

SID WAINER & SON: A GROWING REALIZATION

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ABSTRACT

This teaching case challenges the reader to contemplate what they would do in the absence of a clear crisis or controversy. Good managers proactively solve problems before they become crises. Great leaders engage stakeholders to develop a vision and a plan to realize it.

In this case, enough facts are presented to either engage in a discussion of principles and law-related research into creative courses of action.

The teaching note explains what really happened: how a food supply company realized the "win-win-wins" of adopting sustainable business practices, and how third party standards and laws support the success of these initiatives.

CASE STUDY FOR STUDENTS

This case is deliberately presented in a way that does not present you, the reader, with an obvious business or legal controversy or problem. In real life, there often is no obvious crisis or disagreement to deal with. Further, threats and opportunities may not be obvious. Similarly, the strengths and weaknesses of your organization - or potential strengths and weaknesses - may not be apparent to you or anyone else.

Good managers should be able to not just react to a crisis, but to identify and plan for problems before they become crises. Great leaders articulate a vision, set goals, plan concrete steps to get there, and communicate the need to act in the way that they propose.

All this, ideally, should be done in a way that engages and even inspires internal and external stakeholders. Arguably, setting strategy and planning how to achieve long-term goals may be more challenging when there is no clear crisis to which to respond.

At the very least, you may simply contemplate what you would do in the following scenario and to share your general ideas. Potentially, an instructor could ask you to research specific third party standards and laws that are in some way related to the courses of action that you are contemplating.

Either way, please also be mindful that this case describes, as precisely and faithfully as possible, a "real life" business situation. The accompanying teaching note is similarly candid and faithful in describing the "real world" actions of the president and his company.

Good luck and enjoy contemplating: "what would I do?"

Location: New Bedford, once the wealthiest city in the hemisphere and why it could thrive again.

New Bedford, Massachusetts is one of two port cities located along the South Coast of Massachusetts, the other being Fall River. New Bedford is located roughly 30 minutes by car from Providence, Rhode Island to the west, roughly 30 minutes by car from Cape Cod to the east, roughly 60 minutes by car to Boston to the north, and roughly a 30-minute ferry ride to the island of Martha's Vineyard (see Exhibit One).

Settled by Europeans in 1652, New Bedford was once the wealthiest city in the Western Hemisphere and one of the richest cities, per capita, in the world, when it was the capital of the whaling industry in the mid-1800s.

Thriving textiles and manufacturing industries sustained the city's economy into the 1940s. Since the 1940s, the city experienced an economic and population decline as textiles and manufacturing operations left the region. A handful of manufacturing companies remain in the New Bedford area. In the 1990s, controls were imposed to limit over-fishing in the region, further hurting the local economy.

As of the late 1990s and early 2000s, New Bedford represented an interesting economic puzzle: a city in economic and social ruin despite a unique mix of invaluable assets. The city was characterized by the following positive factors:

- a prime geographic location in the midst of world-famous tourist destinations of the islands of Martha's Vineyard and Nantucket the beaches of Cape Cod.

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- proximity to the private capital, start-ups, thriving technology and biotech companies, and educated populations of Boston and Providence.
- a quaint cobble-stoned old downtown with historic buildings, a National Park and a museum dedicated to the whaling era and whales.
- proximity to University of Massachusetts Dartmouth.
- a functioning port with rail access to Boston.
- a local agricultural economy.
- the highest cash-value seafood port in all of the United States, due to shellfish harvests.
- a rich cultural legacy, best exemplified by the annual “Portuguese feast” (or, more formally, the Feast of the Blessed Sacrament), which is the largest street festival in New England and – for a period of less than a week – becomes the top export market for Madeira wine.

Despite this combination of positive attributes, the city faced the following daunting challenges:

- high levels of unemployment, crime, and citizens relying on some form of public assistance.
- a number of contaminated vacant lots and buildings left behind after the manufacturing collapse.
- over 50% of high school students not completing high school within four years.
- a bad reputation as being unsafe and a dead or dying city in terms of local economy and social life.
- lack of public transportation infrastructure, despite decades of hope of a direct link to Boston by commuter rail.

Among other claims to fame, the city also boasts of having been home of Frederick Douglass and one of the largest antebellum free African-American communities. New Bedford was one of the very first locations where early versions of baseball were played in 1858. Author Herman Melville worked in New Bedford and set opening scenes of his 1851 novel, *Moby Dick*, in the city. Warren Buffet named his firm, Berkshire Hathaway, partly after New Bedford’s Hathaway Mills, in which he once invested.

The company: Sid Wainer & Son

Henry Wainer is President, CEO and owner of Sid Wainer & Son, a high-end specialty food supply company. The company was started in New Bedford, Massachusetts, in 1914 by Henry’s grandfather and was passed on to Henry’s father, Sid Wainer, before becoming Henry’s.

The company started as a basic food supplier in the region of southern New England. Food products were purchased from farmers in the region known locally as the South Coast and resold to area restaurants and stores. Sid Wainer & Son continuously expanded through the decades.

In the 1990s and early 2000s – the timeframe for this case study – Sid Wainer & Son experienced a period of especially rapid growth. Between 1993 and 2008, the company’s fleet of trucks grew from four to 180. Sid Wainer & Son now has approximately 23,000 customers comprised of hotels, restaurants, caterers, and food service companies. Sid Wainer & Son’s network of suppliers grew to include hundreds of farmers in New England and roughly an equal number outside of the United States.

The first factor driving the company’s growth was both product diversification and specialization in high-end goods. Henry Wainer developed relationships with artisanal producers across New England and in several foreign locations to bring to market dozens of “new” products based on preparations, techniques and recipes that are actually centuries old and not available elsewhere.

The company has also grown by vastly expanding its number of clients and its geographic reach. Foods and produce are now shipped to clients across the United States and internationally. Sid Wainer & Son was a pioneer in the practice of shipping produce internationally by air transport.

Finally, the company has developed a reputation for delivering top-quality goods. Internationally-famous restaurant chefs and specialty stores are among the regular clients of Sid Wainer & Son. Both of the major U.S. political parties’ national conventions are supplied by Sid Wainer & Son. The cruise ship, Queen Elizabeth II, has also been supplied by Sid Wainer & Son.

Sid Wainer & Son’s wholesale facility is still located in New Bedford, where the company has also recently started a retail operation. The cost of supplies increased approximately 2% each year for the 5 years prior to 2008. Part of the cost of supplies was packing materials and packaging. The cost of energy generally continued to trend upwards.

