



# Making Them Pay- How to Finance Your Brownfield Revitalization

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# Case Study: Unusual Revenue Sources

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## Initial Issues to Consider:

- Contaminated Site -- Public or Private Owner
- Previous Owner/Operators Viable?
- Possible insurance funds
- Recover costs or forced clean up?
- Effort and Cost v. Likely Result

# Why Care?

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- Contaminated sites still exist
- Best time for plaintiff—ever?
- Public entities in great position
- Role of General Liability and Pollution insurance
- U.S. Supreme Court active in environmental law—  
even Scalia

# Various Options

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1. CERCLA Cost Recovery
2. VAP Private Cause of Action
3. RCRA Citizen Suit
4. CWA Citizen Suit
5. Nuisance
6. Insurance Claim

CERCLA

# *Cooper Industries v. Aviall Services*

- 543 U.S. 157 (2004)
- Voluntary remediation by a private party does not produce a claim under 113(f)
  - CERCLA requires a past judicial or administrative action, in order to have a viable 113(f) claim
- Full Environmental Lawyer Act

# *U.S. v. Atlantic Research Corp.*

- 551 U.S. 128 (2007)
- Private party may sue under 113(f):
  - During or following a civil action or settlement under section 106 or 107(a)
    - Explicitly grants PRPs a right to contribution
- Private party may sue under 107(a):
  - Without any establishment of the plaintiff's liability to a third party
  - Plaintiff may recover any costs "incurred in cleaning up its site"
    - A cost incurred as opposed to cost recovery is an important distinction.

# Atlantic Research

## Summary of Supreme Court's Holdings

### Cost Recovered: 113

- Where a plaintiff has been forced to cleanup or reimburse another party for cleanup of a site (either through a settlement or a court order) and that plaintiff is now seeking to recover its costs from a liable party.

### Costs Incurred: 107

- The clearest case is where a plaintiff has voluntarily (without suit under 106 or 107) conducted cleanup.



## The Gray Area: How Do Consent Decrees Fit In?

- ❑ CERCLA liability may not be established (as it would be with a settlement or a court order), so it doesn't fit neatly within 113.
- ❑ The cleanup is not voluntary but more compelled, so it doesn't fit neatly within 107.

# *W.R. Grace v. Zotos International*

- 559 F.3d 85 (2d Cir. 2009).
- Good overview of the 107/113 dichotomy in the wake of *Atlantic Research and Aviall*.
- Holding:
  - 1. Consent order does not constitute an administrative settlement and does not support a 113 claim.
    - Liability for CERCLA claims was not resolved.
  - 2. Private party could seek recovery under 107.
    - Even though Grace was party to a consent order, it “incurred” liabilities.

# 11<sup>th</sup> Circuit

- *Solutia v. McWane*, 972 F. 3d 1230 (11 Cir. 2012)
  - Armageddon litigation
  - Party to consent decree cannot use Section 107
  - 113 claim still available

## 2 Michigan Cases

- *ITT Industries v. Borg Warner*, 615 F. Supp.2d 640 (W.D. MI 2009).
  - No 107 claim because required to incur cleanup costs pursuant to a consent decree. (An untimely 113 claim).
- *Ford Motor v. Michigan Consolidated Gas*, 2009 WL 3190418 (E.D. MI, Sept. 29, 2009)
  - Consent order is not an administrative settlement, so no 113 claim.
  - Still had viable 107 claim.

# Other CERCLA Developments:

## *Burlington Northern v. U.S.*

- 129 S.Ct. 1870 (2009)
  - 2 important developments
    - Apportionment
    - Arranger Liability
- Case law is evolving weekly [weakly?]
- *Pakootas v. Washington*, No. CV-04-256-LRS (E.D. Wa, 4/4/12)
- *AmeriPride Services v. Valley Indus. Service*, 2012 WL 1143658 (E.D. Cal., 4/4/12)

# Burlington Northern: Apportionment

- ❑ In a CERCLA 107 lawsuit, liability is joint and several.
- ❑ Government only?
- ❑ A court may apportion damages among PRPs based on fault when:
  - The harm is apportionable
  - The Court must use a reasonable basis for apportioning liability based on the contribution of each party.
    - In Burlington Northern the basis for apportionment was land ownership, duration of business divided by term of lease, and breakdown of chemical spills
- ❑ *3000 E. Imperial v. Robertshaw Controls*, CV 08-3985 (C.D. CA, Dec. 29, 2010.)

