

Brownfield Redevelopment: Transforming Contaminated Properties into Ratables

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CONTRIBUTING EDITOR

ACCORDING TO THE CONFERENCE OF MAYORS, the business case for brownfield redevelopment includes increasing city tax bases; creating new employment; revitalizing neighborhoods; and protecting the environment. As these case studies demonstrate, the redevelopment of brownfield sites in New Jersey and the role of Licensed Site Remediation Professionals (LSRPs) are a success story in progress, with an upside potential to transform numerous fallow properties into ratables in the years to come.



Bayshore Recycling Corp.

By Gary Sondermeyer,
Vice President of Operations

For 100 years, the Carborundrum brick manufacturing facility operated in the Keasbey section of Woodbridge Township. In 2001, Valerie and Frank Montecalvo purchased the property and moved their diversified operations to the banks of the Raritan River. Remediation action plans for Carborundrum were applied for and approved. Over the past 13 years, the property has been transformed into a 55-acre Eco-Complex and Energy Campus employing 165 who support the state's economy. Today, the owners operate the largest recycling facility in New Jersey with a combined capacity of more than 10,000 tons per day. Services include: recycling concrete, asphalt, brick, block, glass cullet into aggregate materials; remediation of petroleum contaminated soils; materials recovery of mixed construction and demolition debris into secondary products such as landscaping mulch and bio-fuel; consolidation of consumer electronics for processing; full-service metals recycling; and acceptance of dredge material at a barge terminal. In 2008, \$5.7 million was



New Jersey's LSRPs are fueling the progress that New Jersey is making in the redevelopment of its brownfield sites.

invested for a 679 kilowatt (9,365 panel) rooftop solar energy system that assists in powering the operations. Additional solar, wind and biomass-to-energy projects are planned. The corporate vision for Bayshore is to ultimately operate 100 percent green businesses powered 100 percent by renewable energy.



Connell Foley LLP

By Steve Barnett, P.E., CIH, MPSH,
Esq., Partner, Environmental Law

A client recently purchased property subject to ISRA with operations closing across the street from a CERCLA Superfund site, and adjacent to a site in the NJDEP Site Remediation Program (SRP). Our law firm worked with the client, brokers, prospective sellers and consultants to assess various sites, and we oversaw all legal aspects. We worked with the Buyer's surveyor to correct prior legal descriptions. We negotiated for the Seller to satisfy ISRA and that the Buyer may undertake due diligence for innocent purchaser status. We engaged the Buyer's environmental consultant and arranged for split samples and review of the Seller's LSRP files. We worked with the Buyer's engineer and municipal officials to determine federal, state and local requirements and with the bank to secure a mortgage on the property and refinancing of the Buyer's equipment. Environmental issues included the Seller's post-closing access, LSRP professional judgment, compliance averaging; the Buyer's approval of the Seller's ISRA remediation funding source and NJDEP submissions; the Buyer's responsibility for future monitoring, maintenance and reporting; a previous NFA and ISRA Letter of Non-Applicability; and legal risks of the SRP site and the Superfund site. We also negotiated the Buyer's environmental insurance. The transaction closed—and the Seller's decommissioning and ISRA compliance work and the Buyer's improvements are on schedule.

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By William F. Harrison, Esq., Partner, Director, Environmental Law and Land Use & Approvals Groups

Our client purchased a parcel for development of a warehouse. The parcel was part of a larger parcel for which the seller was responsible for soil and ground water remediation. Based on erroneous advice from his original environmental consultant, our client improperly excavated and stored historic fill on the property during the construction of the warehouse. The original owner then sued our client seeking to have our client become responsible for both the soil and ground water remediation. We were then retained along with a new environmental consultant. As a result of our efforts, a settlement agreement was reached with the original owner remaining responsible for ground water remediation and our client becoming responsible for the soil remediation. Our client's environmental consultant initially tried to complete the soil remediation and obtain a No Further Action letter from the NJDEP. Even though the NJDEP had verbally agreed to the proposed soil remediation, it kept requesting additional information. As a result, we advised our client to have a LSRP with the environmental consultant finalize the remediation. The LSRP has completed the soil remediation enabling the issuance of a Response Action Outcome (RAO). An LSRP for the original owner issued an RAO for the ground water remediation.



Hoboken Brownstone Company

By George Vallone, President

The Hoboken Brownstone Company purchased the 24-acre, former Maxwell House Coffee factory located on the waterfront in Hoboken, New Jersey, in 1999 after manufacturing operations ended in 1989. We retained LSRP John Ferrante PE, of E2PM Inc., to perform the site remediation work. The remediation required the removal of more than a residual 60,000 tons of TCE contaminated soil. Additionally, mercury, asbestos, petroleum hydrocarbons and lead were removed from the buildings prior to demolition of the 800,000sf of factory space. Site soil characterization was performed using standard methods and to identify the aerial extent of the volatile organic compound (VOC) hot spots; the site was characterized using Gore Sorbers to capture the VOC soil gas. Total remediation cost for the site was approxi-



mately \$6 million. Once the NJDEP-approved Remedial Action Work Plan was completed, a NFA, (No Further Action) letter was issued by the NJDEP which gave the developer legal protection from "re-openers" and from third-party claims. The project was one of the first and also one of the largest brownfield redevelopment projects to take advantage of the New Jersey Brownfield Act, which provided up to 75 percent reimbursement for the cost of remediation.



Lindabury, McCormick, Estabrook & Cooper, P.C.

By David R. Pierce, Esq., Shareholder

LSRPs can expect uncertainty when dealing with the rules governing their conduct and professional responsibility. They also can expect to encounter a problem confronting every regulated community—the application of regulations by review and enforcement personnel who incorrectly interpret the regulations, or who contort the regulations to fit their personal agenda. Since the LSRP profession is in its infancy, we expect such issues to arise regularly in the foreseeable future. Lindabury, McCormick, Estabrook & Cooper, P.C., recently represented a LSRP in defense of one of the first complaints submitted by the Site Remediation Professional Licensing Board's (Board) Audit Committee. The complaint asserted three different violations, including claims that the LSRP had improperly certified a response on an audit questionnaire and that several RAOs had to be reissued with substantive changes. Lindabury appeared before a Complaint Review Team with the LSRP and presented information and evidence indicating that review personnel were seeking to impose incorrect interpretations of applicable regulations and that one allegation was based upon review of certain data presentations available only to NJDEP personnel. As a result of the presentation before the Complaint Review Team, the Board exonerated the LSRP of all allegations of misconduct.

Maser Consulting P.A.

By Robert Zelle, P.G., LSRP

Maser Consulting was hired by Northvale Borough to implement the redevelopment of the Tect/Danzig brownfield site for the construction of a 24,500sf commercial building for Inserra Supermarkets. Owning more than 22 stores with 400 employees, Inserra is a member of Wakefern Food Corporation, one of New Jersey's largest employers. The site soil and ground water, impacted in the 1950s/1960s due to various commercial operations, is being remediated pursuant to the NJDEP's Site Remediation Reform Act (SRRA). The program's goal is to increase the pace of remediation and environmental safety, decrease the contamination threat to public health, and quickly return underutilized properties to productive use. The new building will dovetail

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