Even as the company expanded its network of suppliers, the number of farms in New England declined. Several factors contributed to this decline. First, small-to-mid-sized New England farms found it difficult to compete with larger agribusinesses located elsewhere in the United States which had lower costs of production and hence could deliver goods at a lower price. For the same reasons, New England farms could not compete with foreign food producers in terms of price. Real estate prices continued to spiral upward, especially in areas where new housing could be built and sold by developers; sprawling and high-priced McMansion neighborhoods continued to be constructed, for example, in previously rural and semi-rural areas west of Boston. Increasingly unstable and freakish weather – even by New England’s infamous standards for unpredictability – meant more frequent failed harvests and financial losses for farmers. The sons and daughters of

families who had farmed the region for generations, experiencing the increasingly harsh realities of life of farmers and the high prices being offered for their land found it increasingly difficult to resist the clear economic incentive to sell their land and abandon farming for some other line of work. In the region surrounding New Bedford, tracts of real estate previously only used for agricultural purposes are now on sale.

Henry Wainer's formative years and core values

Henry Wainer grew up riding on the back of his father's truck visiting hundreds of local farmers. The environment or pollution were not yet mentioned by clients or suppliers as issues with which to be concerned. However, the connections between a healthy business, a healthy neighborhood, and a healthy environment became apparent in those early years. Henry Wainer's core values were molded by those early experiences visiting farmers with his father. In his own words, "My father was my greatest inspiration and all those things that he taught me to this day have given me the motivation to do what is necessary within the industry. ... My involvement with the local farmers [and] recognizing their strong work ethic and their dedication to the harvest is an essential part of who I am today. ... As a child with my father we visited hundreds of farms and to this day maintain those same relationships. There was always ongoing discussion about what should be grown, what could we market and what could be done to make a hundred percent of the farm productive."

Henry Wainer grew up working by his father's side as the third generation of Wainers in the produce industry in New England. Henry's father was the greatest influence in Henry's life, both personal and professional. Henry's code of ethics, his strength of character and his resolve to be a positive influence on all those around him were taught to him by his father.

Daily reality and decision-making

In the words of Henry Wainer:

"I share all of my ideas with my management team. We meet weekly beginning at 6:00 am and, although there is no formal time to end this meeting, they are usually 4 hours in length. My management team also discusses their individual ideas with their peers at the weekly meeting."

In response to the question of whether the decisions of competitors affect Dr. Wainer's judgment, he replied:

"Our competitors never played any part in planning any initiatives. I do whatever I think is in our best interest, without regard to the barriers, we have always managed to overcome the barriers which stood in our way of achieving our goals."

Concerns of stakeholders

During the period in question, colleges and universities, as well as high schools, began demanding that Sid Wainer & Son recycle. Customers increasingly needed assurance of a commitment to food safety, sustainability, local farming and the environment; certainly, far more questions were being asked than ever before. A challenge was that Sid Wainer & Son essentially served as an intermediary between the producers and growers of food and the company's clients; to provide assurance to his customers, Henry would have to somehow retain or expand upon his company's awareness of everything upstream in the company's supply chain. In other words, to make promises to customers, the company required, more than ever, awareness of how hundreds of suppliers were operating.

The moment

In the period for consideration, Sid Wainer & Son is not in a moment of crisis. The business is continuing to be profitable and to grow. There are no obvious problems in its operations. Henry's relationships with suppliers are as healthy as ever. Costs are not skyrocketing. Consumers are willing to pay the prices that he asks. Competitors are not threatening to take away clients. No drastic, game-changing trends in consumer tastes are evident. There are no game-changing innovations in food production. Similarly, there are no industry-rocking innovations or trends affecting the supply chain or the means-of-delivery or the marketing and selling of Henry's products. New products – that, as mentioned, are sometimes based on classic-but-almost-forgotten-recipes – are still possible to introduce to the market. There are still new geographic regions and new potential clients to win-over and serve.

What, in Henry's shoes, would you do?

TEACHING NOTE (FOR INSTRUCTOR LEADING DISCUSSION)

According to Dr. Henry B. Wainer, Sid Wainer & Son arrived at all of their sustainability initiatives on their own, without following any preexisting examples or investigating the best practices of other companies.¹

In this regard - and to the extent that Henry and his leadership team make decisions in a fairly ad hoc manner (see final section below: OTHER COMMENTS/INSIGHTS FROM HENRY), Sid Wainer & Son may not be everyone's ideal of how to make long-term plans. However, perhaps such an approach contributed to their not being limited in their thinking. Ultimately, in this case, their approach clearly works to their satisfaction, given their growth, profitability, positive name recognition, positive impacts vis-à-vis stakeholders and the environment, and lack of any negative press to date.

More importantly, the fact that Henry and his team may not be everyone's role model for long-term planning presents instructors with a great opportunity: both (1) to use this teaching note as a guide to "what really happened" and the relevant laws and standards that apply to each initiative, and (2) to encourage discussion among students how their planning and execution would differ, especially in a large publicly-traded company, or if they lacked the authority that comes with holding a major ownership interest in a business.

PROBLEM: concerns of customers with regard to food safety.

SOLUTION: certification of attaining a third party standard.

In Henry's words: "The idea of obtaining FDA HACCP (the Food and Drug Administration's Hazard Analysis and Critical Control Points²) certification was kindled by my desire to be the international leader in food safety. The implementation and successful completion of this effort took many years and we are to this day the only HACCP-certified produce company in America."³

Certification: Legal Framework and Further Teaching Notes

During the period in question, colleges and universities, as well as high schools began demanding that Sid Wainer & Son recycle. This was the start to Henry's sustainability campaign. One of the first steps he took to assure his customers that his family business was concerned with being socially responsible was attaining the Food and Drug Administration's HACCP certification.

This is a great opportunity to point out a few things: (1) the first steps in the direction of adopting sustainability initiatives (in the real world) often are inspired by complaints or queries from customers, yet, ironically, (2) sustainability initiatives often (in the minds of students) are equated with efforts to serve stakeholders outside of the firm's conventional focus: customers.

The FDA is the oldest comprehensive consumer protection agency of the U.S. federal government, with practices that can be traced back to the mid 1800's.⁴ In 1848, a Patent Office clerk was assigned the duty of testing for chemicals in agricultural goods, a duty passed-on to the newly-created Department of Agriculture in 1862.⁵ The modern incarnation of the FDA dates back to 1906, with the passage of the Pure Food and Drug Act - a law that took a quarter century to pass - and it received its current name in 1930.⁶ In order to protect consumers from potential harmful products through the development stage to point of consumption, the administration created the HACCP program.