# Burlington Northern: Arranger Liability

## □ Clear Situations:

- An entity that enters into a transaction for the sole purpose of discarding a used and no longer useful hazardous substance is an arranger
- An entity that sells a new and useful product, is not later considered an arranger if the purchaser wrongfully disposes of that product.
- *Team Enters, LLC v. Western Inv. Real Estate Trust*, 647 F.3d 901 (9<sup>th</sup> Cir. 2011) [mfr. of dry cleaning machine not arranger]

# Burlington Northern: Arranger Liability

- Middle Ground:
  - Fact-intensive and case-specific inquiry
  - Must take intentional steps to dispose of a hazardous substance
    - Includes an inquiry as to the defendant's state of mind (Did the defendant intend to arrange for disposal?)
    - Knowledge alone is not sufficient-must be an actual intention (at the time of the transaction) that the product would be disposed of improperly
  - *Nu-West Mining v. U.S.*, 4:CV 09-431 (D. Id. March 4, 2011).

# Recoverable Costs

- *500 Associates v. Vermont American Corp.*, 3:96 cv 847 (W.D. KY, Feb. 7, 2011).
  - A party cannot recover costs under CERCLA unless those costs have furthered the cleanup of the property. Costs incurred for business purposes or in an attempt to avoid liability for a release are not recoverable under CERCLA.

# Statute of Limitations

- 3 or 6 years- Remedial v. Removal?
- *American Premier Underwriters v. GE*, No. 1:05 CV 437 (S.D. Ohio, 3/31/12)(Judge Barrett)
- Criticized by commentators

# *Evansville Greenway and Remediation Trust v. S. Indiana Gas (SD In., 9/29/09)*

- Gen'l Waste Products - operate at site from 1956-1998
- City of Evansville buys property
- Insurers create Remediation Trust
- Assign Claim
- Voluntary Clean-Up-§107 only?
- “Innocence” out- “Guilty” in?

# Public Entity Cases

- *Standex Int'l v. City of Cleveland*, 1:10 cv 00733 (N.D. Oh 2010)
  - CERCLA suit for allegedly exacerbating contamination
- *Bancorpsouth Bank v. Environmental Operations, Inc.*, No. 4:11 CV 9 HEA (E.D. Mo., 9/30/11)(environmental consultant motion to dismiss denied)

VAP

# VAP-Volunteer Recovery

- ORC 3746.23(A): A person who, at the time when any of the hazardous substances identified and addressed by Voluntary Action conducted under this chapter and the rules adopted under it, were released at or upon the property...is liable to the person who conducted the Voluntary Action
  - Also recoverable are attorneys fees and costs (3746.23(A)(7))
- *City of Cleveland v. Standex International*, Common Pleas and N.D. of Ohio cases

# VAP

- *Paxton v. Wal-Mart Stores, Inc.* 176 Ohio App. 3<sup>rd</sup> 364 (6<sup>th</sup> Dist. 2008)
  - A “no further action” letter is a “prerequisite to filing a claim” under ORC 3746.23(C)
  - Concern this misreads 3746.23(C) which states “The person conducting the Voluntary Action may commence the civil action *at any time* after the person has commenced the conduct of the Voluntary Action.”

# RCRA



## RCRA Citizen Suit

Allows injunctive relief that requires responsible parties to perform certain clean-up activities despite absence of governmental action

# RCRA Citizen Suit

- 42 USC 6972(a)(1)(A): [A]ny person may commence a civil action against any person...alleged in violation of any permit, standard, regulation, condition, requirement, prohibition, or order; or
- (a)(1)(B) against any person...and including any past or present transporter, or past or present owner or operator of a treatment, storage or disposal facility who has contributed or who is contributing to past or present handling...of solid or hazardous waste;

# RCRA Citizen Suit

- Requirements:
  - ▣ Risk of harm must exist (not necessarily that it will occur immediately)
  - ▣ Recover for solid or hazardous waste
  - ▣ Causation
  - ▣ Liability is joint and several unless there is evidence for apportionment
- Gas Station- Petroleum contaminated soil is solid waste
- Previous landowner option

# RCRA Citizen Suit- Relief

- Recovery
  - ▣ Claim is for injunction, not for monetary recovery
  - ▣ Can recover attorneys fees if prevailing party
- *Litgo New Jersey v. Martin*, 2012 WL 13-9370 (D. N. J., 4/16/12)(4M in fees requested)

