Public Benefits

- Cleanups are started and finished sooner
  - *E.g.*, 2 years versus 10

- Preserves the Superfund
  - Uses only private funds

- Reduces government transactions costs
  - These costs can be 50% or more of the government’s total site costs
  - EPA states that its indirect costs alone are 29-54% of direct

- EPA/State stays in charge.
  - It benefits by gaining a PRP; no non-De Minimis PRPs are lost

- Cleanup funds are identified and held by fiduciary throughout cleanup
  - Either insurer or escrow agent

- Improved future use: Property can be more easily converted to public beneficial use
  - *E.g.*, parks, open space, *etc.*
Benefits To PRPs

- Transactions costs are avoided; potential savings are typically >30%
  - Note: This is also an identified EPA goal
- Cleanup costs are certain, and in many cases lower
- Cleanup is managed by Contractor, who also purchases substantial insurance policy (naming the PRPs as insureds) and provides full indemnity in perpetuity
- Avoids reliance on continued solvency of other PRPs
Benefits To Cleanup Contractors

- Greater autonomy/efficiencies in executing the cleanup
- Greater predictability with which to plan, budget, *etc.*
- Risks can be largely mitigated through insurance
The Mechanics Of An IFC

- **Contractor Assumes All Environmental Regulatory Liabilities**
  - Assumption Is Contractual (To Clients)
  - Assumption Is Regulatory (To Regulators)
  - Assumption Remains *In Perpetuity*

- **Insurer’s Role:**
  - Acts as **Fund Manager** via Finite Policy
  - Acts as **Insurer** via Finite or Cost Cap

- **EPA-Approved, And Promotes EPA Policies**
  - May 4, 2000 Memo identifying criteria for IFC at Region I Site, *Beede*
  - June 16, 2003 Consent Decree entered in Region II case, *U.S. v. Mattiace*
  - *See also* 2001 Region IX Decree entered by C.D. Calif in *U.S. v. Iron Mountain*.

Three Layers Of Protection Before Costs Return To PRPs; EPA May Look To All 3 Protections, And To The PRPs

- Full Indemnity From Contractor
  (amount of protection depends on assets)
- Insurance Policy ($20M)
- Commutation Account ($10M)
1st Superfund Example
State of Maine v. U.S. and Settling Nonfederal Defendants,

- Portland Bangor Waste Oil Site in Maine (2,900 PRPs).
- Each “exited” fully for 40% less in cleanup costs and with no transactions costs.
- Basic cleanup done in 19 months: Decree signed May 2000; cleanup essentially done by December 2001.
- Site provided to Town of Wells, Maine for productive public use (fields, open space): “Fall Fun Day” held in October 2002 (Boston Globe 10/26/02).
Lead agency = EPA. Note: The State of New York is also a plaintiff.

Contractor signed the Decree as a “Work Settling Party” and, as such, is “jointly and severally obligated” under the Decree. Insurance provides protection up to $25M.

EPA agrees to “initially seek correctively measures, in its enforcement discretion, only from TRC [the Contractor].”
Private-To-Public Brownfield Example

- 31 acres; 115-yr.-old plant; site inactive for years
- $10.1M demolition & cleanup (v. estimate of $15M+)
- “PRPs” paid only half ($5.1M) yet received full benefits of entire cleanup account plus insurance, bond, and full release/indemnity from contractor.
- City paid its half completely with Brownfield grants ($2M) and Tax Incremental Financing ($3M).
- Bottom Line: City received 31 acres, ready for commercial development, essentially for free. PRPs exited $15M potentially liability for $5.1M
Private-to-Private Brownfield Example

- Largest “Brownfield” In The U.S.
  - $103M Cleanup
  - $700MM Land Price
  - $2B Development
- Buyer And Seller Each Wanted To Avoid Environmental And Schedule Risk
- Regulated Under New York’s Voluntary Cleanup Program
Policies That Would Promote IFCs And Thus
(1) Expedite Cleanups;
(2) Reduce Public and Private Costs;
(3) Promote Beneficial Reuse; and
(4) Promote SEC Policies

- **Set A Numeric Goal**: Set a numeric goal of 1 IFC per Region over the next 18 months (or by the end of 2004).
  - Similar to 1995 goal of 50 Brownfield cleanups in 2 years

- **Create Guidance**. Aim to draft and implement guidance within 12 months.
  - Again, similar to EPA’s 1995 identified goal of Brownfield guidance

- **Create A Rebuttable Presumption**. Create a rebuttable presumption that IFCs will at least be considered at Superfund Sites.
  - Similar to EPA’s 1993 policy presumption that Superfund settlements will require PRPs to pay 50% premiums with re-openers and 100% premiums with no re-openers