you think this legislation will leave you and the sites you're familiar with in your ward?

Mr Urbanowicz: Basically in limbo at this particular point in time. The Penman's site is not as heavily contaminated. It's a very old site on the other side. We just had the buildings taken down and it's not too bad, but it sits by a major water source, which is the Grand River. We don't know until we start tapping into the soil what we're really into in that area alone.

Right now I don't see the legislation with enough teeth; there are not enough teeth in it to actually make corporations that feel they're just going to walk away, as they did with the Northern Globe site, into the United States—they walk off into the sunset and we're left holding the bag. That's basically it.

Mr Kells: Councillor, I'm a little curious about the Massey site. Verity is still in existence. In fact, they're bigger and better than Massey were in the tail end of Massey's days. But what happened there? How did they get out of town without cleaning the site up or without still having some kind of responsibility? They wouldn't fall into the fly-by-night category.

Mr Urbanowicz: Basically, they were able to divest themselves slowly of the property. They divested themselves of all their machinery, moved the company just across the border into Buffalo at the time, when they did

go down—I think it was 1986, 1987—and had an industrial auction, brought back machinery and left the taxpayers—if memory serves me correctly, I'm not sure if it's federal and provincial money that they had borrowed to the tune of \$300 million. They were able to get away with it the same way that most of them do: move south of the border and just basically divest yourself.

Mr Kells: Whom did they divest the land to?

Mr Urbanowicz: They sold it, I believe at this point in time, and you're asking me to go back a few years here in my memory—

Mr Kells: Generally speaking. Somebody must own it.

Mr Urbanowicz: It was sold to a private consortium at the time. We got a bit of the property. I believe the municipality was able to take some of the property at the back end of the Henry Street property and they sold off. But we were not able to recoup the taxes. As I stated, the current owner in the property, which would have been Verity South, which is along Greenwich Street across from Cockshutt, is in arrears over \$2 million, and that is saying right now, the current owner.

Mr Kells: At least you have them in your gun sight.

Mr Urbanowicz: We have them in our gun sight, but I can tell you this: if we were to take the site over, they would go bankrupt.

Mr Kells: Not much point in pulling the trigger.

Mr Urbanowicz: There isn't really, not at that point in time.

The Chair: Thank you very much. We appreciate your coming before us and making your comments.

With that, committee, that's the end of our presentations, but we have an opportunity to see some of the sites in question. Mr Levac is prepared to lead us, and if everyone else wants to adjourn to the bus we'll allow Mr Levac the opportunity to show us—

Mr Levac: Mr Chairman, in compliments to Mr Urbanowicz, he's offered an opportunity in his ward, when we get there, to speak to you specifically about the issue of the site. So he's volunteered his time to do that for us, and I appreciate that. I want to thank you for that.

The Chair: With that, the committee stands adjourned.

The committee adjourned at 1615.

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