# Notice Requirement

- The notice must be provided 60 days for suits pursuant to (a)(1)(A) and 90 days for suits pursuant to (a)(1)(B). *Hallstrom v. Tillamook County*, 493 U.S. 20 (1988)
- Notice to potential defendants and the government (the state and U.S. Environmental Protection Agency)
- Diligent Prosecution Defense -“Please Sue Me Now”

# *City of Fresno v. U.S.*

- 709 F.Supp.2d 934 (E.D. Cal. 2010).
- Need to do more than just recite words “imminent and substantial” to demonstrate a health risk worthy of a citizen suit.
- “Although the City’s expert recited 6972(a)(1)(B)’s “magic words”... It lacks the factual detail and scientific exposure evidence”

- *Town & County Co-op v. Akron Products*, (N.D. of Oh, Judge Polster), Case No. 1:11 CV 2578
- 7002(a)(1)(B)- Imminent and Substantial Endangerment
- 7002(a)(1)(A)-Violation of RCRA
- Active conduct required
- Open Dumping is wholly past

# Imminent and Substantial Endangerment

- *Crandall v. City & County of Denver, Colo.*, 594 F.3d 1231 (10<sup>th</sup> Cir. 2010) cert. denied, 131 S. Ct. 287, 178 L. Ed. 2d 141 (U.S. 2010)
- *Attorney Gen of Oklahoma v. Tyson Foods*, 565 F.3d 769 (10<sup>th</sup> Cir. 2009)
- *County of La Plata v. Brown Retail Group, Inc.*, 768 F. Supp. 2d 1092 (D. Col. 2011)
- *Tilot Oil v. BP Products*, 2012 WL 124395 (E.D. Wi., 1/17/12)





## Clean Water Act

# Clean Water Act Citizen Suit

## □ Requirements:

- By any citizen against a person alleged to be in violation of effluent standard or limitation or an order issued by EPA Administrator or State concerning a standard or limitation
- Notice:
  - Give notice to EPA Administrator, State where the violation occurred, and any alleged violator.
  - Must wait 60 days following notification before bringing action
    - If the federal or state government takes action, then the citizen may not bring suit; however, he has a right to intervene.
  - Exception: may proceed immediately following notification if the suit is in regard to sections 1316 or 1317(a)
- Particularized harm [in present or future (rather than past).]
- *Gwaltney of Smithfield v. Chesapeake Bay Foundation*, 484 U.S. 49 (1987).

# Clean Water Act Citizen Suit

## □ Standing Issues

- *Lujan v. Defenders of Wildlife*: citizen must suffer a concrete and discernable harm
- *Friends of the Earth v. Laidlaw*: citizen suffers a harm when “aesthetic and recreational value” of an area is threatened
  - Clearly expanding “harm” from being quantified solely in economic terms.
- *City of Ashtabula v. Norfolk Southern*, 633 F. Supp 2d 519 (N.D. Oh. 2009)
- *Friends of the Earth v. Gaston Copper Recycling*, 629 F. 3d 387 (4<sup>th</sup> Cir. 2011)



# Clean Water Act Citizen Suit

- Relief:
  - Injunctive Relief
  - Civil Penalties (payable to U.S. Treasury)
  - Court may award costs of litigation
    - Includes reasonable attorney and expert witness fees
    - To any prevailing or substantially prevailing party
  - *Friends of the Earth v. Gaston Copper Recycling*, 629 F.3d 387 (4<sup>th</sup> Cir. 2011)

# Example Citizen Suit

- *City of Ashtabula v. Norfolk Southern Railway Company*, 633 F.Supp.2d 519 (N.D. Ohio 2009).
- CWA
- CAA
- Issue of Proper Notice
- Review Complaint vs. Notice Letter

# Citizen Suit Defenses

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- Diligent Prosecution
  - ▣ *Arment v. YSI*, SD of Ohio
  - ▣ “Beg Ohio EPA to Sue Client”
  
- Notice Letter Deficiencies

# NUISANCE

Public Nuisance v. Private Nuisance

# Overview:

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Formation of nuisance claim to depends upon three factors:

- ▣ 1. Party Harmed
  - Public vs. Private
- ▣ 2. Danger of Action
  - Absolute vs. Qualified
- ▣ 3. Statute of Limitations
  - Permanent vs. Continuing

