

ENVIRONMENTAL LAW IN NEW YORK

ARNOLD & PORTER

LEXIS Publishing™

Volume 11, No. 6

June 2000

The Art of Environmental Consensus Building: A Personal Perspective on the Evolution of Brownfields Legislation in New York

by Linda R. Shaw

I. INTRODUCTION

By the time this article is printed, New York State brownfields legislation either may be close to reality in this year's legislative session or slotted as one of the priorities for the 2001 legislative session. Regardless of whether a brownfields law is passed this year or next, it will be important for those of us interested in environmental law to understand how some of the compromises that are most likely to appear in any adopted legislative proposal came to pass.

No one at this point can predict the final provisions of the law with any degree of certainty. However, I can venture a guess that many of the provisions in the new law will be derived from the Brownfields Coalition bill. How can I make such a prediction? The Brownfields Coalition bill is a pre-negotiated piece of legislation, rare in the hallways of the Capitol. Members of the private sector, environmental groups and interested community representatives spent a significant amount of personal and professional time analyzing in excruciating detail every provision that would make a good and fair statutory brownfield program for New York and that had a chance of passing through the legislature. It is hard to believe all of this work will go unnoticed. In addition, many of the other bills that have been presented to the legislature this legislative session, including the Governor's Budget Bill (S.6292/A.9292), which embodied the

efforts of the Governor's Superfund Working Group, have "borrowed" some of the Coalition bill's concepts.

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Oxygen Declines in the Hudson River Associated With the Invasion of the Zebra Mussel (*Dreissena polymorpha*)," 34 *Environmental Science & Technology* 1204 (2000).

UPCOMING EVENTS

June 6-9, 2000

"Annual Summer Institute in Risk Management in Environmental Health and Protection (and Quantitative Risk Assessment)," sponsored by New York University, Wagner Graduate School of Public Service. For information on course content, contact Professor Rae Zimmerman, (212) 998-7432 <rae.zimmerman@nyu.edu>. For registration information, contact Charles Nicolson, (212) 998-7418 <charles.nicolson@nyu.edu>.

June 12, 2000

"EPA Region 2 Conference," 9 a.m. -2:30 p.m., co-sponsored by New York State, New York City, New Jersey, and American Bar Associations. Manhattan. Information: Lisa Murtha Bromberg, (973) 538-4006.

July 6-12

"American Bar Association 2000 Annual Meeting," New York City. The Section of Environment, Energy, and Resources will be conducting special events, including seminars on the Clean Air Act's new source review requirements and hot topics in environmental law. Information: Program Registrar, (312) 988-5724.

July 13-15, 2000

"New York ReLeaf Statewide Urban and Community Forestry Conference on Expanding Green Partnerships," sponsored by the New York State Urban and Community Forestry Council, DEC, the U.S. Forest Service, and Capital District ReLeaf. Albany. Information: DEC's Bureau of Private Land Services at (518) 457-2475.

WORTH READING

Michael B. Gerrard, "Ten Years of SEQRA Litigation: A Statistical Analysis," *New York Law Journal*, Mar. 24, 2000, at 3:1.

Peter W. Herman, "Troubled Waters: Creating a Long Island Sound Reserve," *New York Law Journal*, Mar. 8, 2000, at 5:2.

James A. Lynch, Van C. Bowersox, and Jeffrey W. Grimm, "Acid Rain Reduced in Eastern United States," 34 *Environmental Science & Technology* 940 (2000).

(Matthew Bender & Co., Inc.)

The Art of Environmental Consensus Building: A Personal Perspective on the Evolution of Brownfields Legislation in New York

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This article will begin with my personal perspective of early New York State brownfields reform legislative efforts and why it has taken so long to get to the point where we are now. Gaining historical perspective may also provide some insight into each advocacy group's "deal killer" issues and how we eventually achieved substantive consensus on an overall brownfields program. The article concludes with a brief attempt to highlight the dynamic consensus process that led to some innovative solutions to the age-old "how clean is clean" issue.