The HACCP "is a management system in which food safety is addressed through the analysis and control of biological, chemical, and physical hazards from raw material production, procurement and handling, to manufacturing, distribution and consumption of the finished product."⁷

The HACCP program was developed during the Cold War when the FDA was conducting hazardous analyses of ingredients and processes for the food that would be taken into space.⁸ Since its introduction, the program has gained acceptance from the food industry and other regulatory agencies, which has helped HACCP become the most widely accepted food safety program.⁹ In order to successfully implement the food safety process, systems must be created to meet unique aspects of the production, processing, and preparation operations; the equipment being employed; the food being processed or prepared; and personnel.¹⁰

In order to receive this certification, a company must complete the seven steps of the program that are issued by the National Advisory Committee on Microbiology Criteria for Foods. These seven steps include:

Principle 1: Conduct a hazard analysis.

Principle 2: Determine the critical control points (CCPs).

Principle 3: Establish critical limits.

Principle 4: Establish monitoring procedures.

Principle 5: Establish corrective actions.

Principle 6: Establish verification procedures.

Principle 7: Establish record-keeping and documentation procedures.¹¹

To effectively execute this program, managers and employees must be educated on an on-going basis, especially since there is a high employee turnover rate in the food industry.¹² Previous experiences with this program show that the simpler and more straightforward a HACCP program is, the easier it will be to implement and maintain.¹³ Keeping it simple allows a business to focus on one task a time, reducing the risk of failure and or higher implementation costs.¹⁴

Businesses who are currently involved in these practices should be aware that the number of steps they must complete may increase to 10 or more in the near future.¹⁵ This is an important factor in the overall success of the HACCP program because new diseases are constantly being discovered, along with new treatments.¹⁶

Assembling a HACCP team, describing the food and distribution, conducting hazard analysis, and establishing monitoring procedures are just a few steps that Henry had to complete in order to be nationally recognized.¹⁷ Sid Wainer & Son is currently the only HACCP certified produce company in America.¹⁸

By achieving HACCP certification, Sid Wainer & Son secured a sustainable competitive advantage, or, in other words, it distinguished itself in a way that is difficult to imitate. Sid Wainer & Son now supplies clients that require the very highest security scrutiny in the world.¹⁹ Securing HACCP certification may have helped these contracts. An important take-away lesson, therefore, is that sustainability initiatives that involve achieving certification may help secure new business for a company.

For businesses outside the food industry that are looking for new ways to differentiate themselves from the growing competition, there are a variety of green certification programs. These programs allow a business to obtain a certification from an independent, third-party that can similarly attract more consumers and shareholders. A few of the most recognized programs include Leadership in Energy and Environmental Design (LEED) for buildings²⁰, Green Seal²¹, Food Safety and Quality²², Scientific Certification Systems²³, and Green Business Certification²⁴. By entering these programs, companies are finding new opportunities while taking steps to reduce their environmental footprint and more positively impact stakeholders.

From a legal perspective, such certification is an example of "soft law"; that is, rules that are not enforceable by going to court and asking for monetary fines or imprisonment.²⁵ Rather, as articulated by Cynthia Williams soft law works by establishing a set of norms, the violation of which causes humiliation or sufficient bad publicity - potentially resulting in lost business - such that entities or individuals are wont to violate them.²⁶ Arguably, laws that "regulate through disclosures", such as SEC disclosure guidelines or the Toxic Release Inventory (TRI), occupy a place on the spectrum closer to soft law than "command-and-punish" regulations, in that they simply require disclosure of information, which in itself begets better conduct.²⁷

The Green Business Bureau (GBB) is currently one of the leading entities helping organizations become more green; since opening in 2001, they have consulted hundreds of businesses all across the United States and Canada.²⁸ According to Ramon Kahn of GBB, the majority of their consultation is through their online program, EcoPlan, which provides step-by-step guides for all of the initiatives in the program, and their network of over 650 Eco-consultants helps implement these plans.²⁹ GBB also has an on-site verification program, to make sure parties are making progress.³⁰

By obtaining a certification that recognizes their efforts in socially responsible business practices, Sid Wainer & Son was able to gain recognition from customers, business partners, and the community. This example illustrates how sustainability initiatives that are geared toward customers can have positive results that benefit a company in the long run.

PROBLEM: contaminated properties in New Bedford.

SOLUTION: purchase polluted property, clean it and build a greenhouse.

A federal statute, the Comprehensive Environmental Response Compensation and Liability Act (CERCLA)³¹, popularly known as Superfund³², established that the following three kinds of parties could be made 100% responsible for the cost of cleaning – to pristine conditions – contaminated lands, or "brownfields": (1) those who transport hazardous waste to a site, (2) those who own the land at the time of the hazardous contamination, and (3) anyone who later acquires that land. At first blush, this may appear to be a deterrent to anyone purchasing contaminated sites. For clever businesspeople, however, this represents a wonderful incentive to invest in such property.³³ Arrangements may be negotiated with federal, state, and local authorities to secure immunity from future lawsuits in exchange for less-than-perfect, but reasonably safe remediation, or clean-up, of the contaminated property.³⁴ Other incentives, such as tax breaks, may be negotiated.³⁵ Furthermore, the cost of contaminated real estate is likely lower than that of clean property. Therefore, even to an entirely self-interested investor, much less an altruistically-minded and environmentally-aware businessperson, the decision to buy, remediate, and productively use contaminated land is a "win-win-win-win" proposition for the business, local economy, local society, and environment.

This was exactly what Sid Wainer & Son decided to do, with a twist: they turned a contaminated lot into a greenhouse – in the words of Henry:

"Several years ago, we successfully converted a brownfield which had been useless and contaminated into what was ultimately the first successful attempt at inner city agriculture in the northeast in the past hundred years. This venture resulted in the creation of spectacular greenhouses which are today yielding beautiful local harvests year round. ... The greenhouses were the direct result of a multiyear effort... The necessity to wind our way through the federal, state and local

[government authorities] was driven by my lifelong desire to ensure land conservation. ...this has given me and the community a great sense of pride. ... This project took several years but ultimately everyone involved from the state legislature through local representatives were supportive.”³⁶

Brownfielding: Legal Framework and Further Teaching Notes

As one of the oldest businesses in the New Bedford area, Henry Wainer was continually thinking about creative approaches to running his business that would give something back to the local society.³⁷ Through his lifelong desire for land conservation, Henry came up with the idea to turn a brownfield into an inner-city greenhouse.³⁸