# Public Nuisance

## □ Elements

1. Defendant owed a common right to the general public
2. Defendant breached Duty
  - Must be unreasonable interference with public right
3. Plaintiff must allege a special injury
  - “Must be different in kind, rather than different in degree, from that suffered by other members of the public exercising the public right” *Kramer v. Angel’s Path, LLC*, 174 Ohio App 3d 359, 367, 882 N.E.2d 46 (Ohio App. 6<sup>th</sup> Dist. 2007)
4. Breach was a proximate cause of injury
  - Two ways to evaluate a breach:
    - Lawful and Unregulated Activity
    - Lawful and Regulated Activity

# Private Nuisance

- A nontrespasory invasion of another's interest in the private use and enjoyment of land
- Threatens only one or a few persons
  - No need for “special injury” that sets the plaintiff apart from the wider public harm because the injury in a private nuisance suit affects the plaintiff individually
- Involves an invasion that must be
  - Intentional and unreasonable or
  - Unintentional but caused by negligent, reckless, or abnormally dangerous conduct



# NUISANCE

Absolute Nuisance v. Qualified Nuisance

# Absolute Nuisance

- Absolute Nuisance involves conduct that is “inherently injurious,” and is essentially a strict liability cause of action. *City of Cleveland v. Ameritrust Mortg. Securities, Inc.* 615 F.3d 496 (6<sup>th</sup> Cir. 2010)(quoting *Brown v. Scioto County Bd. Of Comm’rs*, 87 Ohio App.3d at 713 (Ohio 4<sup>th</sup> District 1993))
- Essentially, strict liability

# Qualified Nuisance

- Imposes liability for otherwise lawful actions “so negligently or carelessly done as to create a potential and unreasonable risk of harm, which in due course results in injury to another.” *Metzger v. Pa., Ohio, & Detroit R.R. Co.*, 146 Ohio St. 406, 66 N.E. 2d 203 (1946)

# Statute of Limitations

- Depends on the Nuisance
- Permanent Nuisance- ORC 2305.09(D)
  - when tortious act is fully accomplished but injury persists;  
*Ashtabula River Cooperation Group II v. Conrail, Inc.* 549 F.Supp.2d 981, 984 (N.D. Ohio 2008)
  - 4 years for damage to real property
- *Town & Country Co-op v. Akron Products*, Case No. 1:11 CV 2578 (N.D. Ohio, Judge Polster)(discovery rule applies to permanent nuisance)
- *Sexton v. City of Mason*, 117 Ohio St. 3d 275 (2008)

# Statute of Limitations

## □ Continuing Nuisance

- “arises when the wrongdoer’s tortious conduct is ongoing, perpetually generating new violations.”  
*Ashtabula River Cooperation Group II v. Conrail, Inc.* 549 F.Supp.2d 981, 984 (N.D. Ohio 2008)(quoting *Haas v. Sunset Ramblers Motorcycle Club, Inc.* 132 Ohio App.3d. 875, 726 N.E. 2d 612 (3<sup>rd</sup> Dist. 1999)
- Statute of limitations tolled

# Economic Loss Rule

- The Ohio Supreme Court has recognized that the economic loss rule prevents recovery in tort of damages for purely economic loss. *Ashtabula River Cooperation Group II v. Conrail, Inc.* 549 F.Supp.2d 981, 984 (N.D. Ohio 2008)
- Where there exist physical losses and economic losses, the economic losses are recoverable



## Preemption of Common Law Nuisance Claims

- Cannot recover twice for the same harm
- If the activity is regulated, then the plaintiff must demonstrate noncompliance with the regulation in order for a nuisance claim to exist

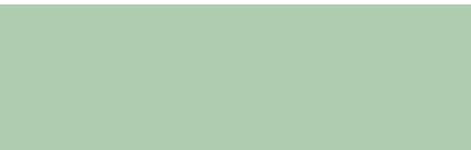
# Diminution of Property Value (Ohio Trespass and Nuisance Claims)

- “Measure of damages for the injury to real property is the cost of restoration, plus the reasonable value of the loss of the use of the property between the time of the injury and the restoration.” *Weber v. Obuch* 2005 WL 3556693 (Ohio App.9 Dist. 2005).
- Where injury to the land is permanent, damages are limited to the difference in the market value of the property before and after the injury. *Ohio Collieries Co. v. Cocke* 107 O.S. 239 (1923) at 248.