II. OVERVIEW OF HOW THE BROWNFIELDS COALITION BILL CAME TO BE A REALITY

It is unclear if the New York State government and the environmental and business advocacy communities have ever agreed on how clean a site must be before an environmental remediation action should be deemed complete. In the last two years, due to a unique consensus building process, these constituencies have moved closer together than ever before to reach agreement on the issue of "how clean is clean," even though some factions are still unable or unwilling to openly admit it. Based on my personal involvement in this two year consensus building process, as well as three years of prior brownfield experience, I believe significant progress has been made in the form of creative new solutions, which will eventually be translated into a legislative solution that all may not love but will be able to live with.

During the last two years, 28 individuals, representing every stakeholder group interested in brownfields redevelopment, were invited to join "The Pocantico Roundtable for Consensus on Brownfields." The Roundtable was supposed to reach consensus in two months, culminating in a summit at the famous Rockefeller Estate in Pocantico Hills, New York. Instead, the Roundtable began in August 1998 and finished formal meetings in June 1999. One hundred percent consensus does not come easily.

The one-year consensus building process among developers, the business community, environmental justice organizations, community organizations, environmental groups, lenders, and attorneys was summarized in a June 1999 report. During the summer of 1999, the concepts in the June 1999 report were turned into an initial draft legislative package designed to create a New York State Voluntary Cleanup Program for brownfield sites and reform the State Superfund program.

Yet in May 1999, the original Pocantico group reached an impasse on one remaining issue — how to pay for the program. Everyone agreed that New York's Superfund was running out of money, it had to be refinanced and that the financing structure

(PUB.004)

had to be reformed. But how? Certain environmentalists insisted it be 50 percent refinanced by imposing new fees on industries. Conversely, certain business groups felt that since cleanups under the Superfund program had been 75 percent funded by the private sector, the future program should be funded exclusively out of the State's General Fund. They pointed out that most of the sites remaining on the Superfund list were "orphan" sites without a viable responsible party owner. Because the Pocantico group failed to reach a consensus on the budget issue, it was disbanded. However, many of the Pocantico members immediately reconstituted a new group called "The Brownfields Coalition." In order to join the new coalition group, members had to sign a document in support of the legislative package. Signing onto the package did not mean each member supported every provision in the legislation, but simply acknowledged that the package as a whole would work. Since August 1999, the legislative package has been further refined to accommodate issues raised by the State, municipalities, and the most extreme advocacy groups.

The Brownfield Coalition now includes close to 70 organizations that support the bill. The Coalition is continuing to grow and add members, enhancing the strength of its proposal. In the first few months of 2000, the Coalition's lobbying efforts on the bill resulted in bipartisan support from a significant number of majority members in both houses of the legislature. The bill may soon serve as the foundation piece for significant changes that will be made to New York environmental law.

III. EARLY BROWNFIELD PROGRAM EFFORTS: WHY "RBCA" BECAME A DIRTY LADY RATHER THAN A SAVING GRACE (1995 — 1998)

In August 1998, upon receiving an invitation to become an official member of The Pocantico Roundtable, I recall being flattered and yet concerned. Would this be just another group of well-intentioned individuals seeking solutions to complicated environmental legal issues without a real game plan to achieve legislative action—particularly in the State Assembly? It was not as though I had completely abandoned the idea that legislation could be enacted in New York. I knew there had to be a way to capture the attention of our State legislators, to let them know that the future of upstate New York, the Hudson Valley and certain portions of New York City are dependent on brownfield legislation designed to stimulate regrowth. But at this point in time, I was just a bit discouraged after having already been part of a number of efforts to draft legislation and create brownfield redevelopment programs that never saw the light of day.

A. The Business Council Bill (S.4918 Marcellino/ A.6822 Aubry)

Between 1995-1996, I worked on a subcommittee of business representatives with the New York State Business Council to create the Site Remediation and Redevelopment Act of 1998 (S.4918 Marcellino/ A.6822 Aubry). We thought we had drafted

a really good piece of legislation. We began with the bill that had been drafted by Governor Pataki during his first six months in office. Thereafter, we reviewed new brownfield laws that had been adopted in other states, particularly our competitor states in the Northeast. These states appeared to be enacting new legislation by the day. We drafted a voluntary cleanup program we believed could work in New York but did not seek amendments to the Superfund program. In other words, this bill exclusively addressed brownfields. The issue of how to refinance the Superfund program, which would be running out of money in or about the year 2000, was mentioned during subcommittee meetings but not viewed as the driving force for brownfield legislation.

