April 16, 2012

The Honorable Max Baucus, Chairman
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510-6200
Fax - 202-228-0554

The Honorable Orrin G. Hatch, Ranking Member
Committee on Finance
United States Senate
219 Dirksen Senate Office Building
Washington, D.C. 20510
Fax - 202-228-0554

Dear Chairman Baucus and Ranking Member Hatch:

RE: Renewal of the Section 198 Remediation Tax Expensing Program
We are writing to request renewal of the section 198 Remediation Tax Expensing provision.

As you know, section 198 makes remediation expenditures tax deductible in the year remediation costs are incurred. This approach, originally adopted in the Community Renewal Act of 2000, treats cleanup of hazardous substances as a “repair” to the land, rather than a “capital expenditure” which must be depreciated over time. The result is fair and equitable, with a very significant secondary benefit: it makes cleanup expenditures less of a barrier to redevelopment of brownfields sites.

America’s cities and towns are struggling to overcome brownfields impediments on an estimated 450,000 to one million sites that are lying idle, often blighting the communities that once depended on the jobs generated by these now-closed facilities.

Section 198 expired at the end of 2011. The program should be renewed; however, while a simple extension of the program would be expeditious; there are several problems with the program that should be addressed:

1. **The program should be made permanent** - Brownfield developers are usually taking a multi-year risk when they invest in a brownfields site. They cannot “pro forma” the tax expensing program because of the possibility that it will lapse and Congress will not renew it.

2. **There should be a “Carry Forward” provision** – Developers often cannot take advantage of the deduction because of the lack of tax liability in the year that remediation expenses were incurred. A five-year carry forward provision would allow the program to assist more sites.

3. **The recapture provision should be eliminated** – Currently the Treasury Department recaptures the tax benefit when the property is sold. This makes the 198 program ineffectual for the numerous brownfields sites that are sold after the remediation and site preparation are complete.

The Remediation Tax Expensing Program has been highly successful in reducing cleanup barriers for a sub-set of brownfields sites; however, the program has the potential to be more productive and incentivize vast numbers of cleanups, ultimately helping cities and towns reposition their economies for new engines of growth. These three changes would go a long way toward bringing about that potential.

Again, we urge you to support the extension for this modest but critically important tax law.

Sincerely,

Evans Paull
Executive Director
The Honorable Max Baucus  
The Honorable Orin G. Hatch  
RE: Section 198 Remediation as Expensing Program  
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National Brownfields Coalition

National Brownfields Coalition:

National, Regional and State Organizations:
US Conference of Mayors
Smart Growth America
NAIOP, the Commercial Real Estate Development Association
National Association of Local Government
Environmental Professionals
Environmental Bankers Association
Groundwork USA
National Brownfields Association
Brownfields Coalition of the Northeast
Wisconsin Brownfields Study Group
Center for Creative Land Recycling
Florida Brownfields Association
Colorado Brownfields Foundation
Minnesota Brownfields
Louisiana Brownfields Association
Goldstein Brownfields Foundation

Local Government:
City of Trenton
City of Milwaukee
Land of the Sky Regional Council

Members of the Brownfields Leadership Circle:
Terracon
O'Neill Properties Group
Sustainable Strategies 2050
Cardno TBE
Environmental Financial Advisor LLC

Other Private Sector Partners:
Ayres Associates

cc: Members of the Senate Finance Committee