# Diminution of Property Value (Ohio Trespass and Nuisance Claims)

- Changing Interpretation of *Ohio Collieries*:
  - Old Law: Recovery for non-permanent injury to property is necessarily measured by the diminution in the market value of the property. See *Reeser v. Weaver Bros.*, 78 Ohio App.3d 681 (Ohio App. 2 Dist. 1992).
  - New Law: In an action based on temporary injury to noncommercial real estate, a plaintiff no longer needs to prove diminution in market property value in order to recover costs of reasonable restoration. *Martin v. Design Constr. Servs.*, 121 Ohio St.3d 66 (Ohio 2009).
    - However, proof of diminution in market value may be offered to demonstrate reasonableness of restoration. *Id.*
    - “[T]he essential inquiry is whether damages sought are reasonable.” *Martin* at ¶25.

# USES OF NUISANCE CLAIMS



# Example:

## *Ashtabula River Cooperation v. Conrail*

- **Count II: Common Law Public Nuisance**
  - Defendants owed a common law duty to the general public not to create a nuisance in the Ashtabula River and Harbor and defendants intentionally and negligently breached that duty.
- **Count III: Public Nuisance Arising from Violation of Ohio Revised Code Chapter 6111**
  - Ohio Revised Code Section 6111.04(A)(1) prohibits any person from polluting any Waters of the State.
  - Violation of 6111.04(A)(1) constitutes an unreasonable interference with a public right and is a public nuisance.
  - Plaintiffs suffered an injury not common to the general public in the costs plaintiffs incurred in the cleanup of the Ashtabula River.

# Example:

## *Ashtabula River Cooperation v. Conrail*

- **Count IV: Public Nuisance Arising from Violation of Ohio Revised Code Section 3767.13**
  - Ohio Revised Code Section 3767.13(C) prohibits any person from unlawfully obstructing the passage of a navigable river and corrupting a watercourse.
  - Violation of 3767.13(C) constitutes an unreasonable interference with a public right and is a public nuisance.
  - Plaintiffs suffered an injury not common to the general public in the costs plaintiffs incurred in the cleanup of the Ashtabula River.

# Judge Gaughan's Holding:

## *Ashtabula River Cooperation v. Conrail*

- The nuisance claims were for a permanent nuisance, which subjects them to a four year statute of limitations.
  - Complaint does not allege that conduct is ongoing.
- CERCLA preempts nuisance claims.
  - Plaintiff may not recover the same damages from both nuisance claims and CERCLA Section 114(b)
- Ohio's economic loss rule bars recovery on nuisance claims.
  - Plaintiffs sought recovery for purely economic damages, which is barred by Ohio's economic loss rule.
- Association lacked standing to bring nuisance abatement action under Ohio statute prohibiting the corruption of watercourse.
  - The statute specifically confers standing only on governmental entities or citizens (of the county in which the nuisance exists) suing on behalf of the state.

# Recovery Summary

<b>Claim</b>	<b>Relief</b>	<b>Attorneys Fees</b>
CERCLA §107	Costs incurred (Joint and Several with possibility of apportionment)	Not recoverable
CERCLA §113	Contribution recovery	Probably not recoverable
RCRA	Injunctive Relief	Court's discretion to prevailing party
CWA	Injunctive Relief and Civil Penalties (payable to the U.S. Treasury)	Court's discretion to prevailing party
Common Law Nuisance	Injunctive Relief and Monetary Damages	Ordinarily not recoverable
VAP	Can recover costs of voluntary action	Recoverable

# INSURANCE COVERAGE

# Strategy

- Pre-1972 GL policies
- Secondary Evidence
  - *Sharonville v. American Employers*, 109 Ohio St. 3d 186 (2006)
- Notice/Prejudice Rule to defeat Late Notice
- Archeologist-mining for policies?
- PLL Case law
- *City of Cleveland v. Chartis*, (Case No. 1:11 cv 02637, N.D. Ohio, Judge Nugent)

# Default Judgment

- Strategy: Default under FRCP 55(b)(2). If judgment unsatisfied after 30 days, ORC Section 3926.06  
Direct Action
- Coverage Issues remain
- Recent success for railroad for pre-72 GL policies

# Allocation/Recent Case Law

- *Goodyear v. Aetna*, 95 Ohio St. 3d 512 (2002).
- All-Sums      Insureds select triggered policy
- *Pennsylvania Gen'l Insurance v. Park-Ohio Indus.*, 126 Ohio St.3d 98 (2010) affirms *Goodyear*.