It is not entirely clear why the Business Council's bill did not move forward. It did everything necessary to create a good, basic brownfield program. However, during Pocantico, I realized that legislation must be drafted with all the necessary stakeholders, and the process must be open and transparent.

B. The 1996 Bond Act Brownfields Restoration Program

By the end of Governor Pataki's first year in office in 1995, pressure appeared to be mounting from environmentalists on the "business friendly" Governor and new Department of Environmental Conservation (DEC) Commissioner Michael Zagata. In 1996, the Governor began a major statewide lobbying campaign for the adoption of the 1996 Clean Water/Clean Air Bond Act. The Bond Act had what appeared to be, at first blush, a municipal solution to the State's brownfield problem. An allocation of \$200 million was set aside for a Brownfield Restoration Program. The program was only available to municipalities, but the assumption was that most of the brownfield sites were already owned or could be acquired by municipalities. (In retrospect, this turns out to have been an erroneous assumption). An applicant municipality would receive a 75 percent matching grant (the municipality had to pay for the remaining 25 percent) for the investigation and remediation of brownfield sites they owned, but not sites on which they contributed to the contamination. In order to keep the pot of money replenished, the Bond Act mandates DEC to seek cost recovery from "responsible parties," including former site owners, regardless of whether such parties contributed to the contamination at all. Another unpopular provision was that a municipality that brought a site through the program and sold it for a profit had to repay the State 50 percent of that profit.

The first key problem with the Brownfield Restoration Bond Act program was that no one in the Governor's office investigated in detail how many private-sector contaminated brownfield sites were in fact owned or could be acquired by municipalities. In the following year after the program was adopted, the sad reality became known: municipalities had hundreds of private-sector contaminated sites on their tax foreclosure lists but did not yet own these sites for fear of the environmental liability that would ensue. The catch-22 of the Brownfield Restoration Bond Act program was revealed.

Despite the wonderful benefits of this program, including one of the best liability indemnification provisions in the country and the 75 percent matching grant, municipalities could not use the program on sites they had contaminated themselves, and could not acquire privately owned sites from parties who, once they understood the cost-recovery provisions of the program, knew they would be sued. The DEC has struggled to market the program and there do appear to be some successful projects four years after the adoption of the Act that are finally reaching the remediation phase. The program does work on sites where there is no responsible party to go after and where the municipalities are capable of paying their 25 percent share of the costs. But only \$40 million of the original \$200 million pot of money has been committed for projects. Needless to say, the Brownfield Restoration Program did not solve the State's brownfield problem, but did have the unintended effect of side tracking legislative efforts for several years as officials anxiously waited for the Bond Act brownfield redevelopment success stories to roll (or trickle) in.

It is also important to comment on one additional problem with the Bond Act program. The program as originally designed by the Governor was intended to be a risk-based cleanup program. In other words, the extent of a required cleanup was to be based on achieving safe levels commensurate with the reasonably anticipated or future use of the site—residential, commercial or industrial. (For example, a cleanup that left some residual soil contamination might be acceptable in a factory site in an industrial district, but would be unacceptable in a housing complex with children likely to play in the dirt, get their thumbs dirty and then suck their thumbs.)

However, last minute changes were made to the legislation based on pressure from the environmental community, which required all cleanups to be performed to the State Superfund goal of "pre-release conditions." The State's Superfund goal is a laudable one but not one that has been consistently defined or proven to be achievable in the real world, particularly by municipalities with budget constraints that would have to pay 25 percent of a potentially unachievable cleanup.