The United States Environmental Protection Agency defines “brownfields” as “abandoned, idled, or under-used industrial and commercial facilities where expansion or redevelopment is complicated by real or perceived environmental contamination.”³⁹ Brownfield sites include “retired chemical dumps, decrepit manufacturing facilities, and abandoned corner gas stations, and they are prevalent throughout both urban and rural communities in the United States.”⁴⁰

Spurred by the public outcry,⁴¹ over the infamous 1978 Love Canal incident, where industrial waste was found seeping into residential basements and onto a playground,⁴² Congress passed the first piece of legislation dealing with hazardously polluted land: the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980.⁴³ CERCLA was intended to encourage private and voluntary remediation and public financial support for cleanups in cases where the private sector did not provide any.⁴⁴ However, due to CERCLA’s imposition of strict liability on potentially responsible parties,⁴⁵ CERCLA in its initial incarnation may have actually discouraged some redevelopment.⁴⁶ States created programs to encourage brownfielding partly as a result of this.⁴⁷ The U.S. EPA led CERCLA clean-ups before 2002, though it entered into cooperative agreements with states in some cases.⁴⁸

Greater coordination between federal and state levels of government was encouraged by the Superfund Amendments and Reauthorization Act (SARA) Amendments of 1986.⁴⁹ SARA created additional enforcement mechanisms, increased citizen involvement, placed a greater emphasis on risk to human health, and increased the Superfund to \$8.5 billion.⁵⁰

The Clinton Administration, to provide a pilot program to model of better federal, state, and local cooperation, created the Brownfields Action Agenda.⁵¹ To encourage learning models,⁵² the program allows the EPA to award \$200,000 to communities to encourage brownfield redevelopment.⁵³ In 1991, 63 of the 1245 sites on the National Priorities List (NPL) had been remediated in the first eleven years of the program.⁵⁴ By 2001, 57 percent of the 1280 sites had been remediated such as to eliminate “threats to humans from toxic exposure.”⁵⁵ However, the industry tax failed to be renewed in 1995⁵⁶ and the number of remediations per year started to fall by the first years of the new millennium.⁵⁷

The Small Business Liability Relief and Brownfields Revitalization Act of 2002 may have helped to shift the balance of incentives more in favor of brownfielding by, among other things, limiting liability.⁵⁸ The Act, also known as the 2002 Brownfield amendments to CERCLA, transferred more responsibility for remediation to the states.⁵⁹ Some provisions were novel and some changes restated existing EPA policies.⁶⁰ The Act created several exemptions from liability.⁶¹ and standardized remediation approaches.⁶² The 2002 Brownfields Act is arguably “the most wide-reaching and comprehensive package of CERCLA amendments since the Superfund Amendments and Reauthorization Act (“SARA”) of 1986”⁶³ and generally was received positively.⁶⁴ Most recently, the American Recovery and Reinvestment Act of 2009 provided \$100 million to the EPA Brownfields Program to encourage further brownfield redevelopment through job training, loans, and cleanup grants.⁶⁵

Roughly half a million other sites are not listed among the 1200 on the NPL, and therefore not eligible for federal funding; these are primarily the concern of state and local governments.⁶⁶ Almost every state has a legal framework for dealing with these sites.⁶⁷ Developers typically approach the state governments with a plan for redeveloping a specific site.⁶⁸ In return, states offer liability protection such as covenants not to sue.⁶⁹ These State Voluntary Cleanup Programs (or VCPs) protect developers from liability if they remediate a property to an agreed-upon standard and follow appropriate guidelines.⁷⁰ Some states provide lender liability protection and financial incentives.⁷¹ One criticism of such an approach, however, is that it does not contribute to well-coordinated regional redevelopment.⁷²

Municipalities and regional redevelopment agencies can play a vital role in brownfield planning.⁷³ Local officials know the communities best, so, as a matter of practical advice, it is good to coordinate with all levels of government - local, state, and federal - to assure smooth coordination and a successful redevelopment.⁷⁴ New York City provides perhaps the best illustration;⁷⁵ its goal is to have cleaned-up all contaminated land in the city by 2030.⁷⁶ With the city’s population expected to boom from 8.2 million to 9.1 million within that timeframe,⁷⁷ brownfielding is practically essential.⁷⁸ New York City’s is the first municipal voluntary cleanup program in the United States,⁷⁹ with a budget of \$11 million in subsidies offered.⁸⁰ Contaminated land will be inventoried and community groups and developers will be trained.⁸¹ The partnership also provides coordination and job preparation.⁸²

As stated above, approximately 500,000 contaminated sites may still exist in the United States, with 192 U.S. cities in 2003 reporting more than 95,000 acres of land as abandoned or under-utilized because of pollution.⁸³ In a 2006 survey of 200 cities, 172 estimated that they had 96,039 acres divided among more than 23,810 brownfield sites, with the average size between 5 and 15 acres.⁸⁴ Decontamination efforts must be increased in order to make a substantial impact on the amount of contaminated sites in the United States.⁸⁵ If contaminated lands were remediated and developed, 82 cities across the country

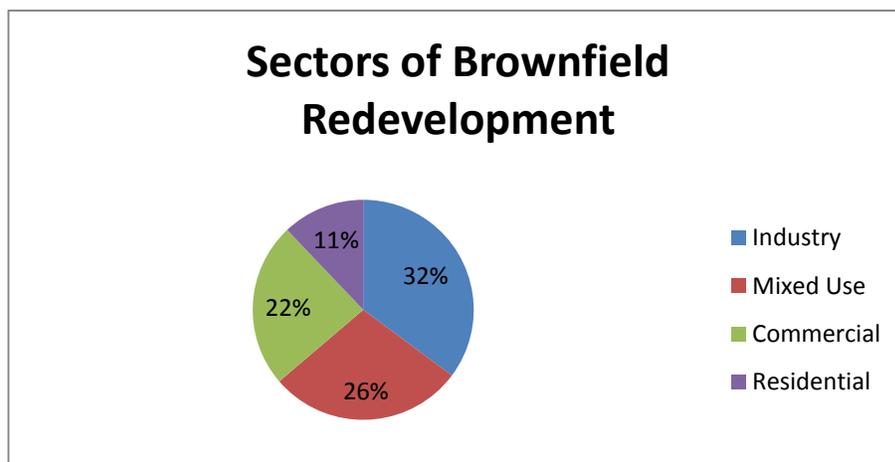
have estimated that they could accommodate a total of 2.8 million people.⁸⁶ Since the beginning of the EPA's Brownfield Program, it has contributed to the creation of an estimated 68,936 jobs.⁸⁷ Out of the 150 cities, 80 of them have reported some impact on a total of 115,600 jobs.⁸⁸