# Recent Case Law

- *Pilkington v. Travelers*, 105 Ohio St.3d 1514 (2005)
- *Pilkington v. Travelers*, No. 3:01CV7617 (N.D. Ohio 9/23/2009)
  - Assets Transfer?
- Issue of Successor Entity Ability to make claim against predecessor owner/operator
- How far can we push the issue?
- *Viking Pump v. Century Indemnity* 2009 WL 3297559 (Del. Chancery, 10/14/09)
- *Lockheed Martin v. Goodyear Tire & Rubber*, 2011 WL 611662 (Feb. 11, 2011, N.D. Ohio)(Judge Dowd rejects *Pilkington* theory)

# Defunct Company?

- No Problem
- Obtain Default Judgment and sue insurer directly under §3926.06
  - *McKean v. Hartford*, 2005 WL 419712 (Ohio App. 5 Dist. 2/18/2005)
- Underutilized?
- Can insurer challenge underlying liability or apportionment?



**FLATS**  
EAST BANK  
CLEVELAND



THE WOLSTEIN GROUP



FAIRMOUNT  
PROPERTIES

**FORUM** Architectural  
Services, LLC

# Public Entity Brownfield Strategies: Financing

## Financing

- ❑ US EPA Funds/Stimulus
- ❑ Clean Ohio Funds
- ❑ BEDI
- ❑ Job Ready Site
- ❑ Targeted Brownfield Assessments
- ❑ OWDA
- ❑ County Funds
- ❑ City Funds

**Note: Separate Funds  
may be available for  
Green/Sustainability  
Projects and Clean  
Energy Projects**

# Public Entity Brownfield Strategies: Avoiding Liability

## ❑ Involuntary Acquisition

- Includes obtaining property through Sheriff's sale and deeds in lieu of foreclosure
- Must comply with Ohio Revised Code procedures
- Must not cause or contribute to the contamination

# Public Entity Brownfield Strategies: Avoiding Liability

- ❑ Bona Fide Prospective Purchaser
  - All Appropriate Inquiry
  - Shelf-life of document
  - Reasonable steps to take appropriate care

# Public Entity Brownfield Strategies: Avoiding Liability

## ❑ Emergency Response

- Must be undertaken in response to or to prevent release of hazardous constituents
- Applies to Health, Fire, Building and Housing alike
- Actions may not be grossly negligent or the result of intentional misconduct

# Public Entity Brownfield Strategies: Avoiding Liability

- ❑ Conducting Clean-Up
  - Applies to all property acquisitions, voluntary or involuntary
  - Must be pursuant to state clean-up statute
  - Must be in state that have signed [non-binding!] MOAs with U.S. EPA
- ❑ Still have to think about RCRA and CWA

# Cleveland Land Banks

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- ❑ One of the oldest *residential* land banks in the country
- ❑ Industrial/Commercial land bank created to consolidate parcels, apply for funding, and address liability concerns of private parties

# City of Cleveland Industrial/Commercial LB Properties

<b>Name</b>	<b>Location</b>	<b>Acres</b>	<b>Status</b>
<b>Midland Steel</b>	10615 Madison Ave.	22	NFA expected in 2Q of 2011
<b>Former Tops (bus garage)</b>	11905 Superior	6.46	End User identified. Project going to City Council for sale.
<b>Trinity Building</b>	9203 Detroit Ave.	5.6	NFA expected in 3Q of 2011
<b>Ward Bakery</b>	4501 Chester Ave	2.5	NFA expected in 3Q of 2011
<b>Warner Swasey</b>	5701 Carnegie Ave	2	Applying to State of Ohio for Assessment & Asbestos Remediation Funding.
<b>Coke Plant (CVIC)</b>	Independence Ave.	54	Site exp.shovel ready by Dec. 2011
<b>Former Asphalt Plant</b>	West 3rd Ave.	2.7	NFA expected in 2011
<b>Crescent Avenue</b>	3418 Crescent Ave.	10.77	Applied for USEPA grant
<b>Midtown Site</b>	Euclid Avenue	10.98	NFA expected in the 2Q of 2011

# Cuyahoga Valley Industrial Center Before



# Cuyahoga Valley Industrial Center After



# Midland Steel Before



# Midland Steel

## During



# Land Bank Issues

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1. Capitalization of projects
2. Time consuming administrative procedures
3. Take properties with buildings?

# Additional Brownfield Funding

- ❑ Insurance Proceeds
  - Midland Steel Site
  - Midtown Site (pending claims)
- ❑ VAP Cost Recovery
  - Liability Defenses
  - PRP Search
  - Extremely Document-Intensive
    - ✓ Building and Housing historical records
    - ✓ Fire Department historical records
    - ✓ All environmental records

QUESTIONS?

COMMENTS?

THANK YOU!