C. The Non-Statutory Voluntary Cleanup Program

Meanwhile, beginning in 1995, DEC began entering into voluntary cleanup agreements with both municipal and private sector parties that permitted the setting of cleanup objectives to take into account the anticipated future use of the land. This more adaptable cleanup program prompted some municipalities to become volunteers rather than Bond Act applicants. It appeared that by late 1996, DEC was becoming more comfortable mentioning the word "risk" out loud. Obviously, risk-based decisions are made in the Superfund program every day despite the program's goals of pristine cleanups. Certainly, for an "average" contaminated brownfield site that does not pose a significant threat, a program that permitted a quick, permanent remedy — such as source removal of contaminated soil and bulk reduction of contaminants in groundwater — began to have internal DEC appeal.

The Voluntary Cleanup Program was spearheaded by Charles Sullivan, Esq., a DEC attorney who was put in charge of not only its policy development but implementation.¹ I and a number of other environmental attorneys throughout the State began to attend every seminar where Charles Sullivan or other DEC representatives handed out descriptions of the program. I began to advise clients on the program, and a number of brownfield sites that otherwise would not have been redeveloped, were developed. But all good policies that are not written into law come to an end.

D. Petroleum Risk-Based Corrective Action ("RBCA")

On January 2, 1997, DEC issued its first draft guidance document to incorporate "risk-based decision making" in official practice at petroleum spill sites. Ironically, this document, entitled "Interim Procedures for Inactivation of Petroleum-Impacted Sites" (later to become known as the "Petroleum RBCA document"), was issued in an effort to formalize the DEC's response to historic petroleum spills. In general, the petroleum spills program, which operates under the State Navigation Law, has always operated a bit differently than the inactive hazardous waste site or Superfund program. According to DEC, there are approximately 15,000 petroleum spills a year. Immediate response in the form of source removal cleanups appears to be commonplace with little emphasis on investigation. The Superfund program emphasizes detailed investigation, typically on historic hazardous waste disposal sites, but years may pass before remediation begins. Internally, questions had arisen over what methodology should be employed to investigate and remediate a historic petroleum spill site.

As a result, DEC's Petroleum Spills Group issued a very detailed guidance document that would have standardized the Department's response to spill cleanups. The RBCA document received an immediate outcry from the environmental community. The environmental community hated RBCA before environmental consultants even knew who she was. Environmentalists viewed the document as the first real threat to the Navigation Law's regulatory "pre-spill" restoration goal.

In response to the environmentalists' negative reaction to the document, DEC attempted to create an open subcommittee review process. With the exception of Val Washington of Environmental Advocates, the environmental community, which raised questions about RBCA, chose not to participate in any of the subcommittees. This was highly unfortunate because, once again, not all of the necessary stakeholders were sitting around the table during the subcommittee meetings, which lasted from early 1997 to the spring of 1998. Despite significant refinements and improvements that were made to the RBCA guidance document to appease the environmental community and improve the program, RBCA was essentially killed in March of 1997 before she even had a chance to be tested on a number of sites. The word on the street became "we can't talk about RBCA anymore." After the death of RBCA in 1997 and 1998, the voluntary cleanup program became more restrictive with each passing day.

So in August 1998, as I received my Pocantico invitation, I sat discouraged but ever hopeful that maybe this new effort might change the status quo. Shortly thereafter, I began the exciting process of participating in the Roundtable with renewed enthusiasm.

IV. EARLY POCANTICO DAYS (AUGUST 1998 — NOVEMBER 1998): RESOLUTION OF SEVERAL KEY ISSUES

From the very first Pocantico meeting, I realized this effort might be different. A large number of environmental group representatives were in the room, along with community group and environmental justice group representatives. In fact, as a private sector attorney, I was in the minority. Later, I understood that the individuals who had dreamed up the Pocantico process planned every detail, including this detail, to a tee.

There were only supposed to be three full-day meetings before the two-day Pocantico Hills summit, where we were scheduled to solve all of the State's brownfield problems. Despite my renewed optimism, those first few full-day meetings focused almost exclusively on community development issues and how community groups are often left out of the decision-making process during the design and planning of both site remediation and redevelopment. I remember feeling frustrated that we would never get to resolve groundwater standards at this rate. It was only after these first few meetings, when we began to listen to each others' principal concerns, that we began to set the stage for real negotiation on individual issues.

