



Canadian Brownfields Network 2012 Workshop

Transfer of Liability

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What is Canadian Petroleum Products Institute (CPPI)?

- CPPI is a national industry association that represents the majority of the petroleum downstream (refining / distribution / marketing).
- On behalf of its members, CPPI works with governments and other stakeholder groups to create responsible standards, laws and regulations to improve and safeguard the community, workplace and environment.
- For contaminated sites CPPI member priorities are protection of human health and environment, full closure of regulatory liability upon remediation, and sustainable redevelopment of properties to a productive use.
 - For 2009 / 2010 – 302 sites remediated; 128 interim use sites
- CPPI members: Chevron Canada Limited, Husky Energy Inc., Imperial Oil Limited, North Atlantic Refining Limited, Nova Chemicals (Canada) Limited, Parkland Fuel Corporation, Shell Canada Products, Suncor Energy Products Partnership (Petro-Canada), Ultramar Ltd., Bitumar.

Transfer of Liability

Approaches to Support Brownfield Re-development

- CPPI supports an effective implementation of the CCME 14th Principle, on the transfer of environmental liability between parties, in order to address one of the key barriers to brownfield redevelopment.
- CPPI members support the ability to transfer liability in a responsible manner.
- CPPI sees two prime types of situations:
- **Situation 1** - Sites that have been remediated to standards of the day, and acknowledged e.g. - issued 'Record of Site Condition', or a 'Remediation Process Certificate', or a 'Certificate of Compliance':
 - It should be a 'matter of course', to be able to transfer residual liability for such sites.
 - The residual liability would transfer with the property, and the market will place an appropriate discount to the property for assuming the liability.

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- **Situation 2** - Sites that have either not been remediated, or if partially remediated, the remediation is not yet to standards of the day.

Most brownfield owners are not developers, so without this situation being adequately addressed, some land will stay undeveloped.

CPPI supports the ability to transfer liability for the these sites and recognizes that additional measures are required to encourage redevelopment and that the party assuming the liability has the capacity to do so.

- Market pricing for the property will reflect the buyer's perception of the needed remediation and the assumption of liability.

This enables the buyer to upgrade the property, increasing its value, and thereby reducing the probability of a future unfunded liability.

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Approaches to Support Brownfield Re-development

- **Situation 2 continued** - Sites that have either not been remediated, or if partially remediated, the remediation is not yet to standards of the day.

Development of any liability transfer policy would need to take into consideration potential for unfunded liability, which can occur when:

- responsible party no longer exist, or is financially incapable, or
- when regulations provide full regulatory closure to a party and the party has met their obligations, but future remediation arises from new science or discovery, which is no longer the parties' responsibility.

Buyer should be able to demonstrate financial ability to assume the liability, which minimizes potential unfunded liability, via e.g. buyer's financial resources, private insurance, an assurance fund, etc.

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Approaches to Support Brownfield Re-development

- Any potential unfunded liability policy should include the following criteria:
 - Assessment and any necessary remediation be addressed on a societal basis, using a broad base of funding.
 - Funding should not be based on a mandated joint and several liability regime.
 - Funds should be directed at unfunded liability sites, and not used as a general government revenue.
- CPPI does not support establishment of a third party risk / assurance entity, as this option is available today in the marketplace.
 - In addition, implementation of such an entity will further diminish the market valuation of remediated properties, reducing re-development.

Transfer of Liability - Summary

- CPPI supports an effective implementation of the CCME 14th Principle, on the transfer of environmental liability between parties, in order to address one of the key barriers to brownfield redevelopment.
- For sites that have been remediated to standards of the day, and acknowledged by the regulator, transfer of liability to the new owner should be a matter of course.
- For sites that have either not been remediated, or if partially remediated and the remediation is not yet to standards of the day, the buyer should be able to demonstrate some degree of surety that the site issues will be addressed to the regulator's satisfaction.
- Market pricing will place a value on the residual risks, the costs to remediate and encourage efficient remediation ultimately supporting redevelopment.