

**REDEVELOPMENT STRATEGIES FOR THE
USX/CEMENT PLANT SITE
IN DULUTH, MINNESOTA**

Prepared for:
THE CITY OF DULUTH, MINNESOTA

By:
Great Lakes Environmental Finance Center
Technical Advisory Committee
www.csuohio.edu/glefc

The Urban Center
The Maxine Goodman Levin College of Urban Affairs
Cleveland State University
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PREFACE

Several people contributed to the success of this project. First, the United States Environmental Protection Agency provided the funding to the Great Lakes Environmental Finance Center to complete this technical advisory project. The City of Duluth, Minnesota planned the May 13, 1999 meeting and organized the local participants. Thomas Cotruvo provided local coordination of the workshop.

Mark Waterhouse, CED, President, Garnet Consulting Services Inc. (Pleasant Valley, CT) and Lisa Novosat-Gradert, Esq. (Akron) served as Technical Advisors to the project.

This report was written by Kirstin Toth, with editorial assistance from Donald Iannone, Executive Director of the Great Lakes Environmental Finance Center (GLEFC).

We express our sincere appreciation to these individuals and groups.

Kirstin Toth, Project Director
Brownfields Community Professional Advisory Service
Great Lakes Environmental Finance Center

EXECUTIVE SUMMARY

In May 1999, the Great Lakes Environmental Finance Center (GLEFC) conducted a strategy-building workshop in Duluth, Minnesota. The purpose of the workshop was to assist the City of Duluth in its efforts to develop actions leading to the successful redevelopment of the USX/Cement Plant site. Particular emphasis was placed on financing strategies pertinent to properties with a history of environmental contamination, often characterized as brownfields. Due to its long history as an industrial site, the 65-acre Cement Plant had its share of perceived environmental contamination, as well as real contaminants detected during previous site assessments and a current Phase I assessment.

USX Corporation currently owns the former Cement Plant site, as well as adjacent property not under current consideration for redevelopment by the city. USX has agreed to sell the Cement Plant site to the City of Duluth for \$300,000 with the stipulation that USX be fully indemnified from any existing or future liability that would arise from previous, or future use of the property and any related contamination. This particular liability indemnification is very broad and leaves wide open the burden of liability on the City.

In addition to the complete liability indemnification issue, the City also is planning for the eventual redevelopment of the site into a light industrial business park, and is determining how best to progress with redevelopment planning. For both of these issues, the GLEFC Advisory Team provided advice and facilitation of a detailed discussion of the relevant factors in the site's redevelopment.

Based upon the workshop discussion, the GLEFC Advisory Team made many recommendations that have been grouped into three categories: 1) recommendations related to environmental issues; 2) those recommendations regarding liability; and 3)

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redevelopment planning for the site. The Advisory Team recommendations are intended to provide an impetus for further study or in many instances, immediate action.

RECOMMENDATIONS REGARDING ENVIRONMENTAL ISSUES

1. Obtain site assessments that adhere to both American Society for Testing and Materials (ASTM) standards as well as the state's Voluntary Investigation and Cleanup (VIC) program minimum testing requirements.
2. Ask for access to the site for additional testing.
3. Utilize a formal "access to the site" agreement with USX if necessary.

RECOMMENDATIONS RELATED TO LIABILITY

1. Reject the current sale offer by USX.
2. Seek out the direct assistance of the Minnesota Pollution Control Agency for liability protections and financial aid.
3. Investigate the possibility of environmental insurance.

RECOMMENDATIONS ON REDEVELOPMENT PLANNING

1. Complete the site assessment through Phase II.
2. Determine who will conduct the site remediation.
3. Encourage a continuing dialogue on site acquisition utilizing political or other third-party contacts.
4. Re-evaluate the need for continuing interest in the property.
5. Develop a master plan for the site incorporating standard economic development elements into the planning process.
6. Build an implementation Working Group.

INTRODUCTION

The Great Lakes Environmental Finance Center (GLEFC) was established in June 1995 through a grant from the United States Environmental Protection Agency (EPA). The Center is housed within Cleveland State University's Urban Center. Seven other centers are based around the country serving the needs of other EPA regions. The client-focused services offered by the Center include technical assistance, training, and research and advisory services in solving financial, marketing, and planning problems related to environmental facilities and resources. The Center created the *Community Brownfield Professional Advisory Service* to help communities across the Great Lakes region address complex brownfield financing issues. The goal is to help clients devise effective financing and marketing strategies for brownfield projects, as well as to identify and test the most effective redevelopment strategies used across communities in our region.

