

October 26, 2017

Mr. Albert Kelly
Senior Advisor to the Administrator
U. S. Environmental Protection Agency
1200 Pennsylvania Ave, NW
Washington, D.C. 20460

Dear Mr. Kelly:

Thank you again for meeting with me, and members of the Environment Committee of the International Council of Shopping Centers (ICSC), earlier this month to discuss expediting redevelopment of CERCLA sites. ICSC members were heartened by the recommendations contained in the report of the Superfund Task Force, and for the direction you have received from the Administrator for expediting their implementation. We are grateful for the time you afforded us to offer our initial feedback on some of the Task Force recommendations, and your interest in receiving our ideas to facilitate retail-focused redevelopment of these properties.

Many of our comments below are an elaboration on the Task Force recommendations from the perspective of retail real estate development.

Expedite NPL De-Listing

Currently there are simply too many obstacles to redevelopment of sites that remain on the NPL. As long as sites remain on the NPL, they are ineligible for state Brownfield or voluntary cleanup programs. Such programs provide the liability protections; tax relief and regulatory certainty, which allow for acquisition, financing, sale, and redevelopment of environmentally impacted properties. We encourage the Agency to aggressively pursue delisting and believe there are multiple pathways to reach that end goal.

First, the NPL deletion process is extremely long and EPA generally requires that groundwater meet drinking water standards. This effectively hamstring's EPA's ability to remove such sites – even when the aquifer is not being used or will not practically be used in the future – and where the states allow a groundwater use restriction to avoid that requirement. Developing some ability to recognize groundwater use restrictions in the deletion process would open up many of the properties to state Brownfield programs.

Second, large areas of NPL properties are already eligible for delisting where impacts are now confined to a small portion of the overall property. Partial delisting could be used to remove the majority of the property from the NPL. Another example would be partial delisting by media in instances where the bulk of the soil and soil vapor contamination have been addressed through cleanup or through risk-based approaches, but residual groundwater concerns remain that may require indefinite monitoring. By granting regulatory closure for soil and soil vapor, EPA could effectively delist the subject property

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and move it to the state program with the condition that groundwater be monitored by the state for some period of time to confirm the contamination is being attenuated. This approach frees up federal resources, gets the site back into state hands, and incentivizes redevelopment.

Risk-Based Closures

We were pleased with the Task Force recommendation to evaluate the groundwater beneficial use policy. In instances where the contamination is not posing a threat to groundwater aquifers that are actually being used, or have the real potential to be used, institutional controls or natural attenuation should suffice.

We believe a formal Risk-Based Regulatory Closure policy, hinged on use of institutional controls or natural attenuation, will send a strong signal to developers and provide the assurance they need to make investment decisions. The policy can certainly set forth requirements for groundwater and vapor monitoring, groundwater use restrictions, and institutional or engineering controls. The policy can also specify reuse restrictions such as defining eligibility or criteria for residential use.

Control of Oversight Costs and Speedier Decisionmaking

Advantages of the state Brownfield and voluntary cleanup programs include much lower oversight costs and much quicker decision making with respect to investigation and cleanup of the environmental conditions of a property. Many of these sites can be entered into a state program prior to purchase, with cleanup taking place as part of the redevelopment. Regulatory closure is often issued several months after the prospective purchaser enters into the program. The ability to accomplish cleanup during redevelopment further reduces expense as that work can be done while demolition is taking place and site grading activities are occurring. While state oversight costs generally range in the thousands to tens of thousands of dollars, EPA oversight costs often run into the hundreds of thousands of dollars, if not more. Also, the timeframe for decisions on sites under the EPA jurisdiction is much longer than for those sites under state control. EPA decisions for ultimate cleanup of sites generally take years while with the state programs such decisions can be accomplished in weeks or months. Since time is so critical to redevelopment of these sites---as well as certainty in expense---the state programs provide a much better framework for implementing these cleanups.

Expand Use of Licensed Environmental Professionals

In 1995, the State of Connecticut established the Licensed Environmental Professional ("LEP") Program. The LEP Program allows an environmental professional who has been licensed under the LEP Program to verify the investigation of a property and ultimately verify that the property has been remediated in accordance with the applicable remediation standard regulations. The State retains the ability to audit any action performed by an LEP, which gives it ultimate control over the process. The Connecticut LEP program has been immensely successful, allowing for the quicker and less costly investigation and remediation of contaminated or potentially contaminated properties. Similarly successful models have been implemented in Massachusetts and New Jersey. We believe establishment of an LEP program for EPA lead sites will significantly reduce oversight costs,

and result in speedier remediation decisions. We also recommend that EPA consider avenues to encourage other states to adopt LEP programs.

Certainty, Consistency and Timeliness

As the Superfund Task Force implements its recommendations and considers additional actions, we wish to offer a few additional thoughts. In order to provide the greatest opportunity to make sound financial and timing assessments relative to the return of contaminated properties to productive service, stakeholders require (i) *certainty* of process such that sets forth a clear path to delisting or clean up, (ii) *consistency* of interpretation and application of policies and processes across all regions, and (iii) *timeliness* of response to applications and posting of supporting documentation. Finally, we urge EPA to work with other federal agencies to reduce conflicting requirements and duplication of effort.

Final Thoughts

We strongly support suggestions in the Task Force report for development of Good Samaritan approaches for non-labile parties and revisions to model settlement agreements and comfort letters. We also noted intentions in the report for using national redevelopment experts and stand ready to assist you in any manner you deem appropriate.

Recognizing the need for consistency across EPA regions, we were especially gratified by your suggestion that our members meet with senior officials in some of the regions and your willingness to facilitate those meetings. We definitely would like to pursue that opportunity and will be in touch with you soon to follow up on your kind offer.

Thank your again for affording us the opportunity to meet with you and to offer our further thoughts.

Sincerely,

Abigail Jagoda
Director
Public Policy and Best Practices