The meetings were run by two professional facilitators — Allen Zerkin a professor of public policy at NYU and Jean McGrane a former DEC regional director and principal of McGrane Associates. They gave us a huge document containing lots of rules at the first meeting. The facilitators were allowed to cut speakers off; they kept the ball rolling. The two most important rules I can recall were: (1) you cannot personally criticize anyone and (2) we must reach 100 percent consensus. In other words, any one individual could break up the entire Roundtable process by raising a deal-killer issue that, eventually, failed to be resolved in a manner acceptable to that individual. At first I recall thinking that this rule was impossible to live up to. What I learned during this consensus building exercise was that by having such veto power, each person was forced to negotiate rather than encouraged to walk from the table. The longer we met, and the more time we invested in the process of trying to reach a consensus, the more each of us had a stake in the outcome, thereby encouraging us to try to reach common ground rather than to destroy the Roundtable process by exercising our veto power. Thus, the 100 percent consensus rule kept the sessions from collapse when seemingly insurmountable disagreements arose. Each of us was required to think of creative, innovative solutions to break the logjam at the next meeting. That is how we resolved several threshold issues.

Our first threshold issues were "what is a brownfield?" and "what sites and parties should be eligible for the program?"

While each of us brought a war story to the table, we eventually agreed that a brownfield should have the broadest possible definition and that our program should have the broadest number of sites and parties participate. Anyone who volunteered to cleanup a brownfield sites in an expeditious manner should be welcomed into the program with open arms. I do not mean to minimize our efforts on this issue. Very difficult discussions related to the circumstances under which Class 2 sites adjacent to residential properties could not apply industrial cleanup standards, whether responsible parties² should all be treated equally, how non-contributory owners³ should obtain more benefits and not be responsible for off-site issues, etc. were negotiated and eventually resolved.

Our second key issue involved public participation. It became clear that if community groups were involved in the brownfield program much earlier than even under the Superfund program (i.e., after a draft work plan has been approved by DEC), their voices could be heard and they could have real input into the process. We had to balance the very new concept of providing upfront and significantly more public participation against the negative impact this might have on the development community. The community groups eventually convinced the business interests that if they were involved early on, developers would obtain the community acceptance necessary before buying and remediating a brownfield site. In the end, those of us on the business side of the table conceded, but this set the stage for the next debate — an expedited process and liability relief.

Developers could not be required to provide public involvement from "Day One" if they could not predict the length of time the process would take and obtain a genuine and effective liability release at the end of the process. The environmental groups came to understand these were key issues for the developers. Therefore, upfront community notice, strong liability protection and an expedited process were quickly agreed upon as essential elements of the program. Of course, the most contentious issue, cleanup standards, was yet to come. Moreover, the eligibility, liability, public participation and expedited process issues were not off the table after general consensus was reached. The large group was broken down into several smaller groups to deal with the details of the administrative process, and the liability release. For example, a basic liability protection provision was sketched out on paper and reopeners were discussed; a flow chart/ time line was developed, including time frames that would be imposed on agency decision-making and various points during the process at which the public would receive notice and an opportunity to comment. In addition, other groups were formed to begin to tackle additional community program issues, financial incentives, and standards. By sitting down together, the community, environmental justice, environmental and business interests in the room realized they were not as far apart as they thought on a number of the five key elements necessary for a brownfield program. Perhaps we could achieve a common ground, after all.

V. MID-POCANTICO (DECEMBER 1998 — APRIL 1999): STANDARDS!

During the first Pocantico summit, the Roundtable remained

in the smaller groups in order to further resolve subissues related to their topic areas. The subgroups were carefully selected, and individuals who were not necessarily meant to share the same views or particularly interested in that topic were put together to solve each subissue.