The technical assistance workshop for Duluth, Minnesota was conducted on May 13, 1999. An Advisory Team was assembled that matched the expertise needed to solve the unique needs presented by the Duluth officials. The team members had special skills in economic development strategy and planning and legal expertise relevant to environmental liability. The format of the workshop was developed in cooperation with Thomas Cotruvo, Director of Business Development, City of Duluth, to provide an open and organized forum for the discussion and selection of appropriate strategy solutions. One specific brownfield site served as the focal point for discussion during the workshop. The former USX/Universal Atlas Cement Plant site was selected by the

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community for examination and to provide the context from which broader discussion followed. A copy of the agenda and a list of workshop participants are included in the Appendix to this report.

The workshop began with a tour of the Cement Plant site. Mayor Gary Doty provided supportive opening remarks that focused on the City's commitment to addressing the site and redeveloping it into productive reuse as an economic and community development priority.

The ensuing discussion at the workshop centered around two key issues needing strategy development. These issues are: 1) determining liability and what the City should assume in liability; and 2) how to move the site to redevelopment. This report will highlight the most relevant topics of discussion and focus on recommendations that the Advisory Team believes will be of most benefit to Duluth's development efforts.

THE CEMENT PLANT SITE

The Cement Plant site encompasses approximately 65 acres previously used as a slag cement manufacturing operation for the Universal Atlas Cement Company, owned and operated by US Steel Corporation. The site is a portion of a much larger, 500-acre former steel works, which is currently under a Superfund cleanup action. The Cement Plant site is not included in the Superfund action. The Cement Plant began operating in 1916 and closed operations in 1976; the site has since been cleared of visible buildings and debris. The idle property is located along a major thoroughfare five miles from the I-35 highway running north-south to Minneapolis/St. Paul.

The City has been in negotiations with USX Realty to purchase the site for redevelopment. The City initially requested that USX donate the property to the City, but USX has offered only to sell the property for \$300,000 with a stipulation for complete liability indemnification. The City has agreed to the price in principle, but has concerns over the liability issues.

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The City currently plans to redevelop the property as a light industrial park of two-to-15 acre parcels. There is currently a Phase I site assessment being performed by AET, Incorporated of Duluth and complete site characterization has not been completed.

Although the current Phase I assessment is still being conducted, a review of previous environmental information indicates levels of polyaromatichydrocarbons (PAH), volatile organic constituents (VOCs), lead, carbazol, solid waste material (slag and concrete), and a previous landfill location. Complete cleanup requirements and costs are unknown at this time.

RECOMMENDATIONS REGARDING ENVIRONMENTAL ISSUES

One of the key issues for the City of Duluth is the concept of managing risk: more specifically, knowing what the city's risk would be were it to purchase the Cement Plant site. To this end, there are several key actions that should be taken by the city in order to minimize its liability and make informed decisions regarding the purchase and liability related to the property.

Key to managing the environmental and liability risk is gaining as full an understanding of what's in the ground as possible. The use of standard testing techniques and performance guidelines for site assessment is critical to gaining a thorough understanding of the environmental status of the property. Key actions for the City should include:

- 1. Obtain a Phase I and Phase II site assessment that follows accepted ASTM standards.**

A sample "Phase I Environmental Site Assessment Mode I" model has been provided to Tom Cotruvo in order to provide guidance in obtaining the best possible investigation available. Following American Society for Testing and Materials (ASTM) standards for Phase I and Phase II testing will assure the consistent level of investigation and assessment that interested third parties are accustomed to seeing. For example, bankers and other private financing sources are often used to reading site investigation reports that adhere to the common standards under ASTM. The Advisory Team recommends that the site assessments on the property include minimum ASTM standards of practice, and to additionally **add any requirements of the state's VIC program**. In addition, Jane Mosel of the Minnesota Pollution Control Agency offered assistance with determining records availability of the former landfill on the site. Also, there is existing knowledge about the US Steel plant site adjacent to the Cement Plant site, and hence, environmental knowledge about that site should be incorporated into any information provided about the Cement Plant.

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2. Revisit the issue of access to the site for soil sampling.

Formally requesting USX for access to the site will clarify the question of ability to conduct on-site testing. Get USX permission for city contractor to go on the site for soil sampling.

3. Agree on the terms for access to the site in order to gain environmental information, if necessary.

It is necessary to gain access to the site in order to conduct soil sampling. It is imperative to understand what is in the ground at the site in order to assess and quantify the City's environmental risk. A sample "Consent to Access Agreement" has been provided to the City by the Advisory Team. The Advisory Team believes that the importance of access and testing on the site cannot be overstated.

RECOMMENDATIONS RELATED TO LIABILITY

Once the environmental issues are clarified and any contaminants have been identified, risk for future environmental liability can be more fully addressed and quantified.

