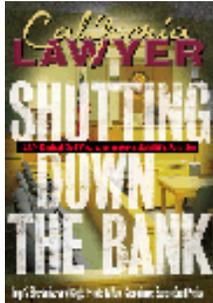


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The Green in Brownfields

So-called brownfields aren't necessarily brown. But they are places where new development is complicated by the presence or potential presence of a hazardous substance - a complication that raises a host of legal and even political issues. At Opper & Varco in San Diego, environmental lawyer Richard G. Opper has so much work in this area that he now devotes his entire practice to it.

In California the brownfield industry got a major boost in 1991 with the passage of the Polanco Redevelopment Act. The law has since been amended several times, with "each amendment generally strengthening the tools that the act provides for redevelopment agencies to facilitate the cleanup of contaminants," Opper explains. The act authorizes redevelopment agencies to clean up a site and sue to recover the costs or order the parties responsible for contamination to do so. It also gives the agency immunity from

liability following the cleanup, which the agency can then pass on to redevelopers and their bankers. "The act unlocked the door to dozens of projects that I've worked on that wouldn't have gone anywhere without it," Opper says.

The stakes can be enormous. One of Opper's current cases is the San Diego Downtown Ballpark Project, an estimated billion-dollar, 26-block redevelopment involving 65 property owners and dozens of lawsuits, including one that yielded the first appellate opinion to interpret substantive law in the Polanco Act. Between \$17 million and \$18 million has already been spent on cleanup, and the public, which had to front about one-third of those costs, has recovered all but a few hundred thousand dollars from the parties responsible for the contamination, and may still recover more.

With projects like this one, and an estimated 90,000 additional brownfield



Richard Opper

sites still idle or underutilized across the state, Opper sees plenty of work ahead for lawyers and consultants. "We're living through a paradigm shift in the world of cleanups," Opper says. "There's no road map on how to do this right. It's all new and evolving and stands on precedent that doesn't fit too snugly, but we're looking to make it work." -Deborah Rosenthal