Although the Superfund law provides some incentives to buyers of contaminated lots, there is still a lot of speculation on the amount of support one may need to be successful.⁸⁹ Many people are turned away from this opportunity because it may be tougher to borrow money from lenders to reinvest in the property.⁹⁰ There is also the fear that neighboring plots may also be polluted and not all of the contamination will be cleared.⁹¹

Despite these costs and risks, there are many benefits to both the developer and every other imaginable stakeholder, including the societies, economies, and environments at the local, regional, national and global levels.⁹² Starting with the perspective of a purely economically self-interested developer, brownfielding can be lucrative. Polluted land normally costs less, and, as just described above, public sector support now encourages clean-up and development, and a project on remediated land can attract significant positive publicity for the developer for eliminating health risks, improving local economies and job opportunities, and raising property values and local tax bases.⁹³ Beyond that, brownfielding generates positive externalities to all other stakeholders:

“... brownfield remediation is a combination of the large and small. Remediation involves working on the microscopic scale to achieve large-scale results; while pollutants exist on the molecular scale, the harm they cause and the benefits of their cleanup occur on a much larger scale. ... Zooming out, brownfields are the open gaps in urban areas. Brownfields offer a means of curbing urban sprawl and development of greenfields, undeveloped land outside cities. Building on brownfields can revitalize cities and curb suburban growth by increasing the tax base, developing unused or blighted areas, and eliminating pollution. Globally, infill development--building inside cities--is a means of addressing two significant challenges that cities are not well-equipped to handle: the global shift in manufacturing away from the United States and global warming.”⁹⁴

Below is a chart of the different sectors that have invested in Brownfield Redevelopment⁹⁵:



As a part of the EPA's RE-Powering America's program, the agency is taking a multi-level approach to cleaning-up and developing contaminated land, such as polluted former industrial properties, for the development of wind, solar, biomass, and geothermal energy facilities.⁹⁶ The EPA and National Renewable Energy Laboratory (NREL) are currently working together to determine the optimal location for renewable energy sources.⁹⁷

In this specific case, by converting the contaminated land into greenhouses, Sid Wainer & Son was "ultimately the first successful attempt at inner city agriculture in the northeast in the past hundred years" and it was a success.⁹⁸ The greenhouses have not only provided the company with year-round harvests but have impacted the economic health of New Bedford. In their greenhouses they use an elevated growing system that allows them to grow plants without the risk of being contaminated.⁹⁹ With the innovation of having an urban greenhouse, Sid Wainer & Son has positioned themselves as a role model for other expanding businesses.

Brownfielding may not be an option for every business in every situation. However, many businesses can emulate the practice of being mindful of how they physically locate themselves. They can choose to locate in preexisting commercial space or to build on previously used land rather than "greenfielding" (or building on pristine or otherwise undeveloped land), thereby possibly reducing costs while acting in the interests of stakeholders as well.

PROBLEM: local and regional farmers face challenges

SOLUTION: purchase property and develop an experimental lot to help them.

Sid Wainer & Son purchased agricultural farmland that had been put on the market. There, the company experiments with cultivating various plants. The lessons learned are then shared – at no cost – with farmers in the region.¹⁰⁰

By doing so, two things are achieved. First, struggling New England farmers are assisted, and thereby have a greater chance of staying in business by learning what crops may be raised most successfully given various methods. Second, supplier relationships are strengthened. In the words of Henry: “My commitment to the farmers and the environment has grown gradually from childhood through today. It appears likely that in each succeeding year I will continue to be more and more involved.”¹⁰¹ In the words of Henry Wainer:

“I believe that Sid Wainer & Son were the first and probably still the only company that meets with the farmers to discuss what should be grown and to ensure their financial wellbeing through purchasing various amounts of their harvest.¹⁰² We buy hundreds of trailers of produce from local farms continuing a program which has grown over several generations.”¹⁰³

Local Agriculture: Further Teaching Notes

Over the last few decades, due to the pressure of competing against industrial agriculture, smaller family owned farms are finding it harder to stay in business.¹⁰⁴ They are constantly faced with high operating costs, real estate prices, and the unpredictability of New England weather.¹⁰⁵ In 1920, the United States had about 6.5 million farms with an average of 149 acres per farm; in 1997, there were fewer than 2 million farms, averaging 487 acres per farm.¹⁰⁶

According to Farm Aid, every week 330 farmers leave their properties.¹⁰⁷ The majority of these farms are facing the effects of globalization and the presence of international markets which creates tougher competition.¹⁰⁸ Currently out of the 2 million farms that are in the United States, roughly 565,000 of them are family operated.¹⁰⁹ Family owned farms have a major impact within their communities and the environment from supplying fresh products to operating an environment friendly operation.¹¹⁰

In richer nations, smaller farms are having trouble competing with stronger commercial farming because of economies of scale.¹¹¹ The larger producers output much higher value products at a greater rate, with a ratio of fewer employees.¹¹² Although the small farm sector may not take in as much revenue, it still plays a vital role concerning employment and the agricultural output in the area.¹¹³

Smaller farms have the tendency to use sustainable farming techniques to preserve the land for future generations and are also more concerned about their customer’s health.¹¹⁴ Small scale farming tends to be more sustainable due to a number of reasons. Sustainable agriculture produces fewer greenhouse gas emissions, increases the ability of soils to sequester carbon, and reduces the risks associated with climate change, such as floods and droughts.¹¹⁵ It is also more likely to promote food security by supporting the livelihoods of small farmers.¹¹⁶

With the number of farms in the local area disappearing, Sid Wainer & Son found themselves in a position for concern. Currently they “buy hundreds of trailers of produce from local farms continuing a program which has grown over several generations.”¹¹⁷ Without local farms to supply them with produce, they would have to rely more on international importing, which would incur high costs and cause more harm to the environment.

To help local farms stay viable, Sid Wainer & Son purchased agricultural farmland that had been put on the market and then used this land to experiment with cultivating various plants.¹¹⁸ The lessons learned were then shared - at no cost - with farmers in the region.¹¹⁹ By doing so Sid Wainer & Son was able to assist struggling New England farmers by educating them on what crops may be raised most successfully given various methods.