It became obvious very quickly that the cleanup standards group needed some outside input. The time had come for the larger group to reconvene to tackle this most difficult issue. Overcoming the fears that "cleanup standards will be lowered" and "contamination will be left" in order to encourage brownfield redevelopment, was, and still is, the most controversial issue that has faced the development of any land-use based brownfield program in the 45 states that have adopted such programs. We began these negotiations in a very contentious manner. The environmental groups on one side argued that the elimination of the goal of restoring property to its pre-release condition was completely unacceptable. On the other side, the business community argued that unless cleanup standards could be based on the use of the site using pure risk assessment methodology, no compromise could be reached. There were many meetings after the first Pocantico summit on the issue of soil cleanup standards. There never seemed to be enough time to get to groundwater. The logjam seemed unbreakable. Then Jody Kass of the New York City Partnership, one of the masterminds behind this consensus building effort, arranged for Pocantico Summit #2.

Back at the mansion for the second time, the group began to break through the logjam when we decided to tackle Superfund reform as well as create a new brownfield program. The environmental community then explained in detail what they really hated about RBCA. According to those groups, using RBCA to set soil standards is a misuse of this inexact science. RBCA uses complicated formulas to derive average numbers based on different assumptions according to use. The derived numbers are generally designed to eliminate risk to human beings on the top of the ground and may not be protective of water under the ground. For example, most conservative residential cleanup standard formulas use certain basic assumptions such as, a child will reside at the site 365 days a year for 24 hours a day. These assumptions are generally standardized. But other assumptions are not. Each state has used different hazard indexes and cancer factors ranging between 1×10^{-4} (1 in 10,000) through 1×10^{-6} (one in one million), the latter being more stringent. The group agreed early on that we would apply the most stringent 1×10^{-6} cancer factor even for the industrial standards.

Not enough. RBCA still creates average numbers. What about the more than 20-year history of the existing State Superfund Program? If stricter numbers were consistently achieved in the field than were derived from the standard risk formulas, the environmental groups felt the more stringent numbers should become the standard. By the end of the Pocantico process, the Roundtable had negotiated a three-step approach for the creation of soil "look up table" standards based on the residential, commercial or industrial end use of the site. First, a broad based panel of experts would be appointed to develop the first cut of

numbers using standard risk assessment methodology. Second, the panel would sort through the records of the State Superfund cleanups that have been completed to date to catalogue the final numbers achieved, the various cleanup techniques employed, their effectiveness and their technical and economic feasibility. Third, if the data developed from the field reveals that it is feasible for the majority of brownfields sites to be cleaned up beyond the formula derived levels, the stricter number as between the step one (risk assessment derived number) and the step two (field derived number) would become the standard.

Some members of the environmental community still felt that they had given up the goal of returning each site to pre-release conditions; this concession compromised the very foundation of their advocacy positions on the environment. However, when we asked each group to define "pre-release," we found it meant different things to different people. Does the phrase suggest the achievement of pristine levels, background levels, or elimination of the release. Yet another creative compromise was reached by turning the pre-release goal into a non-mandatory incentive. First, the goal was actually enhanced to return a site to naturally occurring, rather than just pre-release, conditions. Naturally occurring conditions may be cleaner, because it would not include historic background contamination typically found in urban environments. This new non-mandatory incentive, if achieved by a party on a voluntary basis, would result in a stronger release from liability with fewer reopeners. Thus, the goal of achieving pre-release conditions would not be abandoned; indeed, it would be supported with a new incentive.

The State Superfund reform initiatives focused on the adoption of federal liability exemptions into state law and the creation of a new contribution cause of action in state court. A lender liability protection provision was developed. The municipality exemption was expanded beyond the federal model and a new not-for profit exemption was created for New York to further encourage development. However, the most dramatic reform was a new enforcement mechanism that authorizes DEC to impose a penalty of treble damages on a "recalcitrant" responsible party. The theory behind this change to the statute was to provide a new "hammer" in Superfund that would effectively discourage responsible parties from remaining in the slow, process-oriented Superfund program and encourage them to become volunteers under the new expedited brownfield program. The business groups were not happy with the Superfund treble-damage provision and remain most unhappy over this issue.