Determining the City's liability for future responsibility on the site is the cornerstone of negotiating an acceptable purchase with the seller. This scenario assumes that the seller, USX, is an interested and sincere seller. Based upon their current offer to sell with the broad indemnification stipulation, the Advisory Team recommends the following actions in order to more fully protect the City and prepare for what may become long and involved negotiation process.

1. Do not accept the current offer to purchase the property.

Based upon the September 24, 1998, letter from USX Realty Development detailing the full indemnification for USX, the Advisory Team recommends rejecting this offer. As reiterated by Advisory Team member Lisa Novosat-Gradert, the liability that USX seeks indemnity from the City is all-encompassing, and includes any legal defense

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that may in the future be requested by USX for property-related, previous, or future actions. While it may seem obvious for the Advisory Team to recommend against purchasing the property under the existing offer, suffice it to say that the liability is enormous and unrealistic; the risk exceeds what the City should ever consider reasonable. A sample “Indemnification Provisions” is contained in the Appendix as reference for a model of more typical liability language.

2. Seek out the assistance of the Minnesota Pollution Control Agency (MPCA) to determine liability protection during and after clean-up and redevelopment.

The MPCA offers the Voluntary Investigation and Clean Up (VIC) program and a Certificate of Completion that can provide maximum protection for buyers and assignors of the property. The Advisory Team recommends seeking out the help of the MPCA early in the negotiation process to not only learn about environmental issues, but to learn about protections available under the state’s VIC program.

[Contact Jane Mosel, Project Manager, North District, (651) 296-3263]

3. Investigate the possibility of environmental insurance.

Environmental insurance can be a useful tool in reducing liability risks to the City. Insurance is also a tool for transferring risk, after various measures have been taken to eliminate or reduce that risk. The use of environmental insurance may also reduce fears by potential lenders, but environmental insurance may not always be necessary. Once the city has quantified its future risk, including remediation costs, it can more aptly determine the need for environmental insurance coverage. Even though the City is self-insured, the Advisory Team believes it may be worthwhile for the City to talk to experienced environmental insurance providers to understand the various insurance products available for remediation and post-cleanup liability. The City should get price quotes for environmental insurance from the top three or four nationally-recognized policy providers. Because of the specialized nature of underwriting environmental insurance and the increased sophistication in assessment techniques, there are a few companies who have more experience than most. These include Zurich and ECS Reliance.

RECOMMENDATIONS ON REDEVELOPMENT PLANNING

Advisory Team member Mark Waterhouse led a detailed discussion regarding steps to take in order to redevelop the property once the liability issues were settled. Moving the site to its highest and best use is a process of economic redevelopment planning encompassing many steps basic to planning and marketing. The Advisory Team recommends several basic steps to follow in order to maximize the City's time and talent in the redevelopment of the former Cement Plant site.

1. Complete the site assessment through Phase II if possible.

Once the Phase II sampling is completed, the City will have a better understanding of the nature and extent of contamination, and then be in a position to determine its risk tolerance and begin negotiating a purchase price and arrangement with USX. As previously mentioned, gaining site access and gaining confidence in the environmental contractor are critical components that must be completed prior to any other planning.

2. Determine who will complete the site remediation.

The site owner typically completes site remediation, but ownership does not always have to occur prior to clean-up. Only site control is necessary for clean up, as well as a willingness by both seller and buyer to agree to the terms of the clean-up. In the case of the Cement Plant site, it may be possible to arrange a deal between the City and USX for financing of the clean-up based upon the MPCA VIC program standards and funding available through the Pollution Control Agency (PCA) and the Minnesota Department of Trade and Economic Development. In the case of funding options, it may be best that the City have site control or ownership in order to take full advantage of funding mechanisms not otherwise available to private companies.

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3. The GLEFC Advisory Team recommends proceeding on site acquisition once all of the liability concerns have been addressed and agreeable terms can be drafted. Using community and political contacts to **encourage continuing dialogue** may be useful if discussions are slow to continue. These contacts should include the local state legislative representative(s), as well as other entities that can build support for the project, such as Minnesota Power, the Duluth Economic Development Authority, and the 1200 Fund Incorporated.

4. The City should periodically re-evaluate its continuing interest in the Cement Plant site.

Considering the length of time brownfield negotiations often take, the Advisory Team recommends that the City re-evaluate its interest in the property should negotiations come to a standstill. While it is clear to the GLEFC team that Mayor Doty and the City staff have made the Cement Plant a priority and that there is strong community support for redevelopment, it is nevertheless obvious that if both parties cannot agree upon reasonable terms, the City may focus its limited resources elsewhere.