According to Dr. Wainer “this is not a money making venture for us. It’s a test to see what foreign produce can be grown in New England rather than having it shipped to our company from places like Europe”¹²⁰

By sharing this valuable information with the local farmers, Sid Wainer & Son was able to express its concern for local farmers, which in return strengthened the relationship.¹²¹ Henry stated that “my commitment to the farmers and the environment has grown gradually from childhood through today. It appears likely that in each succeeding year I will continue to be more involved.”¹²² Over a period of just 12 months Sid Wainer & Son have saved a thousand acres of farmland which otherwise would have gone to development.¹²³

The success of this project is evident in the eyes of his suppliers: “I believe that Sid Wainer & Son were the first and probably still the only company that meets with the farmers to discuss what should be grown and to ensure their financial wellbeing through purchasing various amounts of their harvest.”¹²⁴

Jansal Valley Farm, located in Dartmouth Ma, is a 23- acre plot of land that offers a variety of berries, legumes, and tomatoes. It is Henry Wainer’s goal to turn the plot of land into a research and development center with 4,300 varieties of vegetables, fruits, and herbs. By offering valuable information to farms in the New England area, he hopes that farms will be motivated to grow produce on a contractual basis.¹²⁵ This in turn will support the local food movement and reduce the dependency on internationally shipped products.

Through directly involving the company in the practices of their supplier, Henry Wainer created a connection that both parties were able to utilize. By taking the initiative to address the challenges of small local farmers, Sid Wainer & Son was able to show their passion for local farms, along with preserving land that would have potentially been developed for residential housing. The concept of showing concern and helping entities in an organization's supply chain is replicable in other industries and in other parts of the world.¹²⁶

PROBLEM: unhealthy consumer diet and lifestyle habits.

SOLUTION: slow food movement, customer education and trend-setting.

As in other industries, if consumers are educated about the repercussions of their purchase decisions, their tastes and purchase decisions are likely to change. This is therefore another example of a potential "win-win-win" situation. By educating consumers, a company can help them choose healthier lifestyles and create demand for products created by responsible suppliers while also benefiting financially from the change in consumer tastes. In Henry's words:

"We are heavily involved in the Slow Food Movement having met with the principles of Slow Food's University of Gastronomic Sciences in Bra, Italy. Our involvement with Slow Foods, we believe, will ultimately lead us to a position of leadership in the United States. We will be the first G.A.P. (Good Agricultural Practices) certified company in Massachusetts through our Jansal Valley farms."

Slow Food Movement and Third Party Standards: Further Teaching Notes

As an owner of a company that has a direct effect on the consumer, Henry wanted to make sure that consumers were aware of unhealthy diets and lifestyle habits. By becoming part of the Slow Food Movement, Sid Wainer & Son positioned themselves to help customers choose healthier lifestyles. By educating their consumers, they were able to create a demand for products that were prepared with responsible supplies in a sustainable manner. The Slow Food Movement "is an idea, a way of living and a way of eating. It is a global, grassroots movement with thousands of members around the world that links the pleasure of food with a commitment to community and the environment."¹²⁷ By advocating the needs and benefits of small farming, Slow Foods main objective is to get people to be a responsible consumer and use their senses to enjoy quality food with awareness.

Founded in 1989, Slow Food is a non-profit organization that fights against the rise the fast food and industrial farming. The member-supported association has over 100,000 members and is present in over 150 countries.¹²⁸ Their missions include: defending food diversity, developing world-wide networks of farmers, education on where food comes from, and connecting the producer with the consumer. Slow Food has also spread to a number of campuses in the US, UK, and Canada where students are engaging the community to work towards a fair food practice system.¹²⁹

With their involvement with Slow Foods, Henry "believes that it will ultimately lead them to a position of leadership in the United States. They will be the first Good Agricultural Practices (GAP) certified company in Massachusetts through their Jansal Valley farms."¹³⁰

GAP is an array of codes, standards, and regulations that have been developed by the food industry, producer organizations, and governments in order to preserve food safety and quality.¹³¹ The GAP standard serves as a reference tool to farmers to help determine what steps and practices will generate environmentally sustainable and socially responsible outcomes.¹³² The guidelines are based on 8 principles, which are listed below, that outline microbial food safety within the realm of growing, harvesting, packing, and transporting fresh produce:

Principle 1. Prevention of microbial contamination of fresh produce is favored over reliance on corrective actions once contamination has occurred.

Principle 2. To minimize microbial food safety hazards in fresh produce, growers, packers, or shippers should use good agricultural and management practices in those areas over which they have control.

Principle 3. Fresh produce can become microbiologically contaminated at any point along the farm-to-table food chain. The major source of microbial contamination with fresh produce is associated with human or animal feces.

Principle 4. Whenever water comes in contact with produce, its source and quality dictates the potential for contamination. Minimize the potential of microbial contamination from water used with fresh fruits and vegetables.

Principle 5. Practices using animal manure or municipal biosolid wastes should be managed closely to minimize the potential for microbial contamination of fresh produce.

Principle 6. Worker hygiene and sanitation practices during production, harvesting, sorting, packing, and transport play a critical role in minimizing the potential for microbial contamination of fresh produce.

Principle 7. Follow all applicable local, state, and Federal laws and regulations, or corresponding or similar laws, regulations or standards for operators outside the U.S., for agricultural practices.

Principle 8. Accountability at all levels of the agricultural environment (farm, packing facility, distribution center, and transport operation) is important to a successful food safety program. There must be qualified personnel and

effective monitoring to ensure that all elements of the program function correctly and to help track produce back through the distribution channels to the producer.¹³³

GAP was put into place to focus on 5 major areas of concern, including water quality, manure/municipal biosolids, worker hygiene, field, facility, and transport sanitation, and traceback.¹³⁴ By properly managing these various aspects, the company is ensuring that they are distributing healthy food to the public. Although not every business can implement this precise strategy, every business can look for standards and certification, as mentioned above, that serve to build trust and encourage the company to adopt best practices.

By connecting with the customers on a personal basis, affecting their food consumption habits and appreciation for quality, Sid Wainer & Son was able to capture the attention of his audience, draw them into his business, and ultimately lead to them making decisions that both were good for the company and healthier choices for the consumer. At a time when consumers are beginning to become more judgmental towards business practices in relation to the environment and health, organizations need to involve their customers in their initiatives.

