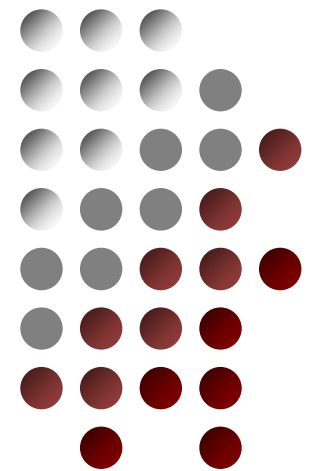


Legal Perspectives: Brownfields Liability, Environmental Covenants, and Long-Term Stewardship

James T. Price
June 21, 2010

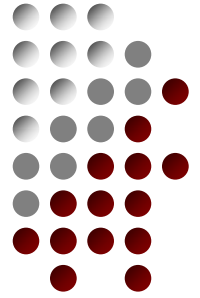
Spencer Fane Britt & Browne, LLP
MDNR/MWCC Brownfields 2010 Conference
Lake of the Ozarks, Missouri



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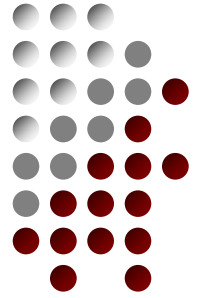
SPENCER FANE
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Liability basics



- Superfund imposes liability upon:
 - --Current property owners/operators
 - --Past owners/operators (but only if . . .)
- Common myth:
 - Chain of title . . . ?

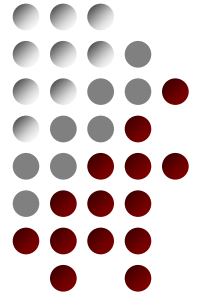
Defenses to liability



- Innocent landowner
- Bona fide prospective purchaser
- Contiguous property owner

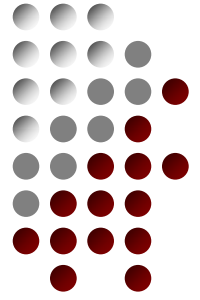
- Acquisition by eminent domain
- Acquisition by bankruptcy, abandonment, delinquent taxes

All Appropriate Inquiry



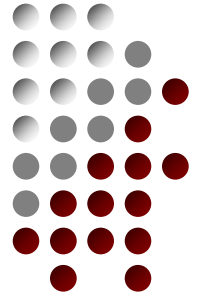
- EPA regulation specifies what the inquiry must contain
 - --Various information-gathering req'ts
 - --Within one year *before* acquiring
- If the inquiry meets the standard . . .
- If the inquiry does not meet the standard . . .

Other aspects of BFPP defense



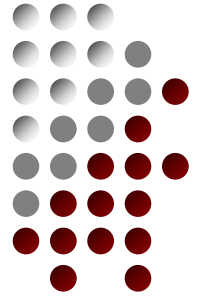
- Continuing obligations
- Appropriate care, reasonable steps
- Cooperation, access
- Comply with use restrictions

Other approaches



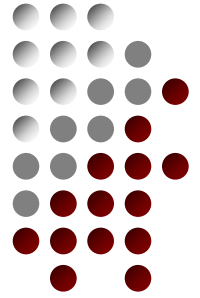
- Contractual
- Performance-based Environmental Services contracting
- Insurance
- Regulatory

Risk-Based Corrective Action



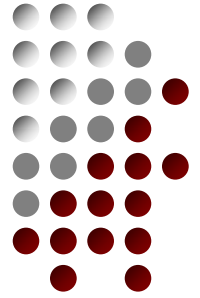
- Focus on future use
 - --Industrial vs. residential
 - --Offsite impacts
 - --Consequences
- Institutional controls
 - --The need for planning, understanding
 - --Inspection, maintenance
 - --Value
 - --Other impacts

Opportunities



- Manufacturing facilities
- Federal facilities

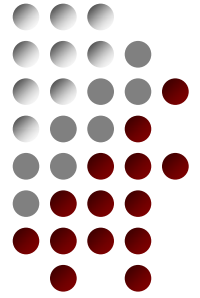
Federal facilities



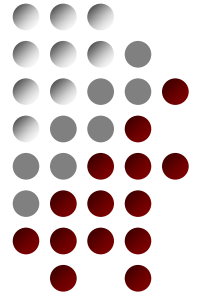
- Military
- GSA
- Contractor
- Air fields
- Training
- Reserve



Neighborhood Sites

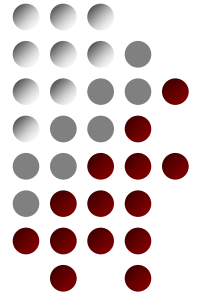


Other types of facilities



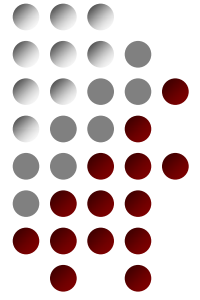
- Railyards
- Agricultural
- Landfills

Potential reuses . . . ?



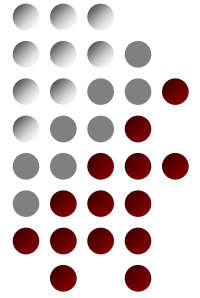
- Importance of location
- Community support
- Integrated reuse/cleanup plan
- Manufacturing?
- Community asset?
- Parking?
- Housing?
- Renewable energy?

Funding Issues, Opportunities

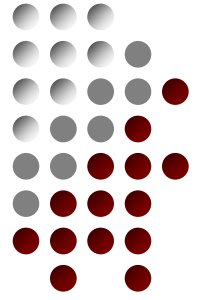


- Missouri Brownfields Tax Credits
- EPA, State assessment grants
- EIRRA funding
- Prior owners
- TIF
- State funds: PSTIF, Dryclean
- Community contributions

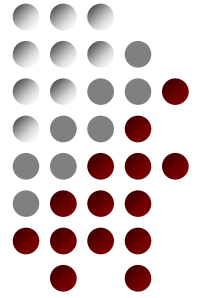
What we do . . .



Conclusion; Questions



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