5. Develop a Master Plan for the site.

Incorporate standard economic development elements into the master planning process, including market analysis; site engineering and planning for infrastructure; a finance plan that incorporates cost/benefit analysis; and implementation planning that incorporates marketing, development, and property management. The GLEFC Advisory Team recommends that the site plan configuration be done by taking existing utility layouts into account. The financial planning should incorporate a thorough investigation of the Minnesota Department of Trade & Economic Development's (MDT&ED) Contamination Cleanup Grants. These grants for cleanups provide up to 75 percent of the estimated cleanup costs. Grants for

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assessment cover 75 percent of the investigation cost, or \$50,000, whichever is less. In addition, the City should examine the use of its annual HUD allocation for Community Development Block Grant (CDBG) as a possible use of loan guarantees as a way to finance brownfield redevelopment.

6. Build an implementation Working Group.

Assemble a team of professionals with specific duties to push the project to fruition. Include in the Working Group the following and assign roles and responsibilities to each: Mayor Gary Doty, Tom Cotruvo, Bob Alseson, Bill Sawyer, Andy McDonough, Heidi Timm-Bijold, John Judd, David Prusak, Jack Gabler, a representative from Minnesota Power, and any others who can bring a skill and or a contact to the table. The Working Group should be just that, working toward completion of a series of steps, many of which are outlined here.

CONCLUSION

The City of Duluth faces challenges in the redevelopment of the USX/Universal Atlas Cement Plant site. The need for more thorough environmental assessments, USX's offer of an unlimited indemnification from liability, and the lack of a master plan for the site all present hurdles that must be overcome in order to redevelop the 65-acre site. However, the GLEFC Advisory team believes that there are distinct positive aspects to pursuing redevelopment of this property. These include:

- The perceived need by the business community for light industrial property in closer proximity to the central business district than the airport;
- The location of the site within five miles of the major I-35 corridor;
- Strong neighborhood support for redevelopment of the site;
- Local focus on this site for redevelopment as evidenced by the goals of the "2001 and Beyond" strategic planning effort ; and

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- The perception of low environmental contamination on the site.

The City is clearly motivated to put into action the redevelopment steps needed to move the site from its current, vacant state into a productive light industrial park. The Advisory Team believes that building upon the commitments made and actions recommended from the workshop and in this report will help the momentum already initiated by the City.

APPENDIX

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**GREAT LAKES ENVIRONMENTAL FINANCE CENTER
Community Brownfield Professional Advisory Service**

**City of Duluth Strategy-Building Workshop
May 13, 1999
City Hall
Room 402**

WORKSHOP AGENDA

- 7:30 - 8:30 a.m. Site Visit: USX Cement Plant site Thomas Cotruvo
Participants meet at 7:30 a.m. at the City's Land Maintenance Center, 2407 Commonwealth Ave. and proceed to site
- 8:30 - 8:45 a.m. Coffee and Sign-In, Room 402, City Hall
- 8:45 - 9:00 a.m. Welcome, introductions, workshop objectives, and agenda Kirstin Toth
- 9:00 -10:00 a.m. Site Overview, background, redevelopment plans. Thomas Cotruvo
- 10:00 – 10:15 a.m. Break
- 10:15 - 11:45 a.m. **I. Assessing Liability Concerns:** Lisa Novosat-Gradert, Esq.
The USX Site and Beyond
A. Liability Options for the Purchaser & Seller
B. What liability should the city take on?
C. What will it cost?
- 11:45-1:00 p.m. Lunch
- 1:00 – 3:00 p.m. **II. Moving the Site to Redevelopment** Mark Waterhouse, CED
A. Steps to redevelop this property
1. Assessment – how to use available information
a. What other information is needed
(with a break) 2. Remediation
a. What will it cost and how will clean up be financed
3. Finance
4. Marketing
- 3:15 p.m. **Wrap-Up and Next Steps** Kirstin Toth

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ABOUT THE URBAN CENTER

The Urban Center is a nationally recognized source of policy research, technical assistance, and training services on urban and regional development issues. As the research arm of the Maxine Goodman Levin College of Urban Affairs at Cleveland State University, the center serves the urban community and the region as a resource for the investigation of policy issues and provides assistance to community leaders in addressing current challenges.

The center's programs and initiatives offer applied research, technical assistance, strategic planning, and training to public officials, community leaders, and the private sector with the objective of enhancing the quality of life in urban communities. The center also has expert capacities in geographic information systems, leadership development, communications technology, survey research, and data resources. The Urban Center provides leadership for the collaborative research and public service goals of the Ohio Board of Regents' Urban University Program (UUP).

The Urban Center employs over thirty professional staff members and provides graduate assistants and undergraduate students with an opportunity for experiential learning. In addition to its own agenda, the Urban Center supports the research and training projects of the college faculty.

For further information on the Urban Center and its activities, please contact Larry Ledebur, Director, The Urban Center, Levin College of Urban Affairs, Cleveland State University, 1737 Euclid Avenue, Cleveland, Ohio 44115.

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