PROBLEM: problems and costs related to resource wastage and pollution

SOLUTION: resource conservation

As listed below, there are conservation efforts under way at Sid Wainer & Son, and many measures of success.¹³⁵

1. A 47% decrease in annual electricity usage through energy saving lamps, equal to the energy consumed by 50 night games at Fenway Park or 120,000 homes per year.
2. The recycling and conservation program involves corrugated materials, office paper and business forms; the transition to paperless operations has saved 850,000 trees per year. These 850,000 trees remove pollutants, including millions of pounds of excessive anthropogenic carbon dioxide, from the air annually.
3. The commitment to replace boxes with reusable totes in the “Sid Wainer & Son Going Green Facility” further establishes the firm’s brand identity as a green business.
4. Replacement of boxes with totes will spare 3 million gallons of water used in the production of boxes annually.
5. The tote program will eliminate the use of 580,000 boxes annually. This number will grow in the future.
6. Given that nearly one third of landfill waste is corrugated material, Sid Wainer’s tote program is making a significant contribution to reducing solid waste production as well as saving thousands of yards of landfill waste and reducing infrastructure strain and costs related to waste disposal.
7. The introduction of a complete energy efficient water filtration system is replacing thousands of units of bottled water, which eliminates the resulting use and costs of petroleum in making and transporting plastic bottles and the costs and strain on infrastructure that would stem from disposing of thousands of empty bottles.
8. The company has a rigid set of “Vehicle Idling Reduction Strategies”. By reducing idling time of the truck fleet 36%, Sid Wainer & Son reduces fuel consumption by about 2,760 gallons per month or 33,120 gallons per year.

Conservation Efforts:Further Teaching Notes

In an effort to run a more environmentally friendly operation, Sid Wainer & Son implemented a variety of conservation practices. Through the use energy efficient products and reducing the amount of waste that the business was creating, the food specialty company was able to significantly reduce their environmental footprint and operating costs.

In many cases, the lighting of a commercial building contributes to the majority of the overall energy consumption. On average lighting will consume 60% of the total amount of energy used.¹³⁶ The current Energy Star efficient light bulbs use up to 75% less energy and last up to 10 years longer, while still providing the same amount of light.¹³⁷ By using these products, Sid Wainer & Son was able to decrease their annual electricity usage by 47%.¹³⁸

If all businesses installed energy efficient products in their homes, there would be a drastic reduction in the amount of greenhouse gasses released from coal powered plants. This is an example where the law can help companies adopt what should be in their own self-interest by restricting what is on the market; most incandescent light bulbs, for example, will soon not be available for retail purchase in the United States because they fail to meet improved energy efficiency requirements.¹³⁹

According to the Environmental Protection the average 2007 idling truck uses between .53g and .72g per hour.¹⁴⁰ Not only is this cost inefficient, but it is detrimental to the environment. For trucks that idle between 20-30 hours a week, there are a number of technologies that can be used to reduce idling time. One of the most effective means to reducing the time is to use an Electrified Parking Space (EPS).¹⁴¹ An EPS is operates independently of the truck’s engine and allows the truck engine to be turned off as the EPS system supplies heating, cooling, and electrical power.¹⁴² Any business that has a large fleet of trucks should consider implementing similar practices because it is a financial incentive. In order to help with some of the upfront costs, the government offers tax credits, grants and loans to potential candidates.¹⁴³

OTHER COMMENTS/INSIGHTS FROM HENRY¹⁴⁴:

Regarding the reputational benefits of Sid Wainer & Son's sustainability initiatives:

"Visitors from around the world arrive to tour the farms, the Sid Wainer & Son facility and our greenhouses.

Universities and major organizations clammer for more information regarding our energy savings initiatives and we respond by lecturing throughout the world on what we have accomplished and what we continue to pursue. Being the only HACCP certified produce company in America has led us to become the recognized world leader in food safety and beyond that we have become the recognized world leader in sustainability and organics."

What information (or questions) from the above was not important?

"Since so many things are the result of 'serendipity,' I'm unable to recognize what may have been unimportant."

What timeline did you set out?

"I don't believe I've ever set a time line for my projects. As my entire company recognizes that it's unimportant how circuitous the plan as long as we execute and reach the goal."

What specific things did you ask for (calculations, information, estimates)?

"On all of our plans, we request as much information as possible and we have the advantage of having a state of the art computer system which can give us detailed information, comparative analysis, projections and finite detail."

Whom did you ask for what (was all the planning internal)?

"All of our planning is internal. We have top management meetings weekly as well as marketing meetings comprised of 50 professionals who speak with our customers daily."

Recollections related to the decision-making moments described above:

"I have clear recollections of when I definitely decided what to do next regarding sustainability initiatives. The project of the farms and the creation of the greenhouses filled me with a sense of pride of what this would mean in the years going forward and the many visitors this would attract. This created the ability for me to realize the marketing position of offering consumers produce that was packed at sundown and delivered to them at sunrise."

How successful was each project (specific metrics)?

"The success of each project is the result of previous projects. The cumulative effect of all of them is where I am today. I am proud of the level this company has achieved."

What have been the best ideas?

"Again, I believe each idea was the result of those before it; each one individually played a major role."

What have been the worst ideas?

"We have never (to the best of my recollection) gone down the road trying to execute a bad idea. Hundreds of ideas have, over the years, been discussed at my management meetings and have not progressed beyond that. ... I'm unaware of any ideas through our management team which did not succeed once a decision was made to embark on that particular project. Our management team meets weekly and is action oriented. We have researched many ideas and continue to research many ideas."

Any advice, based on your experiences that you have described?

"As I noted earlier, 'It doesn't make any difference how circuitous the plan is or even (in the extreme) how bad the plan is, if it is executed properly and achieves the result it is far and away better than a perfectly thought out plan which is not executed well and fails to reach a desired goal.'"

Observation about the impact of the global economic downturn of 2008-09:

"It caused a 3% decline in [the cost of] supplies in 2008 and [costs are] down an additional 10% year to date in 2009 due entirely to lower [supply] costs."

What's coming next?

"Probably an instructional case study of Sid Wainer & Son."