VI. LATE POCANTICO WITH GROUNDWATER TO GO (APRIL 1999- JUNE 1999)

Panic started to set in by Spring 1998. Our negotiations had gone on for much longer than expected and we still had not spent much time on groundwater. Meanwhile, at the same time the Pocantico process was moving forward, the Governor's Superfund Working Group was in full swing. Would they finish before us, or would we finish before them? Several members who were on both groups were sworn to secrecy but did help each process

by sharing "deal killer issues" and framing the debate. Just as it seemed we were out of steam, we created a laundry list of financial incentives and developed a unique approach to groundwater.

A clear deal killer groundwater issue for the environmentalists would be the creation of different sets of standards for drinking water and non-drinking water. However, they were willing to discuss a new approach to groundwater remediation that prioritizes cleanups in drinking water areas and recognizes that certain groundwater can only be cleaned up over a long period of time. Long-term cleanups that achieve drinking water standards would remain a requirement only for responsible parties. Owners who did not contribute to the contamination and non-responsible purchasers would be able to conduct short-term bulk reduction⁴ remediation and be exempt from the long-term liability associated with minor residual contamination that would not yet meet drinking water standards. Incentives were also built into the program for contributory responsible parties. After a such party completes a short-term cleanup, he or she can sell the site to a third party who would be exempt from any liability associated with the remaining long-term contamination under the site. The framework for groundwater program was designed quickly. We continued to work on the fine points of the program during bill drafting.

VII. THE CREATION OF THE BROWNFIELD COALITION BILL WAS AND REMAINS A MONUMENTAL EFFORT THAT HAS FURTHERED THE BROWNFIELDS DEBATE

It nevertheless became obvious in June that we could not reach complete consensus on the budget issue, and the Pocantico Roundtable then disbanded. Its successor, the Brownfields Coalition issued its final report, which encapsulated the Roundtable's consensus principles, on June 3, 1999. The Governor's Superfund Working Group issued its final report in June 2, 1999 and had a bill ready within two weeks of report issuance. That bill was introduced as part of the Governor's Budget Bill in this year's legislative session.

The conversion of the Coalition's June 1999 report into an initial legislative bill draft was a difficult task. Converting theories and concepts into legislative language is a completely different art. The bill drafting phase remained very creative, contentious and exhilarating. I'm very glad I was part of the process and hope the powers that be continue to rework, refine and improve our final product. New York State needs a brownfield law. All of the former brownfield bills and efforts have added value to the debate. It's now time to get something passed.

Linda R. Shaw, a three time graduate of St. John's University, has been an environmental/land use attorney since 1990. Previously, Ms. Shaw was a legal clerk for the New York State Power Authority and the City of New York's Corporation Counsel. Between 1983 through 1990, Ms. Shaw was an environmental regulator in the New York City Mayor's Office of Operation and Department of Sanitation. This practical, hands-on experience at City landfills, incinerators and managing waste flow is where she developed her appreciation for environmental matters. In 1998, Ms. Shaw along with several other prominent New York environmental attorneys created the

first environmental "boutique" law firm in western New York, Knauf, Koegel & Shaw, LLP—a firm located in Rochester and concentrating in environmental and municipal law. The focus of the firm is quality environmental litigation and compliance services. While Ms. Shaw practices in all major areas of environmental and land use law, during the last five years she has concentrated her practice in the facilitation of brownfield redevelopment projects and associated cost recovery actions. As a result, she has become involved in several legislative and state policy advisory groups.

¹ See Charles E. Sullivan, *The Department of Environmental Conservation's Voluntary Remedial Program*, *Envtl. L. in N.Y.*, Vol. 8, No. 2, at 17 (Feb. 1997).

² "Responsible parties" refers to those deemed potentially liable for the contamination under Superfund Act provisions.

³ "Non-contributory responsible parties" refers to those owners or operators of contaminated property who did not contribute to the contamination.

⁴ A "short-term groundwater remediation" is defined in the bill as "measures to accomplish the bulk reduction of contamination to the maximum extent feasible using current technology." When such measures have achieved asymptotic levels or are no longer significantly reducing the residual levels of contamination in the groundwater, the short-term remediation is complete.