

broad number of parties, many of whom were wholly innocent, that any hope of quick resolution became mired in stalling tactics and litigation. This legal wrangling, along with third party lawsuits against polluters seeking damages due to contamination-related declines in property values, had given rise to Superfund's nickname as "The Lawyers' Full Employment Act of 1980." One city that Cherches talked to reported that its \$30 million cleanup had sparked an estimated \$700 million in civil law suits. A study commissioned by the American Insurance Association estimated that cleaning up 1,800 Superfund sites would generate \$8 billion in legal fees.³

Finally, both litigation, and the oversight and administrative steps that EPA requires, add years to a typical Superfund cleanup. Of the average 10 years taken to clean up a site, seven are spent on study and assessment, legal proceedings, and crafting a remedy before the actual cleanup begins.⁴ Judging from this track record, if Gilbert-Mosley became a Superfund site, it would be years before cleanup could even start.

According to Mayor Knight, who consulted a number of other mayors about Gilbert-Mosley, cities with major contamination problems faced a bleak prognosis. "I couldn't find any successful models," he recalled. "The only thing we found was failure: division, frustration, assigning blame, financial ruin, and, ultimately, the very worst thing that can happen to people who love cities, decline."

Special Assistant Glaser also placed successive phone calls in a desperate bid to find a new alternative:

What we kept hearing was, "I can't tell you what to do, but do something. Don't let it go Superfund. Once it goes Superfund, you're in trouble." We knew we had to do something, but nobody knew what that something would be.

A Third Option

Cherches rejected both of KDHE's options, and made up his mind fast. Within a week of the Listing Site Investigation's release, he decided to risk a major leap from existing precedents. Although no one had accused Wichita of being a polluter, and although the city had not even been listed as a PRP, Cherches proposed that the city take full responsibility for the Gilbert-Mosley cleanup. In doing so, Wichita would attempt to sidestep the time and resources normally spent on Superfund-

related litigation, and to create some mechanism to get banks to start lending in the contaminated area again.

The most obvious and immediate barrier to a city-led cleanup was finding an acceptable way to finance it. Cherches was determined that Coleman and other contributors would pay as much as possible for the contamination they had caused. But the city could not count on recouping all cleanup costs from responsible polluters. Some likely contributors were no longer in business, for example, and others lacked the resources to support their share of the cleanup. Moreover, in order to sell the idea to the state and EPA, the city would have to prove it had the funds available to support what could be a 20-year project without relying on uncertain corporate contributions.

Cherches's staff prepared a list of financing alternatives, and the most powerful argument against each, as follows:

- *Establish a special assessment district:* All property owners in the area would be charged an assessment to cover the cost of cleanup. Likely to create an uproar over the inequity of making a large group, comprised mostly of innocent property owners, pay for the pollution of a few.
- *Issue bonds:* Taxes would be raised throughout the city to help pay off the bonds. Could cause a property tax revolt, and would require a change in state statute to allow bonds to be used for ongoing maintenance of the cleanup program.
- *Create a tax increment finance district:* Would dedicate an increment of Gilbert-Mosley property taxes—bolstered by the cleanup—to pay for the program. An untried use of this concept, and, like the bond option, would require a change in state legislation.
- *County pay entire cost, with state assistance:* Based on rationale that the economic health of Wichita is important to the entire county. Would face certain opposition from the county, which believed polluters should pay the tab. The county might seek state reimbursement.
- *Impose a statewide tax:* Would spread the burden to the broadest number of constituents. Certain to provoke strong opposition from a rural state uninterested in solving Wichita's industrial problems.

In addition to the backing of the Wichita City Council, most of these plans would require the approval of the Sedgwick County Council, as well as the Wichita

School Board, since their tax bases would be affected.

Even with a financing mechanism in place, though, a city-led plan would face a number of additional obstacles. Politically, the concept probably wouldn't fly unless Coleman and other contributors could be held at least partially accountable. "Some of the very early public response was, 'Why would the city get involved and commit our tax dollars?'" recalled Glaser. "We were thinking of signing on the dotted line to say we would be responsible for \$20 million. Politically and fiscally, that doesn't wash. It's not even reasonable." Unfortunately, if the city wanted to take charge, it would have to make a commitment long before it knew the likelihood of getting major contributors other than Coleman to pay.

Cherches would also have to convince EPA, which had a reputation for being bureaucratic and inflexible, that the city had the resources and the commitment to take on such an unusual arrangement. There was no record of any city ever having stepped in to accept liability for a contamination problem it had not caused.

In addition, unless Wichita could come up with a way to revive lending in the contaminated district, it wouldn't make any difference who was responsible for the cleanup. The central business district could not afford to wait 20 years for life to return to normal.

Finally, a survey of the obstacles made it clear that the ultimate success of the plan would depend on a complex collaboration between multiple, and sometimes opposed, constituencies, including the city manager's office, the city council, the county commission, the school board, lenders, Coleman, KDHE, the state legislature, the governor, and EPA.

KDHE had already warned the city that it would have to report to EPA in January about progress at the Gilbert-Mosley site. Unless a cleanup plan had taken shape, the state would recommend that EPA take over. If Wichita was unable to solve any one of the obstacles it faced, it would have to confront the inevitability of Superfund, with all that could imply for the devastation of the city's core.

Developing the Plan

Wichita City Manager Chris Cherches moved fast to begin consolidating support for a city-led cleanup of the Gilbert-Mosley site. In order to present the plan to the various constituencies that would have to approve it, the city first had to decide how to pay for it. After weighing alternatives, Cherches concluded that creating a tax

increment finance (TIF) district would be the most equitable and politically palatable way to raise funds. The city's approach, however, was a novel twist on the traditional TIF concept. Typically, a TIF district is set up in an area slated for redevelopment. After city-backed improvements are in place, the difference between the old, depressed property assessments and the new, higher values that have resulted from the improvements creates an increment that is then used to pay for the revitalization effort.

Wichita, by contrast, proposed what could be called a tax "decrement" plan: as a result of the contamination, the city would devalue all the property in the Gilbert-Mosley area—for example, by the 40 percent that property had dropped at the 29th and Mead contamination site—and then would immediately raise values back to their pre-contamination level, under the argument that the city plan would restore lost value. The difference would create the increment to be set aside each year to finance the cleanup. Although the city could find no examples of TIF being used to support environmental remediation, Glaser felt it was an ideal use of the concept. "This seemed like it really fit what the full intent of TIF was designed to do," he declared.

The city's initial talks with the Kansas Department of Health and Environment (KDHE) about assuming responsibility for Gilbert-Mosley had been encouraging. With the TIF proposal in place, KDHE became openly enthusiastic. Cherches began negotiating a plan for the state to oversee Wichita's cleanup in EPA's stead, thereby avoiding the agency's usual high oversight costs. After presenting the proposed plan to the public, and winning the unanimous approval of the city council, he next approached the local financial community.

Lenders, Cherches soon discovered, made eager allies. After all, they risked not only losing the value of their Gilbert-Mosley investments, but of being held liable for the actual cleanup. They also understood the importance to Wichita's economy—and to their own businesses—of returning real estate activity in the contaminated area to normal. But bankers would not resume lending until they had some sort of legal protection from cleanup liability in place.

The concept that the city and the lenders devised to satisfy this need was deceptively simple. Innocent property owners, including residents, businesses, and banks, could apply to the city for a document called the Certificate and Release for Environmental Conditions. If granted, the document would release the holder from any cleanup liability. With such a release in hand, properties could again be bought and sold without the