Footnotes

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- ⁴ U.S. Food and Drug Administration, History, *available at*: <http://www.fda.gov/AboutFDA/WhatWeDo/History/default.htm> (last visited May 31, 2011).
- ⁵ *Id.*
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- ⁷ FDA HACCP homepage, *supra* note 2.
- ⁸ See Frank L. Bryan, *Hazard Analysis Critical Control Point Approach to Food Safety Past, Present, and Future*, 61 J. ENVTL. HEALTH 9 (1999). During the cold war, and the race to beat the Soviets into space, a high priority was placed on conducting hazard analyses of ingredients and processes; this was the start of the HACCP approach to food safety. *See id.*
- ⁹ David McSwane and Richard Linton, *Issues and Concerns in HACCP Development and Implementation for Retail Food Operations*, 62 J. ENVTL. HEALTH. (2000).
- ¹⁰ See Bryan, *supra* note 8. Presently, there are software programs, as well as manuals, that can be used to assist in the development of HACCP systems. *See id.* Whatever is used to aid in the development of generic HACCP systems, the systems must be tailored to meet unique aspects of the production, processing, and preparation operations; the equipment being employed; the food being processed or prepared; and the personnel. *See id.*
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- ¹⁴ *See id.*
- ¹⁵ See Bryan, *supra* note 8. The number of HACCP principles will increase from seven to 10 or more.
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- ³³ See Adam J. Sulkowski, *There’s Gold in Them Thar Brownfields: The Legal Framework of Brownfielding and Some Tips on for Getting Started*, 39 REAL ESTATE L. J., 1, 100-112 (2010).

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- ³⁴ See *id.*
- ³⁵ See *id.*
- ³⁶ Wainer, *supra* note 1.
- ³⁷ *Id.*
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- ³⁹ Gabriel A. Espinosa, *Building on Brownfields: A Catalyst for Neighborhood Revitalization*, 11 VILL. ENVTL. L. J. 1, 8 (2000), citing Office of Solid Waste and Emergency Response, Environmental Protection Agency, Brownfields National Partnership Action Agenda (May 1997).
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- ⁴¹ *Id.* at 366.
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- ¹⁰⁴ Claude Menard & Peter Klein, *Organizational Issues in the Agri-Food Sector: Toward a Comparative Approach*, (Jan. 7, 2004), available at <http://129.3.20.41/eps/io/papers/0401/0401005.pdf>
- ¹⁰⁵ *Id.*
- ¹⁰⁶ *Id.*
- ¹⁰⁷ Sustainable Table, *The Issues: Family Farms* (2007), available at: <http://www.sustainabletable.org/issues/familyfarms/> (last visited May 31, 2011).
- ¹⁰⁸ *Id.* "The dramatic expansion of industrial agriculture (or factory farming) has made it increasingly difficult for small family farmers in the U.S to stay in business. Instead, the food industry has become dominated by a handful of giant corporations which benefit from government policies that favor large-scale production." *Id.*
- ¹⁰⁹ *Id.*
- ¹¹⁰ *Id.* "Perhaps most importantly, family farmers serve as responsible stewards of the land. Unlike industrial agriculture operations, which pollute communities with chemical pesticides, noxious fumes and excess manure, small family farmers live on or near their farms and strive to preserve the surrounding environment for future generations." *Id.*
- ¹¹¹ *Id.*
- ¹¹² *Id.*
- ¹¹³ *Id.*
- ¹¹⁴ *Id.* Since these farmers have a vested interest in their communities, they are more likely to use sustainable farming techniques to protect natural resources and human health. *Id.*
- ¹¹⁵ Paul Hepperly, *Organic Farming Sequesters Atmospheric Carbon and Nutrients in Soils* (Oct. 10, 2003), available at: <http://www.strauscom.com/rodale-whitepaper/> (last visited May 31, 2011).
- ¹¹⁶ *Id.*
- ¹¹⁷ Wainer, *supra* note 1.
- ¹¹⁸ *Id.*
- ¹¹⁹ *Id.*
- ¹²⁰ *Id.*
- ¹²¹ *Id.*
- ¹²² *Id.*
- ¹²³ *Id.*
- ¹²⁴ *Id.*
- ¹²⁵ Sid Wainer & Son, *Wainer & Son Experiments with New Crops on Dartmouth Farm*, available at: <http://www.sidwainer.com/gardensgrow.asp> (last visited April 25, 2011).
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- ¹²⁷ Slow Food USA, *What Is Slow Food*, available at: http://www.slowfoodusa.org/index.php/slow_food/ (last visited May 31, 2011).
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- ¹³⁰ Wainer, *supra* note 1.
- ¹³¹ Food and Agriculture Organization of the United Nations, *What are Good Agricultural Practices?* (2008), available at: http://www.fao.org/prods/GAP/index_en.htm (last visited May 31, 2011).
- ¹³² Anne-Sophie Poisot, *Summary Analysis of Codes, Guidelines, and standards related to Good Agricultural Practices* (Nov. 12, 2003), available at: <http://www.fao.org/prods/gap/Docs/PDF/2-SummaryAnalysisRelevantCodesEXTERNAL.pdf> (last visited May 31, 2011).
- ¹³³ U.S. Food and Drug Administration, *Guidance for Industry: Guide to Minimize Microbial Food Safety Hazards for Fresh Fruits and Vegetables* (Oct. 26, 1998) available at:

<http://www.fda.gov/Food/GuidanceComplianceRegulatoryInformation/GuidanceDocuments/ProduceandPlanProducts/ucm064574.htm> (*hereinafter: FDA Guidance fo Industry*, last visited May 31, 2011).

¹³⁴ *Id.*

¹³⁵ Sid Wainer & Son, Sid Wainer & Son's Commitment, Energy Savings, the Environment and Sustainability, *available at:* <http://www.sidwainer.com/sustainability.asp> (last visited May 31, 2011).

¹³⁶ Energy Conservation, NEED Project (last visited May 30, 2011), *available at* http://www.need.org/needpdf/infobook_activities/SecInfo/ConsS.pdf

¹³⁷ Light Bulbs (CFL's), Energy Star, (last visited May 31, 2011), *available at* http://www.energystar.gov/index.cfm?fuseaction=find_a_product.showProductGroup&pgw_code=LB

¹³⁸ *Id.*

¹³⁹ 42 U.S.C. 6291(30).

¹⁴⁰ U.S. Environmental Protection Agency, Study of Exhaust Emissions from Idling Heavy Duty Diesel Trucks and Commercially Available Idle-Reducing Devices, (Oct. 2002), *available at:*

<http://www.epa.gov/smartway/documents/epaidlingtesting.pdf> (last visited May 31, 2011).

¹⁴¹ U.S. Department of Energy, Truck Stop Electrification for Heavy-Duty Trucks, (Apr. 29, 2011), *available at:* http://www.afdc.energy.gov/afdc/vehicles/idle_reduction_electrification.html (last visited May 31, 2011).

¹⁴² *Id.*

¹⁴³ U.S. Department of Energy, Idle Reduction Incentives, (Apr. 29, 2011), *available at:* http://www.afdc.energy.gov/afdc/vehicles/idle_reduction_laws.html (last visited May 31, 2011).

¹⁴⁴ The source of all quotations in the section are from Wainer, *supra* note 1.